

## **SPECIAL ELEVENTH DIVISION**

**[ CA-G.R. SP No. 127073, December 11, 2014 ]**

**DR. NOEL N. VELASCO, PETITIONER, VS. NORLYN V. NIBRE,  
RESPONDENT.**

### **DECISION**

**PAREDES, J.:**

#### **THE CASE**

THIS PETITION FOR REVIEW<sup>[1]</sup>, filed under Rule 43, 1997 Rules of Civil Procedure, by petitioner Dr. Noel N. Velasco (petitioner) seeks to reverse and set aside the Decision<sup>[2]</sup> dated May 8, 2012, issued by the Board of Dentistry (Board) of the Professional Regulation Commission (PRC), in Administrative Case No. 470 for Gross Negligence, Incompetence and/or Dishonorable Conduct. Also assailed is the Order<sup>[3]</sup> dated July 25, 2012 denying the motion for reconsideration of petitioner.

#### **THE ANTECEDENTS**

On March 3, 2009, Norylyn V. Nibre (respondent) filed a complaint for violation of Section 22<sup>[4]</sup> (a)(b)(c)(h) and (i), Republic Act No. 9484 (RA 9484), otherwise known as the "Philippine Dental Act of 2007", with the PRC-Legal and Investigation Office, against petitioner, alleging that petitioner advertises as a "Dental Implantologist" and "Oral Surgeon" through fliers<sup>[5]</sup>, claiming, that:

Dr. Noel N. Velasco is a renowned Implantologist and Oral Surgeon in the Philippines, Kingdom of Saudi Arabia, Hongkong, Holland, Vancouver, British Columbia and the United States of America. He is an Awardee of the 2005 Parangal ng Bayan Award which was given by her Excellency Gloria Macapagal Arroyo, President of the Republic of the Philippines.

Presently, he serves as consultant to various establishments and practitioner-owner of several dental clinics located in Metro Manila and other places in the Philippines.

A favorite guest and resource person in symposia for issues like Oral Dentistry, Periodontics, Dental Implant, Maxillo Facial Surgery, Prosthodontics, Surgery, Orthodontics, TMJ Disorder Correction and Trigeminal Neuralgia Treatment and Surgery. In addition, he had been invited to speak in media programs such as DZBB-594, IBC 13's Kapwa Ko Mahal Ko, ABS-CBN's Private Confession and Salamat Dok, PTV 4's

Good Morning Manila and GMA 7's Emergency, Kay Susan Tayo, Wish Ko Lang, Lovely Day, and Liga ng Kaganda.

On January 29, 2008, respondent consulted petitioner at his clinic at Mother Ignacia, Quezon City. She informed the latter that she was hypertensive and diabetic. Petitioner advised her to undergo *apecoectomy* and dental implants; respondent agreed.

On March 19, 2008, respondent went to see petitioner at his clinic where she agreed to be subjected to *apecoectomy* and bone-filling procedure at the same time. She also agreed to pay the amount of P732,000.00 for the *apecoectomy* and five (5) dental implants and, accordingly, paid P100,000.00 in cash and the balance in postdated checks. At around 6:23 pm, respondent went under anesthesia and, at around 7:48 pm, more anesthesia was injected into respondent. Thereafter, to her surprise, instead of conducting *apecoectomy*, petitioner conducted a bone-filling procedure on respondent. Two days later, respondent experienced excruciating pain in her teeth and gums, and her face swelled up. On March 23, 2008, after consultation, respondent prescribed additional antibiotics. On March 26, 2008, respondent informed petitioner that a white powdery cement-like substance was leaking out of the sutures in her gums, but the latter told her not to worry and scheduled the removal of the sutures on March 28, 2008. On the appointed date of March 28, 2008, instead of removing the sutures, petitioner injected anesthesia and immediately conducted bone-filling procedure. On the following day, the bone-fillers detached.

On March 30, 2008, petitioner's dentist assistant conducted a root canal procedure on respondent, removed the sutures and conducted bone-filling procedure. However, upon arriving home, respondent experienced sharp and intense pain in all her teeth that lasted for about a month until the gums healed.

In the first week of April 2008, another bone-filling procedure was conducted. As before, respondent suffered from pain and swelling, leaking of white cement from her gums, and sleepless nights. In the second week, she began to undergo removal of the infected and contaminated *gutta percha* points, which was aborted due to difficulties. Petitioner advised her that *apecoectomy* was not practical and, instead, the affected tooth should be extracted and replaced with an implant. Sometime in the third week of April, she demanded a refund of her payments but petitioner was able to dissuade her therefrom.

On June 20, 2008, respondent went to petitioner's clinic to terminate his services and to demand her dental record and a refund of her payment. Petitioner agreed but asked her to call him after two (2) days in order to raise funds to cover the refund; however, he did not answer her calls. Thus, she caused a demand letter to be sent to petitioner.

In his counter-affidavit<sup>[6]</sup>, petitioner claims that he is a licensed dental practitioner and the chairman/owner of Novel International Dental Implant Corporation, which carries on the business of general dentistry and allied services. Sometime in late January 2009, respondent, a walk-in client, went to his clinic for medical prognosis and consultation. On March 19, 2008, he and respondent entered into an

arrangement to perform the dental procedure; the amount of P732,000.00 was contracted and agreed upon. The amount of P100,000.00 in cash was deposited by respondent to assure her conformity to the dental procedure. In return, to show his good faith in the arrangement, and considering that the dental treatments will entail a series of sessions depending on respondent's metabolism and response to the dental therapy, petitioner acceded to give an installment accommodation upon respondent's request. The dental procedures went forward and a series of dental treatments were done. However, the second check issued by respondent, in the amount of P183,000.00 dated June 28, 2008, bounced; but, except for this second check, other check payments were honored and, accordingly, paid. Petitioner learned that respondent had a complaint with her treatment so he advised respondent to return to assess her predicament, but respondent failed to do so. Harsh words and preposterous accusations were even hurled against him. Respondent and her husband, equipped with camera, and accompanied by armed and uniformed policemen, went to petitioner's clinic demanding the return of respondent's money because she did not want to continue with the dental procedure. Respondent threatened petitioner with criminal cases, to the extent of revocation of his license as dental practitioner, in front of his patients, clients, fellow dentists and personnel.

On May 8, 2012, the Board rendered the assailed Decision<sup>[7]</sup> absolving petitioner of gross negligence, finding that the pain and swelling respondent complained of were part of the recuperation process usual in surgical procedures. However, the certificates presented by petitioner were found by the Board insufficient to prove his claims of being an oral surgeon and dental implantologist; hence, it found petitioner guilty of incompetence and dishonorable conduct. The Board held, that:

**WHEREFORE**, based on the foregoing, this Board hereby finds the respondent (*now, petitioner*), Noel N. Velasco, **GUILTY** for being **INCOMPETENT** to practice as an Oral Surgeon and Dental implantologist for his failure to establish (that) those institutions that conferred his certificates of specializations are duly recognized and authorized by this Board. Thus, he is also liable for **DISHONORABLE CONDUCT**.

This Board hereby **SUSPENDS** the respondent's authority to practice the dental profession for the period of **SIX MONTHS** from the date he surrenders to this Board his Certificate of Registration and Professional Identification Card as registered dentist.

Accordingly, respondent is hereby ordered to surrender to this Board his Certificate of Registration and Professional Identification Card as Registered Dentist within **ten (10) days** upon the finality of this decision and to desist from the practice of dentistry during the period of his suspension under pain of criminal prosecution.

**SO ORDERED**<sup>[8]</sup>.

Petitioner moved<sup>[9]</sup> for reconsideration but this was denied for want of merit in the Order<sup>[10]</sup> dated July 25, 2012.

Aggrieved, petitioner filed this petition submitting the following issues for Our resolution:

1] Whether or not the Board of Dentistry committed manifest errors and gravely abused its discretion amounting to lack or excess of jurisdiction when it rendered a Decision and ruled to SUSPEND the petitioner's authority to practice the dental profession for a period of six (6) months on the basis of a PENAL PROVISION or on grounds or causes not authorized or specified by law;

2] Whether or not the Board of Dentistry committed manifest errors and gravely abused its discretion amounting to lack or excess of jurisdiction when it applied and invoked the penal provisions under Sec. 33(h), Art. V of R.A. 9484 and ruled that petitioner is guilty for being INCOMPETENT and liable for DISHONORABLE CONDUCT on the basis of said penal provision, notwithstanding the fact that petitioner is a registered dentist who was absolved by the Board from any liability for gross negligence arising from the dental services rendered to respondent;

3] Whether or not petitioner was denied due process when the Board of Dentistry rendered a Decision declaring him incompetent and thus, summarily ruled to suspend him from the practice of the dental profession on grounds or causes not authorized or specified by the dental law;

4] Whether or not the Board of Dentistry committed reversible errors and gravely abuse its power and authority when it DENIED petitioner's Motion for Reconsideration without resolving the legal and factual issues raised in said motion;

5] Whether or not the Board of Dentistry committed reversible errors and gravely abused its power and authority when it did not include in its findings of fact the FLIER that was used by the respondent as evidence to show that petitioner is incompetent supposedly because he misrepresented himself as dental specialist; and

6] Whether or not petitioner was denied the cold neutrality of an impartial Board or Tribunal<sup>[11]</sup>.

### **THE ISSUE**

In fine, the issue is whether or not the Board of Dentistry erred in finding petitioner incompetent to practice as an Oral Surgeon and Dental Implantologist and, therefore, liable for dishonorable conduct.

### **THE COURT'S RULING**

***The petition is bereft of merit.***

**On the Procedural Aspect**

*Petitioner availed of the wrong remedy.* Petitioner should have appealed the decision of the Board to the PRC, and not to this Court. Section 22, RA 9484 provides the remedy for the party aggrieved by the decision of the Board, thus:

SECTION 22. Revocation or Suspension of Certificate of Registration and Professional Identification Card and Cancellation of Temporary/Special Permit. — The Board shall have the power to recommend the nullification or suspension of the validity of the certificate of registration and professional identification card of a dentist, dental technologist and dental hygienist or the cancellation of a temporary/special permit for any of the causes mentioned in the preceding section, or for:

xxx

(j) xxx **Provided, That the action of the Board in the exercise of this power shall be appealable to the Commission.** (Emphasis supplied)

However, We deem it proper and prudent to apply liberality in the application of the rules on technical procedure and decide the case based on the merits. Overlooking lapses of procedure on the part of litigants in the interest of strict justice or equity and the full adjudication of the merits of his cause or appeal are, in our jurisdiction, matters of judicial policy<sup>[12]</sup>.

**On the Substantive Aspect**

The Board based the suspension imposed on petitioner on the penal provision under Section 33 (h), RA 9484, which provides:

SECTION 33. Penal Provision. — The following, shall be punished by a fine of not less than Two hundred thousand pesos (P200,000.00) nor more than Five hundred thousand pesos (P500,000.00) or to suffer imprisonment for a period of not less than two years and one day nor more than five years, or both, in the discretion of the court: xxx

(h) Any person who shall assume, use or advertise as a bachelor of dental surgery, doctor of dental surgery, master of dental surgery, licentiate of dental surgery, doctor of dental medicine, or dental surgeon, or append to his name the letters D.D.S., B.D.S., L.D.S., or D.M.D. without having been conferred such title or degree in a legally constituted school, college or university, duly recognized and authorized to confer the same or other degrees; xxx