

**BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS**

**WEST VIRGINIA BOARD  
OF DENTAL EXAMINERS,**

**Complainant,**

**v.**

**CASE NO.: 2009-DB-0054D**

**RODGERS W. HARSHBARGER, DDS,**

**Respondent.**

**CONSENT DECREE AND ORDER**

The West Virginia Board of Dental Examiners ( Board) generated an internal report and commenced an investigation regarding possible scheduled controlled substance prescription writing and dispensing issues of Rodgers W. Harshbarger, DDS, (Respondent). The Board and the Respondent have reached an agreement as to an appropriate disposition of the matter, with consideration to appropriate safeguards for protection of the public.

WHEREAS, the Board agrees and acknowledges that this agreement is a compromise of claims disputed by the Respondent, and that his agreement and consent to these terms do not constitute an admission of guilt or culpability on his part.

WHEREAS, the parties have reached an understanding concerning the proper disposition of the matter in controversy, the Board does hereby Find and Order as follows:

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### FINDINGS OF FACT

1. That the Board is the State entity created by West Virginia 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. - \_\_\_\_\_ and is subject to the license requirement of the Board.
3. That Board alleges that a review of the Respondent's controlled substance pharmaceutical prescription writing and dispensing practices from April 2006 through April 2009 along with various patient records show that he engaged in conduct, practices or acts constituting professional negligence or a departure from accepted standards of professional conduct.
4. That Board alleges that the Respondent prescribed various Schedule III controlled substances as defined under West Virginia Code § 60A-2-208 as well as Schedule IV controlled substances as defined under West Virginia Code § 60A-2-210 without treatment records to support the need for the quantity of controlled substances prescribed.

### CONCLUSION OF LAW

1. That the Board has jurisdiction to take disciplinary action against the Respondent.
2. That pursuant to West Virginia 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. Based on the investigation conducted, the Complaint Committee of the Board believes that there is substantial evidence to demonstrate that the Respondent has violated the Practice Act, West Virginia Code § 30-4-1 *et seq.*

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

### ORDER

That the Board agrees to forego further prosecution of the complaint pursuant to the Consent Decree between the Board and Respondent, Rodgers W. Harshbarger, DDS as follows:

1. The Respondent be and is hereby issued a reprimand.

2. The Respondent shall be prohibited from prescribing, dispensing, or administering any scheduled controlled substances in West Virginia until he has successfully completed a minimum of twenty (20) hours of pharmacology and/or pharmacy which shall include an intensive course in the proper prescribing of controlled dangerous substances. Said course shall be pre-approved by the Board and the Respondent shall be responsible with any expense associated thereof.

3. Within sixty (60) days of the date of this Consent Order, the Respondent shall enroll in the course as outlined in paragraph 2 above. The Respondent shall submit written verification to the Board of his enrollment in the course. Further, Respondent shall submit proof of having successfully completed the course on or before April 1, 2011.

4. The Respondent shall petition the Board to allow him to exercise the privilege of prescribing scheduled controlled substances upon completion of the course as outlined in paragraph 2 above.

5. In the event that the Respondent obtains the privilege of prescribing controlled substances, the Respondent shall maintain a separate log detailing all controlled substances prescribed, administered and dispensed. The Respondent shall list the name of the medication prescribed, administered or dispensed and the quantity of said medication, along with an explanation for the prescribing, administering or dispensing of the medication. A copy of this log shall be sent to the Board quarterly. Said log shall also be

made available upon request by the Board or its designee at any time.

6. The Respondent shall enroll in and successfully complete a minimum of ten (10) hours of continuing education in record keeping over and above normal Continuing Education requirements. Said courses shall be pre-approved by the Board and the Respondent shall be responsible with any expense associated thereof. The Respondent shall submit written verification to the Board of his enrollment in the course. Further, Respondent shall submit proof of having successfully completed the course on or before April 1, 2011.

7. That the Respondent shall discontinue the treatment of Temporomandibular joint disorder (TMJD or TMD), patients completely or in the alternative should he desire to continue treatment of such patients he shall take a minimum of twenty (20) hours of continuing education in the present TMJD or TMD treatment technology.

8. That the Respondent shall at all times cooperate with the Board, any of its agents or employees, in the monitoring or investigation of the Respondent's compliance with the terms and conditions of this Consent Order. The Respondent shall be responsible for any expense associated with the monitoring of his practice during the probation period as well as any expenses associated with written reports, records or verifications of actions that may be required by the Board.

9. That the Respondent's failure to fully comply with the terms and conditions

of this Consent Order hereby imposed shall be deemed a violation of this Consent Order. If the Respondent violates any of the terms of this Consent Order, the Board may immediately suspend the Respondent's license.

10. The Respondent shall obey all laws of the United States, the State of West Virginia and its political subdivisions. The Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations.

11. The Respondent shall pay a fine in the amount of Five Hundred Dollars, (\$500.00).

12. The Respondent shall reimburse the Board case in the amount of One Thousand Two-Hundred Fifty dollars (\$1,250.00) for all costs incurred by the Board in the investigation and disposition of this case.

Entered this 12<sup>th</sup> day of November 2010.

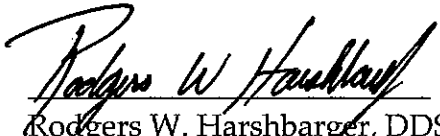
West Virginia Board of  
Dental Examiners:

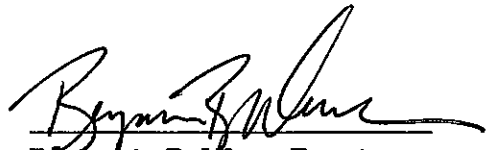


Richard D. Smith, DDS  
President



Inspected and Agreed to by:

  
Rodgers W. Harshbarger, DDS  
Respondent

  
Benjamin B. Ware, Esquire  
Law Offices of Benjamin B. Ware, PLLC  
150 Clay Street, Suite 213  
Morgantown, West Virginia 26501  
Counsel for Respondent