

**STATE OF FLORIDA
BOARD OF DENTISTRY**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO: 2015-10804

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.

March 11 and 31, 2014 Appointments

4. On or about March 11, 2014, Patient P.B. presented to Respondent's practice location in Lake City, Florida, looking to improve the fit of her dentures with implants.

5. Patient P.B. was completely edentulous with a severely atrophied ridge.

6. 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.

7. At this initial appointment, Respondent exposed one (1) panoramic radiograph.

8. The panoramic radiograph showed Patient P.B.'s atrophied ridge.

9. According to Respondent's clinical record for that date, Respondent took the panoramic "to measure bone."

10. Respondent developed two treatment options for Patient P.B.: one option included the placement of "root form" or standard-sized implants, and the second option included placement of "mini" implants.

11. The condition of Patient P.B.'s mandibular ridge made placement of standard-sized implants an inappropriate treatment option for P.B.

12. Patient P.B. chose the second option with the mini implants due in part to financial concerns. Patient P.B. provided payment in the amount listed for the second option on that date.

13. The form listing the pricing for the second treatment option for mini-implants included a note that Patient P.B. was informed that if Respondent was able to place the root form implants, the fee would increase to the pricing for the first treatment option on the day of surgery.

14. Patient P.B. saw this note written on the bottom of the treatment option form, but was not concerned because she knew she specifically chose to have the mini-implants placed.

15. According to the clinical record, on or about March 31, 2014, Patient P.B. presented to Respondent's practice to "do root form implants." According to the clinical record, Respondent was concerned because the practice did not have the mini implants to use "in case the root form did

not work," so Respondent rescheduled Patient P.B. to appoint at a later date.

16. Patient P.B. reported that on the date of this appointment, Respondent proceeded to place one implant and then suddenly took it out without explanation. Respondent's assistant informed Patient P.B. that the implant placed was the incorrect one and that Patient P.B. would need to return.

April 14, 2014 Appointment

17. Respondent used a digital software program to enter and maintain clinical records.

18. On or about July 23, 2015, Respondent added an entry to Patient P.B.'s clinical records for an April 14, 2014, appointment.

19. According to the clinical record for the April 14, 2014, appointment, Respondent reported that she placed four mini-implants in the locations of teeth numbers 22, 23, 27, and 28.

20. This record is inconsistent, however, with Respondent's billing ledger which showed that Patient P.B. was billed for "root form" implants at the locations of teeth numbers 22 and 27, and a mini-implant at the location of tooth number 25.

21. Patient P.B. reported that Respondent placed three implants on that date: two implants on the lower left side and one implant on the lower right side.

22. Following the procedure, Patient P.B. was informed that she owed an additional amount because Respondent had placed "root form" implants.

23. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a dentist to obtain sufficient information on the patient's medical history before placing implants.

24. For the development of treatment options and the placement of the implants on April 14, 2014, the only medical history information available in Respondent's clinical record was a section on the "Patient Information and Health History" form filled out by Patient P.B. on the date of the initial appointment. On this form, Patient P.B. indicated that she had diabetes, had allergies to medications and anesthetics (no specific medications or anesthetics were indicated on the form), and had suffered a stroke, among other ailments.

25. Respondent failed to obtain sufficient information on Patient P.B.'s medical history before placing implants.

26. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a practitioner to take a post-operative radiograph following implant surgery to assess the position of the implant(s) and to diagnose any potential surgical complications.

27. According to the clinical record for April 14, 2014, Respondent noted that she took "digital PA x-rays" to confirm proper placement of implants.

28. Respondent has reported to the Department that this note was an error in the clinical record as Respondent's practice did not have a digital radiography machine at that time.

29. Respondent failed to take post-operatives radiographs of Patient P.B.

30. Respondent's clinical record for the April 14, 2014, appointment contained a note that the prescriptions provided by Respondent on that date were maintained in a "prescription manager."

31. On or about April 14, 2014, Respondent called in a prescription to a pharmacy for dexamethasone 0.75 mg. Patient P.B. did not fill the prescription because she was reportedly allergic to it.

Post-Operative Appointments

32. On or about April 17, 2014, Patient P.B. returned to Respondent's practice with a complaint of pain.

33. According to the clinical record, Patient P.B. was seen by one of Respondent's employees who recorded in the record that Patient P.B. was at the practice "thinking she had a post op appointment." The employee recorded that Patient P.B. was exhibiting speech difficulty and stated that she was in pain.

34. The employee recorded in the clinical record that he or she "went over medical history" with Patient P.B. and "answered questionnaires in computer." The employee entered Patient P.B.'s medical history into the clinical record for that date with a list of current medications and allergies.

35. The record also included a "comment" that Patient P.B. stated that she did not take "penicillin" Respondent had prescribed at the previous appointment.

36. The employee observed "white sloughing" at the tissue of each implant and asked Patient P.B. to wait while he or she telephoned Respondent. The employee noted that Patient P.B. left the practice before he or she returned.

37. According to the clinical record, on or about April 23, 2014, Patient P.B. returned to Respondent's practice for a post-operative appointment. It is not clear whether Respondent was present at this appointment.

38. According to the clinical record, Patient P.B. stated that the swelling had subsided, but that she was "still numb in the lower left."

39. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a practitioner to adequately assess a post-operative complication such as numbness and develop an appropriate treatment plan.

40. The clinical record noted that "white tissue still sloughing around implants," but that "overall tissue looks good, implants are stable[,] and no inflammation was present.

41. No radiographs appeared to have been taken on this date.

42. According to the clinical record, on or about May 6, 2014, Patient P.B. returned to Respondent's practice for another post-operative appointment.

43. According to the record for that date, Patient P.B. reported that the implant in the location of tooth number 28 was inflamed and painful.

44. Respondent had the denture adjusted to "stop hitting on tissue." Respondent recorded that Patient P.B. stated she felt better and Respondent provided Patient P.B. with instructions on how to brush implants and use a saltwater wash. Respondent proceeded with fitting Patient P.B. for upper and lower dentures.

45. No radiographs appeared to have been taken on this date.

46. According to the clinical record, on or about June 11, 2014, Patient P.B. appointed with Respondent for an additional impression for the denture fabrication and the try-in. This was the last date of treatment for Patient P.B. with Respondent.

47. Respondent failed to perform any evaluation of Patient P.B.'s reported post-surgical numbness.

48. Respondent failed to take any post-operative radiographs of Patient P.B.

49. On or about August 18, 2014, Patient P.B. presented to an oral surgeon, Dr. C. Patient P.B. reported to Dr. C. that since Respondent had placed the three implants, she had swallowed one, removed another that was loose, and had one mini-implant remaining in the location of tooth number 28. Patient P.B. reported continued numbness of her left lower lip.

50. According to the clinical record for that date, Dr. C. diagnosed the remaining implant at the location of tooth number 28 as grossly mobile with a surrounding radiolucency. Dr. C. noted that the implant appeared to cross the intra alveolar nerve canal. Dr. C. treatment planned to remove the implant.

Relocation of Lake City Practice

51. In or about March 2015, Patient P.B. observed that Respondent had closed her practice location in Lake City.

52. Patient P.B. did not receive any notice that Respondent closed her practice.

53. Patient P.B. sent a certified letter to Respondent at her other practice location in Live Oak, Florida, and requested copies of her patient records. Patient P.B.'s letter was received by Respondent's practice, but she did not receive any records in response.

54. Patient P.B. contacted the new dental practice that had moved into Respondent's former practice location in Lake City to see if they had copies of her records. Patient P.B. presented to the new dental practice and received some copies of her patient records.

55. Rule 64B5-17.001, Florida Administrative Code (2014), states that patient records are confidential and may not be released unless

authorized by the patient in writing. Within one month of a dentist's termination of practice or relocation of practice outside the local telephone directory service area of his or her current practice, a notice shall be published in the newspaper of greatest general circulation in the county where the dentist practiced which advises patients of the dentist's termination of practice or relocation. The notice shall advise patients that they may obtain copies of their dental records and specify the name, address and telephone number of the person from whom copies of records may be obtained. The notice shall appear at least once a week for 4 consecutive weeks.

56. Respondent reported that she "consolidated" her Lake City practice in November 2014 with her practice location in Live Oak and that "all active patients were personally called or emailed concerning the consolidation." Respondent reported that the new dental practice "retained all the patients who wished to stay at that location, and all their records, including the x-rays."

57. Patient P.B. did not give permission for her patient records to be maintained at the new dental practice.

58. Respondent failed to follow the procedures outlined in Rule 64B5-17.001, Florida Administrative Code, for notifying patients of the

relocation of her practice and where patients could obtain copies of records.

Count I: Record Keeping

59. Petitioner re-alleges and incorporates paragraphs one (1) through five (5), seven (7) through ten (10), twelve (12) through twenty-two (22), twenty-four (24) through twenty-five (25), twenty-seven (27) through thirty-eight (38), and forty (40) through fifty (50), as if fully set forth herein.

60. 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.”

61. 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.

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

- A. By failing to keep an accurate written record of the type and number of implants placed on or about March 31, 2014, and/or on or about April 14, 2014; and/or
- B. By failing to keep an accurate written record of the treatment provided on or about April 14, 2014, specifically that radiographs were taken when they were not.

Count II: Minimum Standards

63. Petitioner re-alleges and incorporates paragraphs one (1) through fifty (50), as if fully set forth herein.

64. 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.

65. 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 for Patient P.B.'s dental condition when she offered to place standard-sized implants;
- B. By failing to obtain sufficient information on Patient P.B.'s medical history before placing implants;
- C. By failing to take a post-operative radiograph following implant surgery; and/or
- D. By failing to perform an adequate assessment of Patient P.B.'s post-operative complication.

Count III: Notice of Termination or Relocation

66. Petitioner re-alleges and incorporates paragraphs one (1) through four (4), and fifty-one (51) through fifty-eight (58), as if fully set forth herein.

67. Section 466.028(1)(mm), Florida Statutes (2013-2014), states that "[v]iolating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto[,]” shall constitute grounds for disciplinary action by the Board of Dentistry.

68. Rule 64B5-17.001(4), Florida Administrative Code (2014), states that "[w]ithin one month of a dentist's termination of practice or relocation of practice outside the local telephone directory service area of his or her current practice, a notice shall be published in the newspaper of greatest general circulation in the county where the dentist practiced which advises patients of the dentist's termination of practice or relocation. The notice shall advise patients that they may obtain copies of their dental records and specify the name, address and telephone number of the person from whom copies of records may be obtained. The notice shall appear at least once a week for 4 consecutive weeks."

69. Respondent violated Section 466.028(1)(mm), Florida Statutes, through a violation of Rule 64B5-17.001, Florida Administrative Code, by failing to adhere to the notification requirements when she terminated or relocated her Lake City dental practice.

WHEREFORE, Petitioner respectfully requests that the Board of Dentistry enter an order imposing one or more of the following penalties: 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 19th day of January 2017.

Celeste Philip, MD, MPH
Surgeon General and Secretary

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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.

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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.