

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

WEST VIRGINIA BOARD
OF DENTAL EXAMINERS,

Complainant,

CASE #: 2007-DB- 0051D

v.

JAMES E. KIRKPATRICK, III, DDS

Respondent.

CONSENT DECREE AND ORDER

On this day came the West Virginia Board of Dental Examiners (Board) and James E. Kirkpatrick, III, DDS (Respondent) and enter into this Consent Decree and Order.

FINDINGS OF FACTS

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. The Respondent is, and at all times relevant to the allegations, was a Licensee of the West Virginia Board of Dental Examiners and is subject to license requirements of the Board.
3. That on July 20, 2007, the Board received information that the Respondent was arrested on July 19, 2007 in Belpre, Washington County, Ohio on on felony possession of oxycontin (10).¹

¹ This charges stemming from this arrest have been dismissed and the case will be taken directly to the Washington County Grand Jury.

4. As a result of the information received, the Board began an investigation of the conduct and practices of the Respondent.

5. The Board reviewed the controlled substance pharmaceutical prescription writing practice of the Respondent from July 1, 2004 through July 20, 2007 along with a review of various patient records.

6. Based on the limited investigation, the Board believes that the Respondent has engaged in conduct, practices or acts constituting professional negligence or a willful departure from accepted standards of professional conduct. Specifically, the Respondent has prescribed various Schedule II controlled substance as defined under W. Va. Code § 60A-2-206, Schedule III controlled substance as defined under W. Va. Code § 60A-2-208 as well as Schedule IV controlled substance as defined under W. Va. Code § 60A-2-210 without treatment records to support the need for the quantity of controlled substances prescribed.

7. The Respondent acknowledges he is aware that the Board has begun an investigation into allegations that he has violated the West Virginia Dental Practice Act (Practice Act) and the ADA Principles of Ethics and Code of Professional Conduct (ADA Code).

8. The Respondent acknowledges that he has substance abuse issues, which are a result of various injuries, surgeries and medical procedures.

9. The Respondent has offered to surrender his license so that he may receive the necessary treatment that would allow him to be, not only a capable but a competent dentist in the future.

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. Based on the limited investigation conducted to date along with the Respondent's acknowledgments of the foregoing facts, the Board finds that there is substantial evidence to believe that the Respondent has violated the Practice Act, W. Va. Code § 30-4-1 *et seq.* and ADA Code.

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 or 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, by affixing his signature hereon, consents and agrees to the following terms and conditions.

7. 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.

ORDER

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

1. That the Respondent's license to practice dentistry in the State of West Virginia is **SUSPENDED** effective immediately upon entry of this Consent Decree and Order.

2. That this Suspension shall remain in effect until reinstatement from the Board. Such reinstatement would be entirely within the discretion of the Board, which will not be unreasonably withheld, if the Licensee complies with the forgoing requirements in good faith.

3. The Respondent may petition the Board for reinstatement of his dental license after completing a minimum of the following:

a. The Respondent shall submit himself to be evaluated by a forensic psychiatrist approved by the Board, for the purpose of determining the Respondent's fitness for duty. The evaluator shall receive a copy of this Consent and any other materials in the Board's file, at the discretion of the Board. The Respondent shall reimburse the Board all costs associated with such evaluation. The Board may require advance payments to cover any or all costs.

b. The Respondent shall release the evaluator to submit a written report to the Board regarding the Respondent's evaluation, to include recommendations, if any.

c. The Respondent shall comply with any treatment recommendations of the evaluator. The Board would recommend that the evaluating and treating physician/facility be separate entities.

d. The Respondent shall submit to random drug testing by a Board approved facility, with the Respondent reimbursing the Board for costs associated with such testing.

e. The Respondent shall enroll in and successfully complete Forty (40) hours in pharmacology pre-approved by the Board. The course shall include an

intensive course in the proper prescribing of controlled dangerous substances. The Respondent shall submit written verification to the Board of his enrollment and shall submit proof of having successfully completed the course.


4. That should the Respondent petition the Board for reinstatement, he shall present satisfactory evidence to the Board, that he is fully capable and competent to safely and effectively return to the practice of dentistry.

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

6. The Respondent shall reimburse the Board in the amount of Three Thousand Dollars (\$3,000.00) for all of the administrative and legal cost incurred by the Board in the investigation and disposition of this case.

Entered this 21st day of December 2007.

West Virginia Board of
Dental Examiners By:



James W. Vargo, DDS
President.
1-22-2008

Reviewed and Agreed to by:



George J. Cosenza, Esquire
Counsel for Respondent



James E. Kirkpatrick, III, DDS
Respondent