

2-1-01

AT

Final Order No. DOH-01-0767-FoF-MOA  
FILED DATE - 6/5/01  
Department of Health

**STATE OF FLORIDA  
BOARD OF DENTISTRY**

By: Victoria R. Kenon  
Deputy Agency Clerk

DEPARTMENT OF HEALTH,  
Petitioner,

vs.

DOH CASE NO.: 1997-16242  
DOAH CASE NO.: 98-2404  
LICENSE NO.: DN 0013137

MARTA NIETO, D.D.S.,  
Respondent.

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**FINAL ORDER**

THIS MATTER was heard by the Board of Dentistry pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on April 27, 2001, in Miami, Florida, for consideration of the Recommended Order (a copy of which is attached as Exhibit A) entered by Errol H. Powell, Administrative Law Judge, dated February 1, 2001 in the above captioned case. At the hearing, Petitioner was represented by Michael J. Cohen, Esq. Respondent was present and represented by Anthony C. Vitale, Esq. Upon consideration of the Administrative Law Judge's Recommended Order, after review of the entire record and having been otherwise fully advised in its premises, the Board makes the following findings and conclusions.

**RULING ON EXCEPTIONS**

\_\_\_\_\_ Petitioner filed exceptions to the Recommended Order. A copy of said exceptions is attached as Exhibit B. The Board concurs in the exceptions, finding that the Administrative Law Judge failed to make findings regarding the aggravating factors listed in Rule 64B5-13.005, F.A.C., and which are supported by the record. The Board GRANTS the exceptions, and finds the existence of said aggravating factors.

**FINDINGS OF FACT**

1. The Administrative Law Judge's Findings of Fact are approved and adopted and are incorporated herein by reference.
2. There is competent, substantial evidence to support the Board's findings.

## CONCLUSIONS OF LAW

1. The Board has jurisdiction of the parties and subject matter of this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes, and Chapter 466, Florida Statutes.

2. The Administrative Law Judge's Conclusions of Law are approved and adopted and are incorporated herein by reference.

3. There is competent, substantial evidence to support the Board's conclusions.

4. The Board substantially agrees with the penalty recommended by the Administrative Law Judge.

WHEREFORE, it is ORDERED AND ADJUDGED that Respondent's license be SUSPENDED for five (5) years, with said suspension deemed to have commenced as of the date of the Emergency Suspension Order, April 17, 1998. During the remaining two (2) years of suspension, Respondent shall provide a minimum of 500 hours per year of community service in a setting(s) to be approved by the Board or its designee. Prior to reinstatement, Respondent shall demonstrate compliance with all required continuing education hours which would have accrued during the suspension period, and shall also evidence specific continuing education hours in ethics and recordkeeping. Upon reinstatement, Respondent shall be on PROBATION for a minimum of three (3) years, and until such time as all terms of this Order are satisfied. As conditions of probation:

1. Respondent shall only practice under indirect supervision, either as an employee of another dentist, a government agency, or a duly permitted non-profit corporation. During said employment, Respondent shall not handle or be responsible for billing or any other financial aspect of the practice.

2. Respondent and her supervisor shall submit quarterly reports to the Board office regarding the quality of Respondent's practice, and shall alert the Board to any problems encountered.

3. Respondent shall make an appearance prior to the termination of probation, as well as at any other time requested by the Board. Respondent shall receive prior notification of any

such appearance.

Respondent shall pay a FINE of \$24,000 and ADMINISTRATIVE COSTS of \$44,847.70. Said fine, costs, as well as any outstanding Medicaid reimbursement, shall be paid prior to the end of probation. Respondent shall make a good faith effort to make monthly payments on these outstanding balances upon becoming employed after reinstatement. Furthermore, Respondent shall not become a Medicaid provider until such time as she petitions the Board and is so authorized.

This Final Order becomes effective upon its filing with the Clerk for the Department of Health. The parties are hereby notified that they may appeal this Final Order by filing one copy of a Notice of Appeal with the Clerk of the Department of Health and by filing a filing fee and one copy of a Notice of Appeal with the District Court of Appeal within thirty (30) days of the date this Final Order is filed.

DONE AND ORDERED this 18 day of May, 2001.

BOARD OF DENTISTRY

  
CHARLES L. ROSS, D.D.S.  
CHAIRMAN

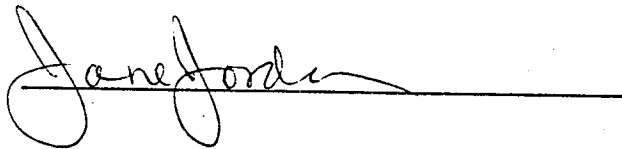
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail to Marta Nieto, D.D.S., 5511 SW 8<sup>th</sup> Street, Miami, Florida 33134; Anthony C. Vitale, Esq., 799 Brickell Plaza, Suite 700, Miami, Florida 33131; Michael Cohen, Esq., 517 SW First Avenue, Fort Lauderdale, Florida 33301-5858, the Honorable Errol Powell, Administrative Law Judge, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by hand delivery/United States Mail to the Clerk, Department of Health and its Counsel this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_

**AMENDED CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been provided by certified mail to **Marta Nieto, D.D.S., 5511 S. W. 8th. St., Miami FL 33134, Marta Nieto, D.D.S., 1009 N. W. 132nd. Ct., Miami FL 33182, , Anthony C. Vitale, Esq., 799 Brickell Plaza, Ste. 700, Miami FL 33131, Michael Cohen, Esq., 517 S. W. 1st. Ave., Ft. Lauderdale FL 33301-5858, Errol Powell, ALJ, DOAH, 1230 Apalachee Pkwy., Tallahassee FL 32399-3060, and interoffice delivery to at or before 5:00 p.m., this 5<sup>th</sup> day of June, 2001.**

A handwritten signature in cursive script, appearing to read "Jane Ford", is written over a solid horizontal line.