

**Commonwealth of Kentucky  
Kentucky Board of Dentistry  
Agency Case Nos. 10-033, 12-067, 13-012, and 14-053**

**Kentucky Board of Dentistry**

**Complainant**

**v.**

**Settlement Agreement**

**Arlene R. Baluyut, D.M.D.  
(License No. 5876)**

**Respondent**

\* \* \* \* \*

Whereas, the Kentucky Board of Dentistry ("Board") having information upon investigation of initiating complaints that Arlene R. Baluyut, D.M.D., ("Respondent"), 630 Comanche Trail, Suite A, Frankfort, Kentucky 40601, has acted in violation of KRS Chapter 313, for which disciplinary action may be taken pursuant to KRS 313.100(1);

And whereas, the Board conducted an investigation and reviewed the evidence collected during the investigation, which included patient records, and believes Respondent:

1. Failed to exercise reasonably expected judgment from trained dental professionals in determining proper treatment options, sequencing, and implementation that should result in reasonably successful outcomes, given the patient's overall oral health care needs;
2. Failed to inform her patient of alternative treatment plans by recommending definitive invasive treatment when other treatment and/or observation were viable treatment options; and
3. Failed to apply proper periodontal risk assessment to achieve a treatment plan relative to the oral health of her patient.

And whereas, Respondent acknowledges based on the above findings and for the purposes of this Settlement Agreement the Board would be able to prove as follows:

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At least one (1) count of violating KRS 313.080(2)(c) by acting negligently in a manner inconsistent with the practice of the discipline for which she is licensed; and

At least one (1) count of violating KRS 313.080(2)(d) by being unable to practice a discipline regulated by the board with reasonable skill or safety.

And whereas, licensee expressly denies any liability or wrongdoing as alleged herein;

And whereas, the parties have agreed to enter into this Settlement Agreement to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the issues expressed herein;

And whereas, the parties mutually desire to rescind their prior agreement that the Respondent signed 7/22/14 and the Board signed 7/24/15 ("the Prior Agreement") and enter into a new agreement.

It is hereby stipulated and agreed between the parties that this matter shall be settled and resolved upon the following terms:

#### **Prior Agreement**

1. The parties agree that the Prior Agreement is rescinded.

#### **Remediation, and Reassessment**

2. The Respondent may obtain, in whatever manner she chooses, the education and training necessary to remediate the deficiencies identified by the University of Maryland's Dental Professional Review and Evaluation Program Report dated October 22, 2014, ("D-PREP Report").

3. At a time of her choosing and at her cost, Respondent shall submit to a reassessment of her competence to practice dentistry by an authorized Dental Professional Review and Evaluation Program ("D-PREP Program") of her choosing. The reassessment

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shall determine whether the Respondent has successfully remediated the deficiencies identified by the D-PREP Report.

4. At least two weeks before submitting to reassessment, the Respondent shall notify the Board when she will submit to the D-PREP reassessment and which program she has chosen. The Board shall send to the D-PREP Program that the Respondent chooses the following materials: all of the materials provided to the D-PREP Program that produced the D-PREP Report, including copies of Respondent's patient records previously identified by the Board, and the Prior Agreement; the D-PREP Report; and this Settlement Agreement. The Board shall submit these materials with a cover letter containing the language in paragraph 3 above. The Board agrees it will request from the Maryland D-PREP Program the questions, Respondent's answers, and the program's evaluation of her responses to the written portion of Respondent's assessment. If this material is provided to the Board, it will provide copies to Respondent. However, the Board makes no representations or commitments that the Maryland D-PREP Program will release this information.

5. The D-PREP Program that performs the reassessment of the Respondent shall submit a report ("the Reassessment Report") to the Kentucky Board of Dentistry.

#### **Effect Upon Licensure Status**

6. The Respondent may begin performing Phase I dentistry on patients immediately upon both parties signing this agreement. For purposes of this agreement, Phase I dentistry is defined as the treatment and elimination of all disease processes of the teeth and gums of a patient within the standard of care, that is, customary dentistry and necessary adjunctive treatment. As it

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relates to this Settlement Agreement "necessary adjunctive treatment" shall mean, for example, after removing tooth decay, placing the appropriate Class I through Class V filling.

7. The Respondent shall not resume performing any Phase II dentistry until a Reassessment Report declares that she is competent to perform that particular type of Phase II dentistry, or until she is approved to resume that type of Phase II dentistry as provided hereafter, and only after a Monitor has been approved as required hereafter. For purposes of this agreement, Phase II dentistry is all dentistry that is not Phase I dentistry, including but not limited to performing crowns, inlays, on-lays, bridges, partials, dentures, implants, and veneers.

8. After performing the reassessment, if the D-PREP Program declares in its report that the Respondent is not competent to perform some types of Phase I dentistry, then upon receipt of notice of that declaration, the Respondent shall immediately suspend performing any such dentistry she is declared not competent to perform as well as any Phase I dentistry that requires performance of the dentistry she is declared not competent to perform.

9. As of the date of the Reassessment Report, the Respondent may immediately begin to perform those types of Phase II dentistry that she has been declared competent to perform. The Respondent shall not resume any type of Phase II dentistry that a Reassessment Report declares she is not competent to perform until she has been approved, as provided hereafter, competent to resume such type of Phase II dentistry.

#### **Remediation after Reassessment**

10. The individual who performs the monitoring of Respondent's practice as provided hereafter ("the Monitor") shall review the Reassessment Report and determine whether the

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Respondent should receive remediation for any deficiency identified in the report, or whether the Respondent should be approved to resume without remediation the dentistry practice that the Reassessment Report declares deficient.

11. For any deficiency identified in the Reassessment Report that the Monitor decides the Respondent should receive remediation, the Monitor shall determine the type of remediation the Respondent shall perform.

12. The Monitor also shall have discretion to approve when Respondent is competent to resume the type of dentistry involved in the remediation.

13. The Monitor shall report in writing to the Board the remediation that the Respondent shall perform. The Monitor also shall report in writing to the Board when the Monitor approves Respondent competent to resume any type of dentistry that the Reassessment Report has declared deficient.

14. The Respondent shall be entitled to resume such type of dentistry on the date of the Monitor's written report to the Board.

15. All of the Monitor's work shall be performed at the Respondent's cost.

#### **Monitoring**

16. The Respondent may select the Monitor who will perform the monitoring set forth in this agreement so long as the person selected is any full-time professor or assistant professor at the University of Louisville, College of Dentistry. If no individual with the University of Louisville, College of Dentistry, can or will act as monitor under this Settlement Agreement, then the monitor shall be approved by the Law Enforcement Committee, Kentucky Board of Dentistry.

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17. Monitoring of the Respondent's dentistry practice shall begin as soon as the Respondent resumes Phase I dentistry.

18. Monitoring shall continue for two years after Respondent is approved to resume all Phase II dentistry, unless at the end of the monitoring period the Respondent has not been approved by the Monitor to resume any dentistry practice that the Respondent has suspended after the Monitor declares the dentistry practice deficient.

19. Monitoring shall consist of unannounced onsite visits and review of records of Respondent's practice of dentistry.

20. Onsite visits may occur at any location where the Respondent performs dentistry treatment or care.

21. The Monitor may observe any and all of Respondent's dentistry treatment and care of patients that occur during each onsite visit.

22. During each onsite visit, the Monitor may select for review from patient records kept at the location that were created since the time Respondent resumed the practice of dentistry, or since the time of the prior monitoring visit at that location, whichever is later. The Respondent shall keep all records of her patient treatment and care at the site where the treatment and care were performed. Respondent shall make all such records available to the Monitor during each onsite visit.

23. During each onsite visit, the Monitor may randomly select for review up to twenty (20) patient records involving Phase I dentistry.

24. During each onsite visit, the Monitor may review any patient record involving Phase II dentistry.

25. Respondent shall provide to the Monitor on each onsite visit a list of all patients to whom she has provided dentistry treatment or care since the time she resumed the practice of dentistry, or since the time of the prior monitoring visit at that location, whichever is later. The list shall identify the date and provide a summary description of the treatment and care performed.

26. The Monitor shall perform no more than two onsite visits with records reviews in the first two months of monitoring; no more than four onsite visits with records reviews in the first six months of monitoring; and no more than three onsite visits with records reviews during each six month periods, or partial six month periods, thereafter.

27. The Monitor shall submit to the Board a written report of each onsite visit and associated records review. The report shall identify specifically any of the Respondent's dentistry care or treatment that does not meet the accepted standard of dentistry care.

28. Upon receipt of the Monitor's report, the Respondent shall suspend the practice of any type of dentistry that the Monitor declares does not meet the accepted standard of dentistry care.

29. For any such deficient dentistry care or treatment, the Monitor shall determine the type of remediation the Respondent shall perform.

30. The Monitor shall have discretion to approve when Respondent is competent to resume the type of dentistry being remediated, and the Respondent shall resume such dentistry practice only when the Monitor so approves.

31. If warranted, the Board may initiate disciplinary charges against the Respondent based on the Monitor's reports.

32. All of the Monitor's work shall be at the Respondent's cost.

### **Voluntary Waiver of Rights**

33. The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this agreement. The Respondent has freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Settlement Agreement only after carefully reading it and developing a full understanding of all of its terms.

34. The Respondent is fully aware of the Respondent's rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges or allegations filed, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the charges, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Circuit Court of the county in which the Board met as otherwise allowed by KRS 313.090(19).

35. All of these rights are being voluntarily waived by the Respondent in exchange for acceptance of this Settlement Agreement.

### **Use of this Settlement Agreement**

36. This settlement agreement shall not be considered disciplinary action against the Respondent and its terms shall not be reported to the National Practitioner Data Bank pursuant to

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KRS 313.090(20).

37. In the event that the Respondent commits any further violations of the Board's law or commits a substantial violation of the terms of this agreement, the Board may initiate new charges against the Respondent and treat this Settlement Agreement as disciplinary action for purposes of deciding the appropriate sanction for the new violations.

#### **Jurisdiction**

38. The Respondent acknowledges that the Board has jurisdiction over the Respondent and the conduct that has precipitated this Settlement Agreement.

39. The Respondent acknowledges that the Board retains jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board.

#### **Publication of Settlement**

40. The Respondent acknowledges that, once signed by the parties, this Settlement Agreement may be considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands that the Board is free to make any use of the contents of this agreement as it deems appropriate. Such uses shall include, but not be limited to, publishing the agreement on the Board website.

#### **Enforcement of Settlement Agreement**

41. The Respondent expressly understands that failure to comply with and complete all terms of this Settlement Agreement constitutes an immediate danger to the health, safety, and welfare of the public for which the Board, its Law Enforcement Committee, or its Executive

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Director, may issue an immediate, temporary suspension of the Respondent's dental license, and a fine of not less than \$500.00 as administrative costs of the Board, prior to a full complaint hearing, with the right of the Respondent to appeal such emergency action as provided under KRS 13B.125.

42. If the Respondent commits a substantial violation of the terms of this settlement agreement, the Board may prosecute the charges against the Respondent that are resolved by this Settlement Agreement.

43. The Respondent agrees to indemnify the Board for any costs, including reasonable attorney's fees, incurred in enforcing this Settlement Agreement if the Board or a court determines, after notice and opportunity to be heard, that the Respondent has failed substantially to comply with any provision of this Settlement Agreement.

#### **Release of Liability**

44. In consideration of execution of this Settlement Agreement, the Respondent for the Respondent personally, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Kentucky Board of Dentistry, and the Kentucky Attorney General, and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, and this settlement or its administration.

45. The Board agrees that it will not initiate any charges, known or unknown at this time,

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against Respondent based on Respondent's actions or a failure to act prior to the signing of this Settlement Agreement.

**Cooperation with the Board**

46. The Respondent agrees to cooperate with the actions of the Board, its members, agents, and employees to monitor the Respondent's compliance with the terms and conditions of this Settlement Agreement.

**Effective Date of Settlement Agreement**


47. It is hereby agreed between the parties that this Settlement Agreement shall be effective upon signing by both parties.

48. The parties agree that the Board's Law Enforcement Committee chair, on behalf of the committee, can sign this agreement pursuant to the authority granted in KRS 313.090(10).

**Complete Agreement**

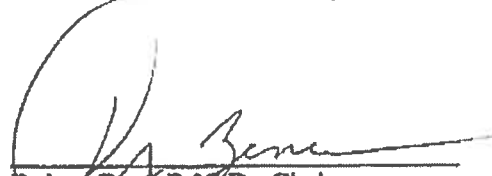
49. This Settlement Agreement embodies the entire agreement between the Board and the Respondent. This Settlement Agreement shall constitute a binding contract between the Respondent and the Board. This Settlement Agreement may not be altered, amended or modified without the express written consent of both parties.

**Have Seen, Understood, and Approved:**

  
Arlene R. Baluyut, D.M.D.  
Respondent

By:

Kentucky Board of Dentistry

  
Robert Zena, D.M.D., Chair  
Law Enforcement Committee  
Kentucky Board of Dentistry

  
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Date: 7-23-15



Robert Benvenuti  
*Attorney for Respondent*

Date: 7-23-2015

Date: 7-23-15



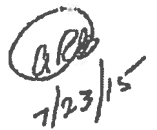
Michael Head  
*Attorney for Kentucky Board of Dentistry*

Date: 7-23-15



Frank Recker  
*Attorney for Respondent*

Date: 7-23-15

  
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