

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

**WEST VIRGINIA BOARD  
OF DENTAL EXAMINERS,**

**Complainant,**

**CASE No.: 2009-DB-0001D**

**v.**

**JAMES E. KIRKPATRICK, III,**

**Respondent.**

**FINAL ORDER**

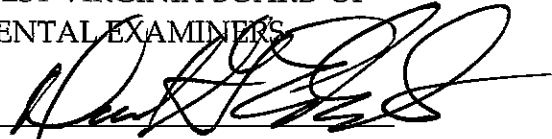
On the 15th day of June 2009, West Virginia Board of Dental Examiners (Board) reviewed the Findings of Fact, Conclusions of Law and Recommended Order (Recommended Order) of the Hearing Examiner in the above-styled action. After review of the record of the proceedings, the Board ADOPTS, in its entirety, the Recommended Order, dated on May 12, 2009, which is attached hereto and incorporated by reference herein. Based on the Recommended Order, the Board hereby ORDERS as follows:

1. That the Respondent's license is REVOKED effective July 1, 2009;
2. That the Respondent shall be assessed a fine in the amount Five Thousand Dollars (\$5,000.00).
3. That the Respondent shall reimburse the Board in the amount of Three Thousand Six Hundred ninety Dollars (\$3,690.00) for the costs incurred by the Board associated with the investigation and prosecution of this matter.

4. That, in addition to all other requirements as prescribed by law, the Respondent shall not be eligible for reinstatement of licensure until the above costs are paid in full.

ENTERED this 24<sup>TH</sup> day of JUNE, 2009.

WEST VIRGINIA BOARD OF  
DENTAL EXAMINERS

  
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David G. Edwards, DDS  
Board President

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**Respondent.**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER**

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This matter came on for hearing on February 20, 2009, at the office of Legislative Services, State Capitol Complex, Charleston, West Virginia, pursuant to a Statement of Charges and Notice of Hearing issued against the Respondent by the Complainant, West Virginia Board of Dental Examiners (hereinafter "Board"). The Board appeared by Assistant Attorney General Darlene Ratliff-Thomas, Board Representative Dr. Richard Marshall, and Executive Secretary of the Board, Mark Harmon. The Board called as its only witness its Assistant Secretary to the Board, Susan M. Combs. The Respondent appeared Pro Se, called no witnesses and testified on his own behalf. The Board introduced eight (8) exhibits, all of which were made a part of the record. Respondent introduced no exhibits.

All witnesses were sworn, documents were received into evidence, the hearing was recorded electronically, and a transcript prepared and distributed to the parties. After a review of the record and exhibits admitted into evidence at the hearing of this matter, after assessing the credibility of all testimony of witnesses of record and weighing the evidence in consideration of the findings as to credibility, and after consideration of the proposed findings of fact and conclusions of law as were filed by the parties, the undersigned Hearing Examiner makes the following findings of fact, conclusions of law, and proposed order. To the extent that these findings and conclusions are inconsistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are rejected by the Hearing Examiner. Conversely, to the extent that these findings and conclusions are generally consistent with any proposed findings of fact and conclusions of law submitted by the parties, the same are accepted and adopted. To the extent that the testimony of any witness is not in accordance with these Findings and Conclusions, such testimony is not credited. Any proposed finding of fact, conclusion of law, or argument proposed or submitted by a party but omitted herein is deemed irrelevant or unnecessary to the determination of the material issues in this matter.

## **CREDIBILITY OF WITNESSES, TESTIMONY, AND EXHIBITS**

The Hearing Examiner was and is satisfied that all records and documents entered as exhibits are complete, authentic and valid, and that they were entered with the proper evidentiary foundations.

The Hearing Examiner was and is satisfied that the witnesses brought on by the parties were credible and truthful except as noted below. Neither the demeanor of the witnesses nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive except as noted below.

### **FINDINGS OF FACT**

1. The Board is a state entity created by West Virginia Code § 30-4-1 *et. seq.*, and is authorized to regulate the practice of dentistry.
2. Pursuant to West Virginia Code § 30-4-1 *et seq.*, the Board has jurisdiction over this matter.
3. The Respondent, James E. Kirkpatrick, III, is a licensee of the Board.<sup>1</sup>
4. On or about May 2, 2008, the Board staff discovered a newspaper article that stated a US District Judge in Charleston had sentenced the Respondent to eight months in prison after he plead guilty to fraudulently obtaining hydrocodone, a Schedule III controlled substance. (Board Exhibits 1, 2 and 3; Tr. 9-10.)

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<sup>1</sup>The Respondent's license to practice dentistry is currently suspended pursuant to a Consent Decree and Order signed by the Respondent on December 7, 2007, and entered by the Board on January 22, 2008. (Board Exhibit 4.)

## **CONCLUSIONS OF LAW**

1. The West Virginia Board of Dental Examiners has jurisdiction over this matter. See W. Va. Code § 30-4-1 *et seq.*

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

3. The Board has the power to revoke a license, place a licensee on probation, suspend a license, reprimand a licensee or take other disciplinary action under W. Va. Code § 30-4-1 *et seq.* and the rules promulgated thereunder.

4. The Respondent plead guilty and was convicted of one felony count of "knowingly and intentionally acquired and obtained possession of a quantity of hydrocodone, a Schedule III controlled substance, by deception and subterfuge." (Board Exhibit 3; Tr. 12.)

5. West Virginia Code §§ 30-1-8(a) and 30-4-20(a)(6) provide that the Board may suspend or revoke the license of any person who is convicted of a felony or a willful departure from accepted standards of professional conduct.

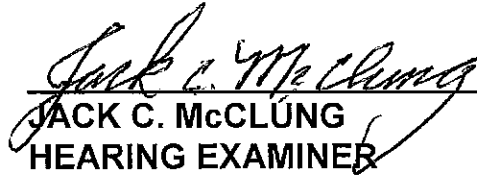
6. It is concluded as a matter of law that the Respondent violated W. Va. Code §§ 30-1-8(a) and 30-4-20 (a)(6) which renders his license subject to discipline.

## **RECOMMENDED ORDER**

In accordance with the foregoing Findings of Fact and Conclusions of Law, it is the recommendation of the undersigned that the Board take such disciplinary

action as it deems appropriate against the Respondent's license to practice dentistry in the State of West Virginia up to and including revocation, along with an assessment for all costs related to this matter.

Dated this 12th day of May, 2009.

  
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JACK C. McCLUNG  
HEARING EXAMINER