

**STATE OF FLORIDA  
BOARD OF DENTISTRY**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO: 2015-23828**

**CHARLOTTE YVONNE GERRY, D.M.D.,**

**RESPONDENT.**

---

**ADMINISTRATIVE COMPLAINT**

COMES NOW Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Dentistry against Respondent, Charlotte Yvonne Gerry, D.M.D., and in support thereof alleges:

1. Petitioner is the state department charged with regulating the practice of dentistry pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 466, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed dentist within the State of Florida, having been issued license number DN 14223.

3. Respondent's address of record is 8750 Perimeter Park Blvd., Jacksonville, Florida 32216.

4. Patient N.H. treated with Respondent from on or about September 30, 2013, to on or about October 16, 2014.

5. On or about September 30, 2013, Patient N.H. presented to Respondent's practice after seeing an advertisement for Respondent's Six-month Smiles® ("SMS") cosmetic braces program.

6. According to Respondent's SMS "Quick Treatment Planning Form," Patient N.H.'s primary concern was the need to shift the midline of her smile.

7. Dental midlines are determined relative to facial features and consist of an upper arch dental midline and lower arch dental midline.

8. These midlines must be referenced to each other and to the facial midline location to impart any specificity to anatomic location and/or to impart any direction/degree of anticipated change to be created by orthodontic treatment.

9. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a dentist to develop appropriate treatment options based on an examination of the patient's dental condition.

10. According to the SMS "Short Term Ortho and Cosmetic Exam Form" filled out by Respondent on this date, Respondent estimated Patient N.H.'s upper midline to be "5 mm off to the right" of the facial midline. Additionally, Respondent indicated that Patient N.H.'s lower midline matched the facial midline, but also indicated that it was "1- mm" off (a direction was not indicated).

11. According to the clinical record for this date, Respondent stated that Patient N.H. was a "good candidate" for the SMS treatment program.

12. Respondent's patient records for N.H. contained a SMS "Short Term Ortho Treatment Planning Flowchart" that included various factors that would make a patient a poor candidate for the SMS treatment program. Pertinent factors included whether a patient wanted a midline moved more than 2 mm and whether a patient had less than "1<sup>st</sup> premolar anchorage" anywhere in the mouth.

13. Patient N.H. had lost a permanent upper right 1<sup>st</sup> molar several years earlier.

14. According to Respondent's examination, Patient N.H.'s upper midline was approximately 5 mm off from her facial midline.

15. Respondent failed to properly assess whether the SMS treatment program was appropriate for Patient N.H.'s dental condition and orthodontic needs.

16. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a dentist to acquire appropriate records on a patient's dental condition in order to carry out a treatment plan.

17. Although Respondent's clinical records for this date indicated that Patient N.H.'s medical history and existing dental conditions and treatment were charted into the computer, Patient N.H.'s records contain no evidence of a medical history or dental charting.

18. The term "midline" is indeterminate unless it is in reference to anatomic features exhibited by the patient.

19. Respondent did not take any photographs or otherwise document Patient N.H.'s facial features or dentition at the initial appointment on or about September 30, 2013, or any time following.

20. Respondent failed to make a specific determination of the location of Patient N.H.'s midlines.

21. On or about October 16, 2013, Patient N.H. presented to Respondent's practice to begin orthodontic treatment with the placement of brackets and arch wires.

22. According to the clinical record, on or about November 4, 2013, Patient N.H. presented to Respondent's practice. Respondent began treatment of Patient N.H.'s lower teeth by "stripping" teeth numbers 22-27.

23. Tooth stripping or shaving is the interproximal reduction of a tooth's enamel in order to reshape the tooth. It is an irreversible treatment modality.

24. A tooth can become sensitive to temperature if too much of the dental enamel is removed.

25. Respondent provided no written justification in the clinical record for the need to perform stripping on these teeth numbers.

26. According to the clinical records, Respondent performed additional teeth stripping on or about November 18, 2013 (teeth numbers 23-25), February 4, 2014 (teeth numbers 7-10); and/or April 10, 2014 (teeth numbers 9-10).

27. Respondent provided no written justification in the clinical record for the performance of stripping on these teeth.

29. According to the clinical record for that date, Respondent planned to seat the crown at tooth number 19 at the next appointment.

30. None of Respondent's clinical records following this date contain any notation on the delivery, fit, or seating of the permanent crown on tooth number 19.

31. According to the clinical record for July 16, 2014, Respondent stated that she was unable to "move the midline more on the upper arch." The record stated that "per Patient request, Dr. Gerry will start stripping on lower between 24, 25, 26, 27, trying to correct the lower midline, in relationship with upper midline."

32. According to the clinical record for July 31, 2014, Patient N.H. requested that additional stripping be performed on her lower teeth. Patient N.H. was reportedly informed that additional stripping would make the teeth sensitive. Patient N.H. reportedly "agreed with [Respondent's] decision," and Respondent performed "light stripping" on that date.

33. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a dentist to recognize when to cease an irreversible treatment modality due to the risk of harm to the patient.

34. Patient N.H. reported that she began to notice heat/cold temperature sensitivity in her teeth a few months after Respondent began stripping on her teeth on or about November 4, 2013.

35. Over the course of treatment, Respondent performed irreversible stripping of Patient N.H.'s teeth without sufficient clinical justification. There is no evidence in Respondent's clinical records that Respondent gave consideration for the need, amount, and location of tooth stripping as part of the overall treatment plan.

36. After initiation of the SMS treatment on or about November 4, 2013, Patient N.H. presented to Respondent's practice approximately every two weeks to primarily receive "regular orthodontic continuing care," among other treatments.

37. Respondent's records lack any documentation of the treatment appointments that occurred on or about the following dates: December 1, 2013; January 10, 2014; April 18, 2014; June 10, 2014; July 18, 2014; and/or September 9, 2014.

38. Section 466.024(1), Florida Statutes (2013-2014), states in part that a dentist may not delegate irremediable tasks to a dental hygienist or dental assistant, except as provided by law. A dentist may delegate

remediable tasks to a dental hygienist or dental assistant when such tasks pose no risk to the patient.

39. Rule 64B5-16.005, Florida Administrative Code (2013-2014), sets out the tasks delegable to dental assistants and the required level of supervision for those tasks.

40. The following remediable orthodontic-related tasks may be performed by a dental assistant who has received formal training and who performs the tasks under direct supervision: (1) selecting and pre-sizing orthodontic bands, including the selection of the proper size band for a tooth to be banded which does not include or involve any adapting, contouring, trimming or otherwise modifying the band material such that it would constitute fitting the band; (2) selecting and pre-sizing archwires prescribed by the patient's dentist so long as the dentist makes all final adjustments to bend, arch form determination, and symmetry prior to final placement; and (3) removing and re-cementing properly contoured and fitting loose bands that are not permanently attached to any appliance.

41. Rule 64B5-16.001, Florida Administrative Code (2013-2014) defines "direct supervision" as requiring that a licensed dentist examine the patient, diagnose a condition to be treated, authorize the procedure to be



performed, be on the premises while the procedure is performed, and approve the work performed prior to the patient's departure from the premises.

42. A dental assistant who has received formal training may perform the remediable orthodontic-related task of (1) securing or un-securing an archwire by attaching or removing the fastening device under indirect supervision.

43. Rule 64B5-16.001, Florida Administrative Code (2013-2014) defines "indirect supervision" as requiring that a licensed dentist examine the patient, diagnose a condition to be treated, authorize the procedure to be performed, and be on the premises while the procedure is performed.

44. At a majority of Patient N.H.'s appointments with Respondent's practice, Patient N.H. treated with an individual identified as Respondent's dental assistant, "Sonia."

45. "Sonia" performed adjustments and/or treatment to Patient N.H.'s orthodontic braces on or about the following dates: November 18, 2013; December 1, 2013; December 13, 2013; January 10, 2014; February 4, 2014; February 19, 2014; March 10, 2014; March 26, 2014; April 10,

2014; April 18, 2014; May 5, 2014; May 16, 2014; May 22, 2014; June 27, 2014; July 9, 2014; July 16, 2014; July 25, 2014; and/or July 31, 2014.

46. Of the dates listed in paragraph above, "Sonia" performed adjustments and/or treatment to Patient N.H.'s orthodontic braces without Respondent present to provide any supervision on the following: December 1, 2013; January 10, 2014; February 19, 2014; March 10, 2014; March 26, 2014; April 18, 2014; May 16, 2014; June 27, 2014; July 16, 2014; July 25, 2014; and/or July 31, 2014.

47. Other dental assistants employed by Respondent performed adjustments and/or treatment to Patient N.H.'s orthodontic braces on or about the following dates: June 10, 2014; July 18, 2014; August 5, 2014; August 11, 2014; August 19, 2014; August 27, 2014; and/or September 9, 2014.

48. For the dates listed in paragraph above, these other dental assistants performed adjustments and/or treatment to Patient N.H.'s orthodontic braces without Respondent present to provide any supervision.

49. On multiple occasions, Respondent delegated irremediable tasks relating to the adjustment and/or treatment to Patient N.H.'s orthodontic braces to persons not qualified by training, experience, or licensure to perform them.

50. On or about October 6, 2014, Patient N.H. presented to an orthodontist, Dr. B., for a second opinion. At this time, Patient N.H. was experiencing sensitivity to heat/cold temperature due to the stripping performed by Respondent. Dr. B. diagnosed the need to correct the arch asymmetry and address the malposition of Patient N.H.'s midlines.

**Count I: Record Keeping**

51. Petitioner re-alleges and incorporates paragraphs one (1) through eight (8), ten (10) through fifteen (15), seventeen (17) through thirty-two (32), thirty-five (35) through thirty-seven (37), and forty-four (44) through forty-eight (48) as if fully set forth herein.

52. Section 466.028(1)(m), Florida Statutes (2013-2014), provides discipline for "[f]ailing to keep written dental records and medical history records justifying the course of treatment of the patient including, but not limited to, patient histories, examination results, test results, and X rays, if taken."

53. Rule 64B5-17.002, Florida Administrative Code (2013-2014), states that for the purpose of implementing the provisions of subsection 466.028(1)(m), Florida Statutes, a dentist shall maintain written records on each patient which written records shall contain, at a minimum, the following information about the patient: (a) Appropriate medical history;

(b) Results of clinical examination and tests conducted, including the identification, or lack thereof, of any oral pathology or diseases; (c) Any radiographs used for the diagnosis or treatment of the patient; (d) Treatment plan proposed by the dentist; and (e) Treatment rendered to the patient.

54. Respondent violated Section 466.028(1)(m), Florida Statutes, in one or more of the following ways:

- A. By failing to keep a written record of Patient N.H.'s medical history;
- B. By failing to keep a written record of dental charting or identification of existing decay, missing, and/or filled teeth, and other oral conditions throughout the mouth;
- C. By failing to keep a written record in justification of the performance of tooth stripping on or about November 4, 2013; November 18, 2013; February 4, 2014; and/or April 10, 2014;
- D. By failing to keep a written record on the delivery, fit, and/or seating of the permanent crown on tooth 19; and/or

E. By failing to keep a written record of the following appointment dates: December 1, 2013; January 10, 2014; April 18, 2014; June 10, 2014; July 18, 2014; and/or September 9, 2014.

**Count II: Minimum Standards**

55. Petitioner re-alleges and incorporates paragraphs one (1) through thirty-seven (37), and forty-four (44) through fifty (50) as if fully set forth herein.

56. Section 466.028(1)(x), Florida Statutes (2013-2014), states that “[b]eing guilty of incompetence or negligence by failing to meet the minimum standards of performance in diagnosis and treatment when measured against generally prevailing peer performance[,]” shall constitute grounds for disciplinary action by the Board of Dentistry.

57. Respondent violated Section 466.028(1)(x), Florida Statutes, in one or more of the following ways:

A. By failing to develop an appropriate option to treat Patient N.H.’s dental condition when she diagnosed N.H. as a candidate for SMS treatment;

- B. By failing to obtain sufficient information on Patient N.H.'s dental condition before implementing a treatment plan; and/or
- C. By failing to recognize when to cease performing the irreversible treatment of tooth stripping.

**Count III: Improper Delegation**

58. Petitioner re-alleges and incorporates paragraphs one (1) through forty-nine (49) as if fully set forth herein.

59. Section 466.028(1)(z), Florida Statutes (2013-2014), states that “[d]elegating professional responsibilities to a person who is not qualified by training, experience, or licensure to perform them[,]” shall constitute grounds for disciplinary action by the Board of Dentistry.

60. Respondent violated Section 466.028(1)(z), Florida Statutes, by delegating professional responsibilities, including the adjustment and/or treatment of Patient N.H.'s orthodontic braces, to persons who were not qualified by training, experience, or licensure to perform them.

WHEREFORE, Petitioner respectfully requests that the Board of Dentistry enter an order imposing one or more of the following penalties: revocation or suspension of Respondent's license, restriction of practice,

imposition of an administrative fine, issuance of a reprimand, placement of Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

SIGNED this 19<sup>th</sup> day of January 2017.

Celeste Philip, MD, MPH  
Surgeon General and Secretary

Bridget K. McDonnell

Bridget K. McDonnell  
Assistant General Counsel  
DOH Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, Florida 32399-3265  
Florida Bar #99874  
TEL: 850.245.4444, FAX: 850.245.4684  
Express Mail Address:  
2585 Merchants Row, Suite 105  
Email: Bridget.McDonnell@flhealth.gov

FILED  
DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK **Angel Sanders**  
DATE **JAN 19 2017**

PCP: January 13, 2017  
PCP Members: J.T., T.M., N.F.

DOH v. Charlotte Yvonne Gerry, D.M.D., Case # 2015-23828

## **NOTICE OF RIGHTS**

**Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested.**

**A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.**

**Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.**

## **NOTICE REGARDING ASSESSMENT OF COSTS**

**Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition to any other discipline imposed.**