

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:

## FINDINGS OF FACT

1. On November 12, 2010, the West Virginia Board of Dental Examiners entered a Consent Decree and Order (Order) in regard to the above-styled action.

2. The terms of the Order provided that “[t]he 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.”

3. On or about January 6, 2011, the Assistant Executive Secretary for the Board performed an audit via the West Virginia Board of Pharmacy Drug Monitoring Databank.

4. The audit revealed that from November 15, 2010 through January 1, 2011, the Respondent prescribed Hydrocodone (Lortab) a Schedule III controlled substance under W. Va. Code § 60A-2-208 on ten (10) separate occasions.

5. The Respondent failed to comply with the November 12, 2010 Order and his continuing to prescribe a scheduled controlled substance is clearly in violation of the Order issued by the Board.

6. The Respondent asserts that he “misunderstood” the prescription prohibited outlined in the Order issued by the Board and that he did not wilfully violate the Order of the Board.

### 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. That the license of the Respondent to practice dentistry in the State of West Virginia is suspended for thirty (30) days, with all but five (5) working days **STAYED**, the Suspension shall commence upon entry of this Consent Decree and Order.
2. The Respondent shall pay a fine in the amount of Five Hundred Dollars, (\$500.00).
3. The Respondent shall reimburse the Board costs in the amount of Five Hundred Dollars (\$500.00) for all costs incurred by the Board in the investigation and disposition of this case.

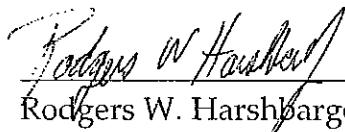
That the remainder of the November 12, 2010 Order shall remain in full force and effect except for as modified herein.

Entered this 12 day of January 2011 

West Virginia Board of  
Dental Examiners:

  
George D. Conard, Jr., DDS  
President

Inspected and Agreed to by:

  
Rodgers W. Harshbarger, DDS  
Respondent