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MJK

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

New Jersey Office of the Attorney General

Division of Consumer Affairs
State Board of Dentistry
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VIA CERTIFIED (RRR) AND REGULAR MAIL

June 3, 2016

RECEIVED AND FILED WITH THE N.J. BOARD OF DENTISTRY ON 7-27-16 DA

RECEIVED JUN 08 2016 DHD ATTORNEYS

Mark J. Berkowitz, D.D.S.
C/o Michael Keating, Esq.
Dughi, Hewitt & Domalewski, P.C.
340 North Avenue
Cranford, NJ 07016

Re: Settlement Letter in Lieu of Formal Disciplinary Proceedings in Complaints 92572
Patient L.T.

Dear Dr. Berkowitz:

The New Jersey State Board of Dentistry has completed its review of information concerning the above captioned complainants. Specifically, the information reviewed included:

1. The patients' complaint;
2. A copy of your response, including patient's treatment and financial records, and other office records;
3. A transcript of your appearance before the Board on April 20, 2016; and,
4. Other available information about the patients' condition.

Based upon the review of these matters, the Board has preliminarily identified actions which may constitute violations of the Board's statutes and regulations.

1. **Diagnosis and Treatment planning** - The patient record failed to contain adequate diagnostic records on which to base treatment; specifically, it appears that you did not take chart the patient's periodontia, and you failed to take radiographs and/or failed to utilize adequate diagnostics prior to developing a treatment plan.

2. **Record Keeping** - It appears that the patient chart failed to contain adequate information to record the condition of the patient's oral cavity, your examination and treatment of the patient.

These failures in properly diagnosing and planning treatment, and poor record keeping practices may constitute violations of the Board's statutes and regulations sufficient to initiate the filing of formal disciplinary proceedings. However, the Board has determined that it will first offer you an opportunity to settle this matter, and avoid the initiation of formal disciplinary proceedings, should you agree to the following:

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1. Pay a civil penalty in the total amount of $3,000; of this amount, a $2,500 penalty is for repeated acts of negligence (i.e., failure to utilize adequate diagnostic tools, and a $500 penalty for inadequate record keeping practices.

2. Complete a total of seven (7) hours of remedial continuing education in record keeping.

If you are willing to settle this matter on the offered settlement terms, you may do so by signing the acknowledgment at the bottom of this letter, and returning it to the Board office. The civil penalty should be paid by a check or money order made payable to the "State of New Jersey" and submitted to the Board office. Continuing education course work must be pre-approved by the Board, and is to be completed in addition to the credits you must complete for the renewal of your dental license. You should be aware that upon receipt of your signed acknowledgment, this letter will be a matter of public record.

In the event you are unwilling to settle this matter on the offered terms, it will be referred to the Attorney General's office for the initiation of an appropriate enforcement action. In such event, you will be afforded an opportunity to defend against the alleged violations. If an evidentiary hearing is deemed warranted, the Board will either conduct that hearing at a date and time to be scheduled or refer the matter to the Office of Administrative Law. You are advised, however, that in the event formal charges are filed, the Board may assess civil penalties in an amount greater than those offered in settlement here, in addition to other sanctions, should any charges against you be sustained. Additionally, the Board may, if the facts are found to so warrant, enter an order requiring you to reimburse certain monies and/or requiring you to pay the additional costs incurred by the Board. Should you have any questions concerning this letter or the settlement offer, I suggest that you contact Deputy Attorney General Nancy Costello Miller, who may be reached at (973) 648-2500.

If you elect to settle this matter, you should sign the acknowledgment at the bottom of this letter and return it to the Board within fifteen (15) days following your receipt of this letter. In the event that the Board receives no response from you within fifteen (15) days, the Board's settlement offer will be withdrawn, and the matter will be referred to the Attorney General's Office for the initiation of appropriate enforcement proceedings.

Sincerely,
NEW JERSEY STATE BOARD OF DENTISTRY

Jonathan Eisenmenger
Executive Director

cc: Nancy Costello Miller, Deputy Attorney General

ACKNOWLEDGMENT: I, Dr. Mark J. Berkowitz, have read and reviewed the settlement proposal set forth in this settlement letter. I acknowledge the conduct which has been charged. I am aware that by signing this acknowledgment, I am waiving any rights I may have to defend myself against any charges of wrongdoing at an administrative hearing. I am also aware that the action taken against me by the Board is a matter of public record, and that this letter is a public document. I agree to comply with the directives noted. I will:

1. Pay a civil penalty in the total amount of $3,000; of this amount, a $2,500 penalty is for repeated acts of negligence (i.e., failure to utilize adequate diagnostic tools, and a $500 penalty for inadequate record keeping practices.

2. Complete a total of seven (7) hours of remedial continuing education in record keeping.

7/21/6
Date

Dr. Mark Berkowitz
Dr. Mark J. Berkowitz