

**STATE OF FLORIDA
BOARD OF DENTISTRY**

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO: 2014-16075

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. Respondent may also be located at 6383 Whispering Oaks Drive North, Jacksonville, Florida 32277.

4. According to the clinical record, on or about May 15, 2014, Patient S.S. first presented to Respondent's practice for a limited oral evaluation for a "porcelain/ceramic substrate crown" for tooth number 30. Despite this being the first time that Patient S.S. apparently treated with Respondent, it was noted that the medical history was reviewed with "no changes."

5. Respondent's clinical records do not appear to contain any medical history information on Patient S.S.

6. Respondent's clinical records appear to have been maintained in a digital format using clinical note software. In the records provided to the Department, the clinical record for May 15, 2014, also contained an undated handwritten addendum stating "Dx caries."

7. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a practitioner to adequately diagnose decay.

8. There is no radiographic or clinical evidence of decay on tooth number 30 prior to Respondent's treatment on this date.

9. Respondent's clinical record for May 15, 2014, referred to Respondent obtaining a signed consent form for the crown from Patient S.S. However, Respondent's clinical records do not appear to contain any signed consent forms.

10. According to the clinical record, Patient S.S. returned the following day for a crown with build-up for tooth number 30 and crown preparation on tooth number 31.

11. In the records provided to the Department for May 16, 2014, there is an undated handwritten addendum stating that the decay removed on that date involved the pulp and that Patient S.S. was in "constant pain," with positive results for cold and percussion testing (presumably in tooth number 30).

12. In a separate clinical record for the same date, Respondent noted that Patient S.S. also presented for root canal treatment for tooth number 30.

13. The second clinical record for May 16, 2014, included a note to check for alerts associated with a review of medical history. There is no medical history contained in Respondent's clinical records for Patient S.S.

14. The second clinical record for May 16, 2014, also included a note that the "root canal consent form" was explained to and signed by the

patient. However, Respondent's clinical records do not appear to contain any signed consent forms.

15. In this second clinical record, there is an undated handwritten addendum stating that the root canals were sealed "to as far as the canal is open," and that the roots were "calcification [*s/c*]."

16. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a practitioner adequately diagnose the condition of dental roots and structures.

17. The "working length" radiograph taken by Respondent on that date showed that the canals were instrumented to the root apices in four canals and did not support the undated handwritten addendum stating that the canals were otherwise calcified.

18. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a dentist to adequately obturate the canals of the tooth during root canal treatment.

19. Failure to adequately obturate the canals of the tooth to the apex may lead to an increased risk of re-infection, pain, and result in the need for re-treatment.

20. Respondent failed to adequately obturate the root canals of tooth number 30.

21. On or about June 5, 2014, Patient S.S. returned to Respondent's practice. According to the clinical record for that date, Patient S.S. complained of sensitivity in tooth number 31.

22. Respondent identified carious dentin present in tooth number 31 and recommended root canal treatment.

23. Respondent removed the decay at the crown margin of tooth number 31 and performed the root canal treatment that day. Respondent replaced the temporary crowns on teeth numbers 30 and 31.

24. Respondent failed to adequately obturate the root canals of tooth number 31.

25. The clinical record for June 5, 2014, contained a note that the "root canal consent form" was explained to and signed by the patient. However, Respondent's clinical records do not appear to contain any signed consent forms.

26. On or about June 10, 2014, Patient S.S. returned to Respondent's practice for Respondent to complete the permanent crowns on teeth numbers 30 and 31. According to the clinical record, Respondent performed a core build-up on tooth number 31 and seated the permanent crowns on both teeth.

27. An undated hand-written addendum to the clinical record for June 10, 2014, stated that before Respondent seated the crowns, Patient S.S. denied any problems and gave negative responses to endodontic testing.

28. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a practitioner to take a new impression for a crown once the tooth's margin has been altered.

29. Respondent failed to take a new impression following the alterations to the margin of tooth number 31.

30. Poor margins in restorations such as crowns may lead to problems such as decay, compromised gum health, and tooth failure.

31. The crown on tooth number 31 had an open margin.

32. On or about June 26, 2014, Patient S.S. presented to Respondent's practice with a complaint about sensitivity in teeth numbers 30 and 31. Patient S.S. reported that she was experiencing pain in tooth number 31 and that tooth number 30 seemed "slightly loose."

33. The minimum standard of performance in diagnosis and treatment in the practice of dentistry requires a dentist to adequately assess and correct a restoration such as a crown when the fit has been compromised.

34. Respondent took a periapical radiograph. In an undated handwritten addendum to the clinical record, Respondent noted that she adjusted the occlusion on tooth number 31.

35. Respondent's clinical record for that date also noted that she would "[c]heck area #31 for pain."

36. Respondent did not recommend or provide any additional treatment for tooth number 31.

37. Respondent also recommended removal and re-cementing of the permanent crown on tooth number 30. In a second undated handwritten addendum to the clinical record for June 26, 2014, Respondent noted that Patient S.S. would not permit Respondent to remove the permanent crown at tooth number 30 on that date because "she was fearful."

38. On or about the same date, Patient S.S. presented to another provider, Dr. J.P., who recommended re-treatment of the root canal on tooth number 31 and made a referral to an endodontist.

39. On or about July 8, 2014, Patient S.S. presented to Respondent for a limited oral evaluation concerning the crown on tooth number 30. It is unclear from the clinical records whether Respondent provided any treatment on this date.

40. On or about July 29, 2014, an endodontist re-treated the root canal on tooth number 31.

41. On or about August 27, 2014, Dr. J.P. remade and seated the crown on tooth number 31.

42. On or about February 9, 2015, Dr. J.P. provided Patient S.S. with an endodontic referral for re-treatment of the root canal on tooth number 30.

43. Underneath the digital record for the date August 25, 2014, Respondent's clinical record contained a hand-written addendum noting that the "root canal(s) was filled to length of calcification," and that before the crowns were seated, Respondent verified that Patient S.S. was asymptomatic. The note continued to state that Patient S.S. would not give accurate answers to the testing.

COUNT I

44. Petitioner re-alleges and incorporates paragraphs one (1) through six (6), nine (9) through fifteen (15), twenty-one (21) through twenty-three (23), twenty-five (25) through twenty-seven (27), thirty-two (32), thirty-four (34) through thirty-seven (37), thirty-nine (39), and forty-three (43), as if fully set forth herein.

45. 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.”

46. 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 S.S.’s medical history; and/or

B. By failing to keep an accurate written record of any consent forms signed by Patient S.S.

COUNT II

47. Petitioner re-alleges and incorporates paragraphs one (1) through forty-three (43), as if fully set forth herein.

48. 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.

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

- A. By failing to adequately diagnose decay in tooth number 30;
- B. By failing to adequately diagnose the condition of the roots of tooth number 30;
- C. By failing to adequately obturate the canals of tooth number 30 during root canal treatment;
- D. By failing to adequately obturate the canals of tooth number 31 during root canal treatment;
- E. By failing to take a new crown impression of tooth number 31 following changes to the tooth's margins; and/or
- F. By failing to adequately assess and correct the crown on tooth number 31 when the fit was compromised.

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 6th day of March 2017.

Celeste Philip, MD, MPH
Surgeon General and Secretary

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FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK **Amber Greene**
DATE **MAR 06 2017**

PCP: March 3, 2017
PCP Members: Dr. Joseph Thomas; Dr. Charles Ross; Dr. Claudio Miro

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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.