

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

**WEST VIRGINIA BOARD
OF DENTAL EXAMINERS,**

Complainant,

CASE No.: 2008-DB-0002D

v.

JAMES M. HENDERSON, 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 M. Henderson, DDS, (hereinafter "Respondent") violated the Dental Practice Act pursuant to West Virginia Code §30-4-1 *et seq.* §30-4A-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. 3480 and is subject to the license requirement of the Board.
3. That on or about January 17, 2007, the Board alleges that the Respondent negligently operated an electro-cautery tool to remove a malignant lesion from the nasal

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tip of a patient. The cautery tool was used in too close a proximity to the oxygen tube and a flash fire occurred resulting in burns to the patient's face, nose and neck.

4. That the Respondent failed to notify the Board of a patient injury in his office.

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), 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

That the Board agrees to forego further prosecution of the complaint pursuant to the Consent Decree between the Board and Respondent, James M. Henderson, DDS and hereby ORDERS as follows:

1. The Board shall issue a written reprimand to the Respondent.

2. The Respondent shall be assessed a fine in the amount of Five Thousand Dollars (\$5,000.00).

3. The Respondent shall reimburse the Board in the amount of One Thousand Dollars (\$1,000.00) for all costs incurred by the Board in the investigation and disposition of this case.

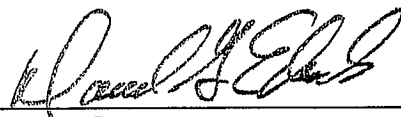
4. The Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations.

5. 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, and that if the Respondent violates any of the terms of this Consent Order, the Board may immediately suspend the Respondent's license.

6. All matters in controversy related to the instant complaint are hereby resolved and closed, pending full compliance with the terms mandated herein.

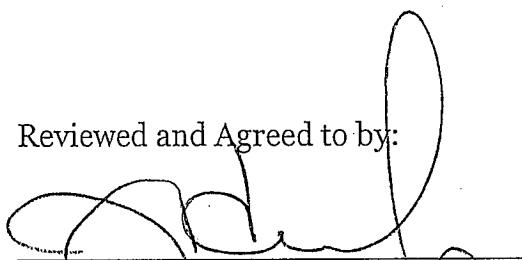
Entered this 27th day of August 2008.

West Virginia Board of
Dental Examiners:



David Edwards, DDS
President

Reviewed and Agreed to by:


James M. Henderson, DDS
Respondent