

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

**WEST VIRGINIA BOARD OF
DENTAL EXAMINERS,**

Complainant,

v.

Case No.: 2010-DB-0009D

SAMUEL D. CARNES, DDS,

Respondent.

FINAL ADMINISTRATIVE ORDER

Upon review of the record in the above-styled matter, the West Virginia Board of Dental Examiners, (hereinafter "Board") hereby ADOPTS, in its entirety, the Recommended Decision of the Hearing Examiner, dated November 12, 2010, which is attached hereto and incorporated by reference herein. Based on the Findings of Fact and Conclusions of Law of the Hearing Examiner, the Board hereby ORDERS as follows:

Accordingly, the Board Orders as follows:

1. The Board shall adopt and ratify verbatim the Findings of Facts and Conclusions of Law entered on November 12, 2010.
2. The dental license of and/or the right to a dental license for Samuel D. Carnes, DDS (hereinafter "Respondent"), License No. 2746, is hereby **SUSPENDED**. The Respondent shall not engage in the practice or business of dentistry whatsoever, either directly or indirectly, in the State of West Virginia during this **SUSPENSION**.

3. The Respondent shall enroll in and successfully complete a twenty-hour (20) course on dental pharmacology and record keeping. The pharmacology course shall include an intense course in the proper prescribing of dangerous controlled substances. Further, the Respondent shall complete six (6) hours in Dental Ethics. All courses shall be *pre-approved* by the Board and the final results shall be sent directly to the Board from the educational institution. Completion of these classes does not count as credit for regular continuing education hours required by law.

4. After completing the courses outlined above, the Respondent shall successfully complete the Jurisprudence, Ethics and Risk Management (JERM) Examination administered by the North East Regional Board of Dental Examiners, Inc. and the Dental law examination given by the West Virginia Board of Dental Examiners.

5. The Respondent shall not prescribe, dispense or administer any scheduled controlled substances during the Suspension. That should the Respondent's license be reinstated, he shall petition the Board to lift the restriction on prescribing, dispensing or administering any scheduled controlled substances. That should the Board lift the restriction on the Respondent's license to prescribe, dispense or administer any scheduled controlled substances, the Respondent shall maintain a separate log detailing all control substances prescribed, administered or dispensed to his patients. The Respondent shall list the medication prescribed, administered or dispensed along with an explanation for the medication. A copy of this log shall be sent to the Board monthly and said log shall also be made available upon request by the Board or its designee at any time.

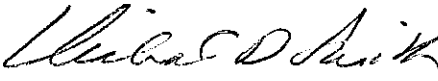
6. That the Respondent shall be assessed a fine in the amount Two Thousand Five Hundred Dollars (\$2,500.00) to be paid prior to the lifting of the Suspension.

7. That the Respondent shall reimburse the Board in the amount of Three Thousand Three Hundred Twenty-two Dollars (\$3,322.00) for the costs incurred by the Board associated with the investigation and prosecution of this matter. Said reimbursement to be paid prior to lifting of the Suspension.

8. The Respondent shall be responsible for any cost associated with the implementation of this Order.

ENTERED into the records of the Board this 18th day of January 2011.

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

By: 
Richard D. Smith, DDS
Board President

Pursuant the West Virginia Code §29A-5-4(b) an appeal of this decision may be made to the Circuit Court of Kanawha County or in the circuit court of the county in which the licensee resides or do business. This appeal must be filed within 30 days after receiving notice of this decision.

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

Complainant,

v.

Case No. 2010-DB-0009D

SAMUEL D. CARNES, DDS,

Respondent.

**HEARING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER**

This matter comes before the undersigned Hearing Examiner Jack C. McClung by a Statement of Charges dated July 16, 2010, issued against Respondent Samuel D. Carnes, DDS (hereinafter "Respondent"), by the Complainant West Virginia Board of Dental Examiners (hereinafter "Board"), and by an Amended Notice Of Hearing setting this matter for hearing on September 8, 2010.

This matter therefore came on for evidentiary hearing on September 8, 2010. The Complainant Board appeared by Assistant Attorney General Darlene Ratliff-Thomas and Susan Combs, Assistant Executive Director of the Board. The Respondent appeared in person, pro se.

During the said evidentiary hearing, the Board called as its witnesses Assistant Executive Director Susan Combs, Board member Dr. Diane Paletta, and the Respondent, and introduced seven (7) exhibits, all of which were made a part of the record. Respondent testified on his own behalf.

All witnesses were sworn, documents were received into evidence, the hearing was recorded electronically, and a transcript prepared and distributed to the parties. After a review of the record and exhibits admitted into evidence at the hearing of this matter, after assessing the credibility of all

testimony of witnesses of record and weighing the evidence in consideration of the findings as to credibility, and after consideration of the proposed findings of fact and conclusions of law as were filed by the parties, the undersigned hearing examiner makes the following findings of fact, conclusions of law, and proposed order. To the extent that these findings and conclusions are inconsistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are rejected by the hearing examiner. Conversely, to the extent that these findings and conclusions are generally consistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are accepted and adopted. To the extent that the testimony of any witness is not in accordance with these Findings and Conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed or submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

CREDIBILITY OF WITNESSES, TESTIMONY, AND EXHIBITS

The hearing examiner was and is satisfied that all records and documents entered as exhibits are complete, authentic and valid, and that they were entered with the proper evidentiary foundations.

The hearing examiner was and is satisfied that the witnesses brought on by the parties were credible and truthful except as noted below. Neither the demeanor of the witnesses nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive except as noted below.

FINDINGS OF FACT

1. Respondent Samuel D. Carnes holds a license to practice dentistry in the State of West Virginia, with license number 2746.
2. The Complainant Board is a regulatory agency created for the purpose of regulating the practice of dentistry in the State of West Virginia. W. Va. Code § 30-4-1 et seq.

3. Respondent Carnes is properly subject to the jurisdiction of the Board as to the subject matter.

4. On May 14, 2009, the Board received a facsimile transmission from an attorney with the West Virginia Medicaid Fraud Unit indicating that information had been received that Respondent was prescribing medication outside the scope of dentistry in that he was prescribing Ambien, a drug for insomnia, to his mother, Catherine Carnes. Hearing Transcript (“Tr.”) at 8. See Complainant Exhibit (“Ex.”) 1.

5. Based on that communication, Susan Combs (hereinafter “Combs”), the Board’s Assistant Executive Director, issued an internal report to the Board. Tr. at 8-19; Ex. 1.

6. The said internal report included a report of the West Virginia Board of Pharmacy as to prescriptions written for Ambien by Respondent for Catherine Carnes between June 11, 2007, and December 13, 2008. See Ex. 1.

7. The matter was thereafter referred to a Board complaint committee and the Board notified Respondent by letter dated June 10, 2009, of the allegations as to his writing prescriptions outside the scope of practice. Tr. at 11-13; Ex. 2.

8. By letter received by the Board on July 14, 2010, Respondent responded to the Board letter of June 10, 2010. Respondent therein admitted to the writing of the subject prescriptions for his 93 year old mother, and that he kept only “a mental chart” on his treatments for his mother. Tr. at 13-14, 42; Ex. 3.

9. The Board thereafter issued the July 16, 2010, Statement of Charges. Tr. at 15; Ex. 4.

10. Respondent requested a formal hearing on the matter. Tr. at 17, 42; Comp. Ex. 5.

11. At the hearing of this matter, Dr. Diane Paletta (hereinafter “Paletta”), a licensed

dentist and a member of the Board, testified that she did not know of any reason Ambien would be prescribed for dental use. Tr. at 31.

12. Paletta cited as authority as to the use of Ambien in dentistry Dr. Harold "Hal" Crossley, who she testified was the foremost authority on pharmaceutical practice in dentistry. Paletta cited Crossley's "Drug Information Handbook for Dentistry" as noting that dental use for Ambien "has not been established." Tr. at 31; Ex. 7.

13. Paletta further testified that from information received from Respondent, Catherine Carnes was not an active patient in Respondent's dental practice during the period in which the subject prescriptions were written, and that it was unethical for a dentist to prescribe medication for an individual who was not his patient. Paletta also expressed concern about Respondent's prescribing the maximum dose of Ambien (12.5 milligrams) to a 93-year-old patient. Tr. at 31-33.

14. Respondent admitted in his testimony as a witness called by the Board that he did prescribe Ambien for his mother on at least four different occasions in the amount of thirty (30) 12.5 milligram tablets per prescription, and that at the time of such prescribing Respondent was not treating his mother for any dental condition. Tr. at 42-43. Respondent testified under cross-examination that his first prescription for his mother was in June 2007. Tr. at 48-49.

15. Under examination by the hearing examiner, Respondent stated that he was not a practicing dentist, having been disabled since August 1, 2006. Tr. at 43.

16. The record therefore establishes that Catherine Carnes was not a patient of Respondent during the June 11, 2007 - December 13, 2008, period during which the subject prescriptions were issued by Respondent, and that Respondent was not a practicing dentist during that same period of time.

17. In testimony presented on his own behalf, Respondent did "freely admit" that he

prescribed the subject medication for his mother “[o]n three or four occasions” when he was “unable to reach her physician for a refill on one of her prescriptions.” Tr. at 44. Under cross-examination, however, Respondent conceded that his mother’s pharmacy records indicated that he was the first person to prescribe Ambien for his mother, but stated that Dr. John Richards may have suggested it. Tr. at 49-51.

18. In further testimony presented on his own behalf, Respondent noted that in twenty years of his dental practice, he had never been called before the Board before, and asserted this matter was his “first offense” and a “minor infraction.” Tr. at 46. He further asserted that he was, in such prescribing, “in that gray area prescribing something like that to a family member . . .” Respondent compared his acts in the matter to “a traffic ticket.” Respondent admitted that he was “guilty of the infraction,” but requested that the penalty imposed “be justified . . . for what I did.” Tr. at 44-45.

CONCLUSIONS OF LAW

1. The West Virginia Board of Dental Examiners has jurisdiction over this matter. See W. Va. Code § 30-4-1, et seq.
2. Respondent Samuel D. Carnes is a licensee of the West Virginia Board of Dental Examiners and is subject to license requirement of the Board.
3. The Complainant Board is empowered by law to refuse to renew a license, suspend a license, or revoke any license of a licensee upon satisfactory proof that a licensee is, in his or her professional capacity, engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct in violation of the provisions of W. Va. Code §§ 30-1-1, et seq., 30-4-1 et seq., 30-4A-1 et seq. and the Code of State Rules, Title 5 et seq., including the principles of ethics and code of professional conduct of the American Dental

Association.

4. This matter is properly before the undersigned hearing examiner for evidentiary hearing and submission of recommended findings of fact and conclusions of law to the Board for its consideration.

5. The Statement Of Charges in this matter alleged that Respondent exceeded the scope of dental practice by prescribing Ambien, a scheduled controlled substance, for his mother (Catherine Carnes) from June 11, 2007, through December 13, 2008.

6. The Statement Of Charges in this matter further alleged that Respondent could not provide any documentation to demonstrate that his mother was a dental patient of his during that period of time.

7. The Statement Of Charges in this matter further alleged that Respondent does not have records to support the need for the quantity, amount or frequency of the controlled substances prescribed by him for his mother.

8. Respondent has admitted the said allegations as stated in the Statement Of Charges.

9. The Board has proven by a preponderance of the evidence of record the said allegations as stated in the Statement Of Charges, and has established as a matter of law that Respondent did exceed the scope of dental practice as alleged.

10. It is therefore found that the allegations as stated in the Statement Of Charges as to the therein referenced violations of law should be sustained in all respects and any defenses or objections to the same by Respondent should be denied.

11. Respondent has offered certain matters in mitigation of the sanctions which may be imposed by the Board, which matters in mitigation the Board may consider as it finds appropriate. Such matters in mitigation do not, however, act as a defense to the matters alleged in the Statement

of Charges.

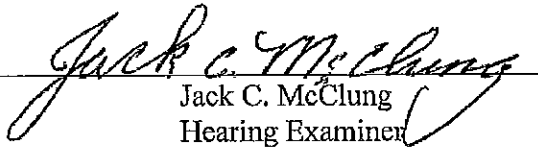
PROPOSED ORDER

It is recommended as follows as to the Statement Of Charges against Respondent Samuel D. Carnes.

1. That the allegations against Respondent as stated in the Statement Of Charges as to the therein referenced violations of law be SUSTAINED in all respects and any defenses or objections to the same by Respondent be DENIED.

2. That Respondent's license to practice the profession of dentistry be disciplined accordingly by Complainant West Virginia Board Of Dental Examiners

Recommended this 12th day of November, 2010.


Jack C. McClung
Hearing Examiner