

**BOARD OF DENTISTRY
GENERAL BUSINESS MEETING MINUTES
July 24, 2020
1:00 P.M.**

Videoconference/Teleconference Meeting Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/874056757>

**You can also dial in using your phone.
United States (Toll Free): [1 877 309 2073](tel:18773092073)
Access Code: 874-056-757**

New to GoToMeeting? Get the app now and be ready when your first meeting starts:

<https://global.gotomeeting.com/install/874056757>

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the board's website.

I. CALL TO ORDER/ROLL CALL

MEMBERS PRESENT

Nick White, DMD
T.J. Tejera, DMD
Catherine Cabanzon, RDH, BASDH
Nick Kavouklis, DMD
Karyn Hill, RDH
Fabio Andrade, Consumer Member
Dr. Naved Fatmi, DMD

MEMBERS PRESENT

Dr. Claudio Miro, DDS
Dr. Matthew Freedman, DMD

COURT REPORTER

For the Record
(850) 222-5491

STAFF PRESENT

Jessica Sapp, Executive Director
Paulette Schofill, Program Administrator

BOARD COUNSEL

David Flynn, Esq.
Senior Assistant Attorney General

PROSECUTION SERVICES UNIT

Octavio Ponce, Esq
Kelly Fox, Esq.
Chad Dunn, Esq.

Dr. Naved Fatmi and Dr. Claudio Miro were recused due to participation on probable cause panels and did not participate. Dr. Nick White chaired the meeting.

Mr. Flynn proceeded with opening comments.

Prosecution Services summarized each case and summarized the Administrative Law Judge's recommended penalty.

Mr. Flynn referred the Board to paragraph 10 of the Recommended Order which outlines

Dr. Gerry's previous discipline history. He referred the Board to Dr. Gerry's Settlement Agreement in Case No.2002-25421, which indicated that Count II of the Administrative Complaint was dismissed. Count II was a charge for violating Section. 486.028(1)(z), F.S.

Motion: by Ms. Cabanzon to strike the portion of paragraph 10 in the Recommended Order as the Board determined that Dr. Gerry did not have a previous violation of Section 486.028(1)(z), F.S.

Second: by Ms. Hill

Vote: Unanimous

II. RECOMMENDED ORDER

A. Dr. Charlotte Gerry
Case No.: 2013-11395
DOAH Case No. 19-2898
(PCP: 9-19-2014 – Britten, Robinson, Tejera)

Dr. Tejera was recused due to participation in the probable cause panel.

Dr. Gerry was present and represented by George Brew, Esq.

Mr. Ponce summarized the case. On September 25, 2014, the Department filed an Administrative Complaint charging Respondent with the following violation: Section 466.028 (1)(x), F.S. by failing to refer a patient who has experienced a health complication during dental treatment to an appropriate medical health professional.

On December 8, 2014, Respondent filed an Election of Rights in which she disputed the allegations and requested a formal administrative hearing.

The case was referred to the Department of Administrative Hearings and assigned Case No. 19-2898PL. As set forth in the findings of fact, the Department was unable able to establish that the Respondent violated the standard of performance as alleged. On January 31, 2020, the Administrative Law Judge recommended the Board of Dentistry enter a Final Order dismissing the complaint.

After discussion, the following action was taken by the board:

Motion: by Ms. Cabanzon to accept the Administrative Law Judge's recommendation and dismiss the case.

Second: by Dr. Andrade

Vote: Unanimous

Case No. 2014-16075
DOAH Case No. 19-2899
(PCP: 3-3-2017 – Thomas, Ross, Miro)

Dr. Gerry was present and represented by George Brew, Esq.

Mr. Ponce summarized the case. On March 6, 2017, the Department filed an Administrative

Complaint charging Respondent with the following violations: **Count I:** Section 466.028(1)(m), F.S., by failing to keep written dental records and medical history justifying the course of treatment. **Count II:** Section 466.028 (1)(x), F.S. by failing to adequately diagnose the condition of the roots of tooth 30; failing to adequately obturate the canals of tooth 30 during root canal treatment; failing to adequately obturate the canals of tooth 31 during root canal treatment; failing to take a new crown impression of tooth 31 following changes to the tooth's margins; and failing to adequately assess and correct the crown of tooth 31 when the fit was completed.

On August 8, 2017, Respondent filed an Election of Rights and Petition for Formal Administrative Hearing in which she disputed the allegations and requested a formal administrative hearing and assigned Case No. 19-2899PL. On January 31, 2020, the Administrative Law Judge found that the Department failed to meet its burden to establish by clear and convincing evidence that Respondent committed the violations as alleged in Count I. On January 31, 2020, the Administrative Law Judge found that the Department was able to establish that the Respondent violated the standard of performance as alleged in Count II.

The Respondent filed exceptions to the Recommended Order. After hearing from the Petitioner and the Respondent, the following action was taken based on the oral presentation and written statements submitted:

Motion: by Dr. Tejera to deny Exception 1 based on the evidence provided and the Department's written and oral response.

Second: by Dr. Kavouklis

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 2 based on the evidence provided and the Department's written and oral response.

Second: Dr. Kavouklis

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 3 based on the evidence provided and the Department's response.

Second: by Dr. Andrade

Vote: Unanimous

Motion: by Dr. Tejera to deny Exception 4 based on the evidence provided and the Department's response.

Second: Mr. Andrade

Vote: Unanimous

Motion: by Dr. Tejera to deny Exception 5 based on the evidence provided and the Department's response.

Second: Ms. Cabanzon

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 6 based on the evidence provided and the Department's response.

Second: by Mr. Andrade

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 7 based on the evidence provided and the Department's response.

Second: by Dr. Kavouklis

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 8 based on the evidence provided and the Department's response.

Second: Ms. Hill

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 9 based on the evidence provided and the Department's response.

Second: by Mr. Andrade

Vote: Unanimous

Motion: by Dr. Kavouklis to deny Exception 10 based on the evidence provided and the Department's response.

Second: by Ms. Cabanzon

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 11 based on the evidence provided and the Department's response.

Second: by Mr. Andrade

Vote: Unanimous

Motion: by Ms. Cabanzon to accept the findings of facts from the Administrative Law Judge and adopt the conclusions of law.

Second: by Mr. Andrade

Vote: Unanimous

Case No.: 2015-10268

DOAH Case No. 19-2900

(PCP: 1-13-2017 – Thomas, Morgan, Fatmi)

Dr. Gerry was present and represented by George Brew, Esq.

Mr. Ponce summarized the case.

On January 19, 2017, the Department filed an Administrative Complaint against Dr. Gerry. Respondent was charged with the following violation: 466.028(1)(x) by seating a crown containing an open margin on tooth 13 and failing to adequately diagnose issues with the crown on tooth 13, and that Respondent failed to perform appropriate corrective treatment after having sufficient evidence of the deficiencies.

On February 10, 2017, Respondent filed an Election of Rights and Petition for Formal Administrative Hearing in which she disputed the allegations and requested a formal administrative hearing and was assigned Case No. 19-2900PL. On January 31, 2020, the Administrative Law Judge found that the Department was able to establish that the

Respondent violated the standard of performance as alleged.

The Petitioner filed exceptions to the Recommended Order. After hearing from the Department and Respondent, the following action was taken based on the oral presentation and written statements submitted:

Motion: by Ms. Hill to deny Exception 1 based on evidence presented and the Department's response.

Second: by Mr. Andrade

Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 2 based on evidence presented and the Department's response.

Second: by Mr. Andrade

Vote: Unanimous

Motion: by Ms. Cabanzon to accept the findings of facts from the Administrative Law Judge and adopt the conclusions of law.

Second: by Mr. Andrade

Vote: Unanimous

Case No.: 2016-22431

DOAH Case No. 19-2901

(PCP: 12-7-2018 – Gesek, Miro, Morgan)

(PCP: 5-11-2018 – Gesek, Melzer, Calderone)

Dr. Gerry was present and represented by George Brew, Esq.

Mr. Ponce summarized the case. On December 10, 2018, the Department filed an Amended Administrative Complaint against Dr. Gerry. Respondent was charged with the following violation: Section 466.028(1)(x), F.S., by failing to lift, or refer for lifting, of sinus before placing an implant in the area of tooth 14; failing to appropriately place the implant by attempting to place it into a curved root which could not accommodate the implant; failing to react appropriately to the sinking implant by trying to twist off the carrier instead of following the technique outlined in the implant's manual; and paying, or having paid on her behalf, an indemnity in the amount of \$75,000 as a result of negligent conduct in her treatment of the patient.

On December 19, 2018, Respondent filed an Election of Rights and Petition for Formal Administrative Hearing in which she disputed the allegations and requested a formal administrative hearing and was assigned Case No. 19-2901PL. On January 31, 2020, the Administrative Law Judge found that the Department was able to establish that the Respondent violated the standard of performance as alleged.

The Petitioner filed exceptions to the Recommended Order. After hearing from the Department and Respondent, the following action was taken based on the oral presentation and written statements submitted:

Motion: by Dr. Tejera to deny Exception 1 based on evidence presented and the Department's response.

Second: by Ms. Cabanzon
Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 2 based on evidence presented and the Department's response.
Second: by Dr. Tejera
Vote: Unanimous

Motion: by Dr. Tejera to deny Exception 3 based on evidence presented and the Department's response.
Second: by Mr. Andrade
Vote: Unanimous

Motion: by Dr. Tejera to deny Exception 4 based on evidence presented and the Department's response.
Second: by Ms. Cabanzon
Vote: Unanimous

Motion: by Ms. Cabanzon to deny Exception 5 based on evidence presented and the Department's response.
Second: by Mr. Andrade
Vote: Unanimous

Motion: by Ms. Cabanzon to accept the findings of facts from the Administrative Law Judge and adopt the conclusions of law.
Second: by Mr. Andrade
Vote: Unanimous

Case No.:2017-00132
DOAH Case No. 19-2902
(PCP: 12-7-18 – Gesek, Miro, Morgan)
(PCP: 3-2-2018 – Gesek, Melzer, Miro)

Dr. Gerry was present and represented by George Brew, Esq.

Mr. Ponce summarized the case. On December 10, 2018, the Department filed an Amended Administrative Complaint against Dr. Gerry. Respondent was charged with the following violations: **Count I:** Section 466.028(1)(x), F.S., by failing to take adequate diagnostic imaging prior to placing an implant in the area of patient's tooth 8; failing to pick an appropriately sized implant and placing an implant that was too large; and failing to diagnose or respond to the oral fistula that developed in the area of tooth 8. **Count II:** Section 466.028(1)(m), F.S., by failing to document the model or serial number of the implant placed and failure to document the results of Respondent's bone examination.

On December 19, 2018, Respondent filed an Election of Rights and Petition for Formal Administrative Hearing in which she disputed the allegations and requested a formal administrative hearing.

The case was referred to the Department of Administrative Hearing and was assigned Case No. 19-2902PL. As set forth in the findings of fact, the Department was unable able to establish that the Respondent violated the standard of performance as alleged. On January 31, 2020, the Administrative Law Judge recommended the Board of Dentistry enter a Final Order dismissing the complaint.

Following discussion, the following action was taken by the board:

Motion: by Ms. Cabanzon to adopt the findings of facts and accept the Administrative Law Judge's recommendation and dismiss the case.

Second: by Mr. Andrade

Vote: Unanimous

Motion: by Ms. Cabanzon to adopt all findings of facts and conclusions of law not previously adopted.

Second: Dr. Tejera

Vote: Unanimous

Mr. Ponce summarized all violations in the cases, which consists of three violations of Section 486.028(1)(x)

The Petitioner filed exceptions to the Recommended Order disagreeing with the Administrative Law Judge that these three cases should not be considered a collective case and Dr. Gerry's second violation, but instead a second, third and fourth violation.

Motion: by Ms. Cabanzon to view these as individual cases and consider these violations as Dr. Gerry's second, third, and fourth violations.

Second: by Dr. Tejera

Vote: Unanimous

The Petitioner withdrew second the second exception.

The Department recommends revocation and Mr. Ponce summarized as to why revocation is appropriate in this case.

After discussion, the following action was taken by the board:

Motion: by Ms. Cabanzon to impose the following penalties

- Six (6) month suspension of Respondent's license followed by five (5) years of probation.
- Completion of a twelve (12) month comprehensive remedial course through a Florida accredited college of dentistry to include crown and bridge, implants, endodontics, and diagnosis and treatment planning to be completed within (18) months from the filing of the Final Order.
- Completion of a level II implant course to be completed within (18) months from the filing of the Final Order. This course may be included in the twelve-month comprehensive course.
- Fine of \$10,000 to be paid within eighteen (18) months from the filing of the Final Order.

Second: by Dr. Tejera
Vote: 5/1. Mr. Andrade Opposed. Motion Passed.

The Department did not receive any filed objections and presented a Motion for Costs in the amount of \$79,944.58. Mr. Brew had questions as to how the Department arrived at that cost amount.

Motion: by Ms. Cabanzon to bifurcate the Motion for Costs and requested this be heard at the August board meeting
Second: by Dr. Andrade
Vote: Unanimous

III. ADJOURNMENT

There being no further business the meeting adjourned at 4:21 p.m.