

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

**WEST VIRGINIA BOARD
OF DENTAL EXAMINERS,**

Complainant,

CASE #: 2006-DB-0046D

v.

JAMES D. GANDEE, DDS,

Respondent.

CONSENT DECREE AND ORDER

After due investigation, the West Virginia Board of Dental Examiners (hereinafter "Board") determined that there was probable cause to believe that James D. Gandee, DDS (hereinafter "Respondent") violated the Dental Practice Act pursuant to West Virginia Code §30-4-1 *et seq.* and the Rules of the Board, 5 CSR 1 *et seq.*

WHEREAS, in lieu of further disciplinary proceedings, the Board and Respondent have reached an agreement concerning the proper disposition of this matter. The Board does hereby Find and Order as follows:

FINDINGS OF FACT

1. That the Board is the State entity created by W. Va. Code § 30-4-1 *et seq.* and is empowered to regulate the practice of dentistry.
2. That the Respondent is a licensee of the Board, possessing License No. 2093 and is subject to the license requirement of the Board.

3. That the Respondent prescribed controlled substances for various patients from 2003 through 2006, with little to no treatment rendered, no diagnosis to justify such prescriptions, or no documentation in the patient chart that any medication was prescribed, when in fact various scheduled controlled substances were indeed prescribed.

CONCLUSION OF LAW

1. That the Board has jurisdiction to take disciplinary action against the Respondent.

2. That pursuant to W. Va. Code § 30-4-1 et seq., the Board may revoke a license, suspend a license, reprimand a licensee or take other disciplinary action for violation of the rules and regulations of the Board.

3. The Respondent is a licensee of the West Virginia Board of Dental Examiners and is subject to license requirements of the Board.

4. The Respondents' actions constitute a violation of the W. Va. Code § 30-4-20(3) and (8), i.e., incompetence, professional negligence in the performance of services, or a willful departure from accepted standards and professional conduct.

CONSENT OF LICENSEE

The Respondent by affixing his signature hereto, acknowledges the following:

1. Respondent has been given the opportunity to consult with counsel and executes this Consent Decree and Order voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.

2. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to enter this Consent Decree and Order other than as set forth herein.

3. Respondent acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently, knowingly and voluntarily waives such rights.

4. Respondent acknowledges that he is aware that this Consent Decree and Order is a public document, available for inspection at any time by any member of the public under Chapter 29B *et seq.*, of the West Virginia Code, Freedom of Information Act and may be reported to other governmental, professional Boards or organizations.

5. Respondent waives any defense of laches, statute of limitations, estoppel and waiver that he may have otherwise claimed as a condition of this Consent Decree and Order.

6. The Respondent acknowledges that this Consent Decree and Order shall be presented to the Board as soon as practical but no later than next scheduled meeting of the Board, with a recommendation for approval from the Complaint Committee.

7. That Respondent consent to the entry of the following Order affecting his license in the State of West Virginia

8. The Respondent, by affixing his signature hereon, consents and agrees to the following terms and conditions.

ORDER

Based on the foregoing Findings of Facts and Conclusions of Law, it is by West Virginia Board of Dental Examiners, hereby ORDERED:

1. The Respondent's license to practice dentistry in the State of West Virginia is **SUSPENDED** for a period of three (3) years; with all but fifteen (15) days **STAYED**, the suspension shall commence on April 4, 2008 and continue until April 24, 2008.
2. The Respondent shall enroll in and successfully complete twenty (20) hours of continuing education in pharmacology, which shall be pre-approved by the Board. The Respondent shall submit a written request for approval of the course to the Board's Complaint Committee.
3. The Respondent shall enroll in and successfully complete ten (10) hours of continuing education in record keeping, which shall be pre-approved by the Board. The Respondent shall submit a written request for approval of the course to the Board's Complaint Committee.
4. The Respondent shall enroll in and successfully complete ten (10) hours of continuing education in ethics, which shall be pre-approved by the Board. The Respondent shall submit a written request for approval of the course to the Board's Complaint Committee.
5. The Respondent shall submit written verification to the Board of his enrollment and proof of successful completion of all courses on or before October 30, 2008. The Respondent shall be responsible for all costs incurred for these courses.

6. The Respondent shall not prescribe, dispense or administer any Controlled (Schedule) drugs for ninety (90) days. Thereafter, and for a period of two (2) years, the Respondent shall maintain a separate log detailing all controlled substances prescribed, dispensed or administered to his patients. A copy of this log shall be sent to the Board office on a quarterly basis or made available for inspection upon request by the Board or its designee.

7. The Respondent shall not prescribe, dispense or administer any medications to his family members, under any circumstance.

8. The Respondent shall not prescribe any medications for himself, under any circumstance.

9. The Respondent shall not use controlled substances, or mood altering drugs at any place or time unless prescribed by a licensed practitioner for a bona fide medical condition and upon prior notice to the Board; except that prior notice to the Board shall not be required in the case of a bona fide medical emergency.

10. The Respondent shall take and pass the West Virginia Dental Law Exam within sixty (60) days of entry of this Consent Decree and Order.

11. The Respondent shall obey all laws of the United States, the State of West Virginia and its political subdivisions.

12. The Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations.

13. The Respondent shall be assessed a fine in the amount of Five Hundred Dollars (\$500.00).

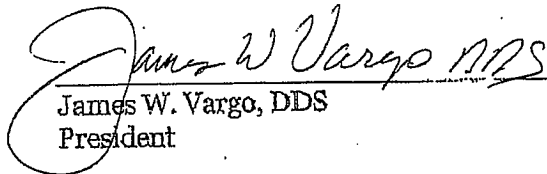
14. The Respondent shall reimburse the Board in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) for all costs incurred by the Board in the investigation and disposition of this case.

15. The Respondent shall be responsible for any costs associated with the implementation of this Consent Decree and Order.

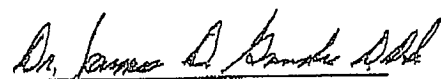
16. If the Respondent fails to fully comply with the terms of this Consent Decree and Order, the Board may lift the stay on the SUSPENSION. If the stay is lifted, the SUSPENSION will immediately be in full force and effect.

Entered this 4th day of April 2008.

West Virginia Board of
Dental Examiners:


James W. Vargo, DDS
President

Reviewed and Agreed to by:


James D. Gandee, DDS
Respondent