

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

**RE: DR. JAMES W. OSBORNE**

**Case No.: 2005-DB-0016D**

**ORDER AND CONSENT DECREE**

The West Virginia Board of Dental Examiners (Board) and, Dr. James W. Osborne, (Respondent) freely and voluntarily enter into the following Consent Decree pursuant to West Virginia Code 30-4-20(a)(3); 30-4-20(a)(4); and 30-4-20(a)(5).

**FINDINGS OF FACTS**

Dr. Osborne holds a license to practice dentistry in the State of West Virginia, License No. 1871, issued June 23, 1969.

Dr. Osborne's address of record with the Board is in Bluewell, West Virginia, 24701. The Board initiated an investigation and complaint against Dr. Osborne after receiving a phone call from a dentist in Bluefield, West Virginia concerning excessive prescription writing.

The Board investigated the allegations by way of Agency Request Form from the West Virginia Board of Pharmacy and by subpoena of patient records.

The Board recognizes the diagnosis and treatment of pain is integral to the practice of dentistry. All dentists should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing controlled substances. Pain should be assessed and

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treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration of the pain, and treatment outcomes.

The Board is obligated under the laws of the State of West Virginia to protect the public health and safety. The Board recognizes that the use of opioid analgesics for other than legitimate dental purposes pose a threat to the individual and society, and that the inappropriate prescribing of controlled substances, including opioid analgesics, may lead to drug diversion, addiction, and abuse by individuals who seek them for other than legitimate dental use. All such prescribing must be based on clear documentation of unrelieved pain. The scope of dental practice involves treating acute pain episodes that are controlled or alleviated by most over the counter analgesics.

At issue in this investigation is the number and duration of opioid analgesics prescribed and choice of benzodiazepine used for, we presume, anxiolysis. The Board agrees with the complainants that the volume of Schedule III narcotics and the number and duration prescribed by Dr. Osborne is excessive and a threat to the public health and safety as described previously. In addition, Dr. Osborne prescribes the Benzodiazepine, Alprazolam, or brand name Xanax, to a vast amount of patients, and in numbers that are considered excessive. Xanax has a duration of effectiveness in the 11-14 hour range and as such, is not the Benzodiazepine of choice for dental procedures that typically range from 30 minutes to two or three hours in duration. There are others that can be utilized for the management of acute anxiety, with a shorter duration that are recommended by national organizations like DOCS and AAOMS for the management of anxious patients with acute dental pain. Dr. Osborne

has been writing a combination of opioids and the long-term Benzodiazepine Xanax, in numbers and duration that the Board considers to be a threat to the public and not within the scope of practice of a dentist.

The board has investigated the pharmacy records and dental records of many patients in the practice of Dr. Osborne. We will not report on each one but will address several in this investigation:

Patient A. Received 450 Oxycodone 10 mg tablets over a six-month period of time, along with 40 Alprazolam tablets. There was no dental record provided for this patient.

Patient B. Was prescribed 478 pain pills, mostly 10mg opioid tablets, dispensed in 30 prescriptions over eleven months. There are a lot of extractions in this case but they are spread out with a lot of single extractions and of course a narcotic opioid prescription after each extraction. There is no documentation of unrelieved pain and the number and duration of this medication is excessive.

Patient C. Was prescribed 35 Wygesic pain pills after a partial denture adjustment and the following month were prescribed 35 more Wygesic pain pills after another partial denture adjustment. Over an eight month period of time, she filled prescriptions totaling 715 Wygesic pain pills. Some of these were filled in frequency where the patient was taking 5 a day, day after day and later the treatment record indicates only a partial denture adjustment was done again and 35 Wygesic would be prescribed.

Patient D. Was prescribed 378 Lortab 10mg over eleven months of treatment. Many of these were just restorative appointments where Lortab 10mg was prescribed afterwards. There is no documentation of unrelieved pain and it is very rare that narcotics would be required and prescribed after restorative dentistry.

Patient E. Was prescribed 225 Lortab 10mg tablets over a ten-month period of time. Again there were many restorative appointments, with no documentation of unrelieved pain requiring narcotic analgesics.

Patient F. Was prescribed 590 Lortab 10mg tablets over an eleven-month period of time. The treatment record indicates restoration appointments with Lortab being prescribed. There are entries with no diagnosis and no treatment being rendered with antibiotics and Lortab being prescribed.

Patient G. Was prescribed 60, then 90 and then 90 Lortab 7.5 mg pain pills on three separate appointments. Then prescribed 30 Ambien 10mg. tablets along with 90 Alprazolams 0.5mg being filled that same day. Then a month later 90 more Alprazolams 0.5mg. There was never a chart provided for this patient, only the pharmacy record.

Patient H. An eight-year-old patient was prescribed on two separate occasions 18 Lortab 5.0 mg pain pills. There were no dental records for this patient, only the pharmacy records.

Patient I. On 6-7-04 a patient got 16 Lortab 10 mg. and the record indicates "says hurts may 20". Then three days later got 18 more Lortab 10 mg. with the entry

"Adjust Bite". Then was seen six days later and received 10 more Lortab 10mg. after what looks like a prophylaxis appointment.

In summary, the pharmacy records of Dr. James Osborne over approximately one year's period of time, reveal opioids in mostly the form of Lortab 10mg with 500 mg. of APAP being prescribed in the thousands with many of these appointments being simple restorative appointments or partial or denture adjustments, or no entry or diagnosis at all. There are hundreds and maybe thousands of prescriptions that were written for Alprazolam or Xanax and these pills far outnumber the dental visits where this medication was to relax or calm the anxious patient.

#### **CONCLUSIONS OF LAW**

The Board has a mandate pursuant to West Virginia Code § 30-4-1 et. seq to protect the public interest. Probable cause exists to substantiate charges of violation of the dental practice act pursuant to the provisions of West Virginia Code §§ 30-4-20(a)(3); 30-4-20(a)(4); and 30-4-20(a)(5), prescribing controlled substances other than in good faith and in a therapeutic manner in accordance with accepted medical and dental standards and in the course and scope of a general dentist's practice. It is accepted therapeutic practice to prescribe Schedule II or III narcotics for not greater than a two-week period of time, due to the addictive nature of these medicines.

The Board is of the opinion, in regards to these cases, that controlled substances have been prescribed which are excessive in both volume and duration, raising the question to appropriateness of patient care, and the subsequent

investigation and action by the Board has lead to a determination that the same is a violation of the standard of care in the practice of dentistry.

Furthermore, the Board notes that some patients were prescribed medications with no clinical notes indicating a diagnosis for such prescription writing. The Board determines the same to clearly be a violation of the standard of care in the practice of dentistry to write prescriptions to patients without first clinically diagnosing the need for such prescription writing.

### CONSENT

Dr. James W. Osborne, by affixing his signature heron, agrees solely and exclusively for purposes of this Consent Decree and provided for and stated herein, to the following:

The Respondent acknowledges that he is fully aware that, without his consent, here given, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code 30-4-20(a).

The Respondent acknowledges he has the following rights, among others: the right to a formal hearing before the West Virginia Board of Dental Examiners, the right to reasonable notice of said hearing, the right to be represented by counsel at his own expense, and the right to cross examine witnesses against him. The Respondent waives all rights to such a hearing. The Respondent consents to the entry of this Consent Decree relative to the practice of dentistry in the State of West Virginia.



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.

### **PUBLICATION OF SETTLEMENT**

The Respondent acknowledges that, once adopted by the Board, this Consent Decree is a public document, available for inspection at any time by any member of the public pursuant to Chapter 29B et. seq., of the West Virginia Code, also known as the Freedom of Information Act.

Further, the Respondent understands that the Board is free to make any use it deems appropriate of the contents of this Consent Decree, which shall include the Board's ability to share the content of this Consent Decree with any governmental or professional Board or organization.

### **ORDER**

Wherefore, on the basis of the Finding of Fact and Conclusions of Law of the Board, and on the basis of the consent of the Respondent, the West Virginia Board of Dental Examiners hereby ORDERS as follows:

1. The Respondent shall be on probation for a period of three (3) years effective the date of entry of this Consent Decree;
2. The Respondent shall take at minimum a twenty hour (20) pharmacology course approved by the Board that has an emphasis on the pharmacology of opioids as controlled substances and their abuse potential as well as the addiction potential and subsequent potential harm to the patient. The Respondent shall submit written

verification to the Board of his enrollment and shall also submit proof of having successfully completed the course within six months of the execution of this document;

3. The Respondent shall maintain a separate log detailing all control substances prescribed, administered or dispensed to his patients. The Respondent shall list the medication prescribed, administered or dispensed along with an explanation for the medication. A copy of this log shall be sent to the Board monthly commencing December 1, 2007 and continuing monthly until June 1, 2008 and then quarterly thereafter for the remainder of the probation period. Said log shall also be made available upon request by the Board or its designee at any time.

4. The Board shall monitor the Respondent's practice by conducting unannounced office inspections to review patient records along with the separate controlled substance log at any time during the three-year probation. The goal of this Consent and Order is to witness an improvement in the manner in which the Respondent writes prescription in his dental practice.

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

6. The Respondent shall reimburse the Board costs associated with this case in the amount of Four Thousand Dollars (\$4,000.00); and

7. The Respondent's failure to fully comply with the terms and conditions of this Consent Order hereby imposed shall be deemed a violation of Probation and of this Consent Order, and that the Board may immediately suspend his license without



prior hearing, until such time as a full hearing may be held as well as he may be subject to addition charges by the Board.

8. That at the end of the three years of Probation, the Respondent shall petition the Board for termination of his probationary status.

#### RELEASE OF LIABILITY

In consideration of execution of this Consent Decree, the Respondent, the Respondent's executor, administrators, successors and assigns, hereby releases and forever discharges the State of West Virginia, West Virginia Board of Dental Examiners, and the West Virginia Attorney General's Office and each of their members, agents and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, the disciplinary action, this settlement or its administration.

#### ACCEPTANCE BY THE BOARD

It is hereby agreed between the parties that this Consent Decree shall be presented to the West Virginia Board of Dental Examiners with a recommendation for approval from the Board's attorney at the next regularly-scheduled meeting of the Board.

The Respondent understands that the Board is free to accept or reject this Consent Decree, and if rejected by the Board, a formal disciplinary hearing against the



Respondent may be scheduled with notice under Chapter 29A et. seq., of the West Virginia Code. The Respondent hereby agrees to waive any right the Respondent might have to challenge the impartiality of the Board, based solely upon the presentation of this Consent Decree, to hear the disciplinary matter if, after review by the Board, this Consent Decree is accepted.

If the Consent Decree is not accepted by the Board, it shall be regarded as null and void.

Admissions by the Respondent in this Consent Decree will not be regarded as evidence against the Respondent at any subsequent disciplinary hearing. The Respondent will be free to defend and no inferences against the Respondent will be made from the Respondent's willingness to have entered into this Consent Decree.

This Consent Decree will not be submitted for Board consideration until after it has been agreed to and executed by the Respondent. The Consent Decree shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

#### **COOPERATION WITH THE BOARD**

The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees to monitor the Respondent's compliance with the terms and conditions of this Consent Decree.

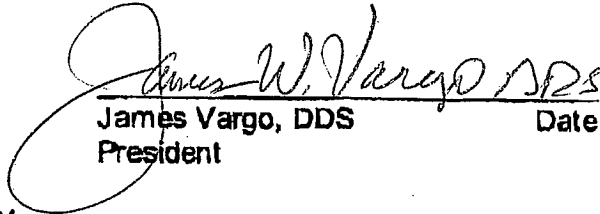
#### **COMPLETE AGREEMENT**



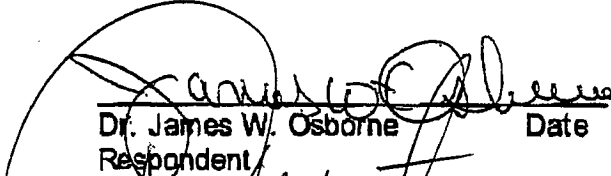
This Consent Decree consists of eleven (11) pages and embodies the entire agreement between the Board and the Respondent. It may not be altered, amended or modified without the express written consent OF BOTH PARTIES.

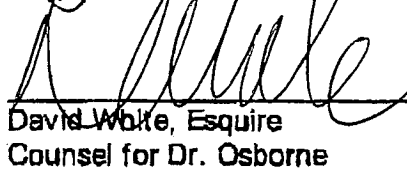
HAVE SEEN, UNDERSTOOD AND APPROVED:

West Virginia Board of Dental Examiners

  
James Vargo, DDS      Date  
President                      10-11-07

INSPECTED AND APPROVED BY:

  
Dr. James W. Osborne      Date  
Respondent                      11 Oct 07

  
David White, Esquire      Date  
Counsel for Dr. Osborne      11-Oct-07

