

BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY

WEST VIRGINIA BOARD OF DENTISTRY

Complainant,

v.

CASE NO. 2015-DB-0057D

ANTOINE E. SKAFF, DDS,

Respondent.

CONSENT DECREE AND ORDER

Now comes the West Virginia Board of Dentistry (hereinafter "the Board") and Antoine E. Skaff, DDS, by counsel, Lisa L. Lilly, Esquire (hereinafter "the Respondent"), for the purpose of agreeing to disciplinary action which shall be taken against the Respondent by the Board.

WHEREAS, the Respondent acknowledges that the Board has served the Respondent with the Second Amended Statement of Charges against his license, alleging that he has violated certain acts of W. Va. Code §§ 30-4-1, *et seq.*, and W. Va. Code R. §§ 5-5-1, *et seq.* relating to his prescribing of controlled substances and his billings to the State Medicaid program, which acts, if proven to be true, would constitute professional negligence and/or a departure from, and failure to conform to, the standards of acceptable and prevailing dental practice and the ethics of the dental profession, which would be grounds for disciplinary action.

WHEREAS, the Respondent wishes to resolve this matter without further prosecution and a formal hearing.

WHEREAS, the Board agrees and acknowledges that this agreement is a compromise of claims disputed by the Respondent.

It is hereby STIPULATED and AGREED between the undersigned parties that this matter be settled and resolved, the parties having reached an understanding concerning the proper disposition of the matter in controversy. The Board, approving such an agreement, does hereby FIND and ORDER as follows:

FINDINGS OF FACT:

1. The Board is a state entity created by West Virginia Code §§ 30-4-1, *et seq.* (Dental Practice Act), and is empowered to regulate the practice of dentistry in the State of West Virginia.

2. At all times relevant to this investigation, the Respondent was a licensee of the Board, holding License No. 3049. As a result, the Respondent is subject to the Board's licensing requirements and rules.

3. On November 16, 2015, the United States Drug Enforcement Administration (DEA) notified the Board that the Respondent allegedly was overprescribing pain medication to his patients.

(a) The DEA had reviewed the Respondent's prescribing history with the West Virginia Board of Pharmacy and approximately ten patient files subpoenaed from the Respondent. The DEA also interviewed the Respondent and most of the ten patients.

(b) The DEA reported to the Board that from January 1, 2015 through August 1, 2015, the Respondent had issued 1,145 prescriptions for controlled substances during that time, almost all of which were for Hydrocodone.

(c) The DEA ran individual pharmaceutical histories on the ten (10) patients who appeared to have the most prescriptions. Those individual histories revealed the number of Hydrocodone prescriptions filled for each patient ranged from eight (8) to twenty-four (24), for

the period from 2014 through August 1, 2015. During this same time period, two other patients of the Respondent overdosed on Hydrocodone (non-fatal) and were treated at a local hospital in Charleston, West Virginia.

(d) All of the patients interviewed by DEA were on Medicaid, which pays only for teeth extractions and not fillings. Those interviewed admitted to going to the Respondent on multiple occasions to have teeth pulled, usually one or two at a time, and receiving a prescription for pain medication each time. Some admitted to being addicted to Hydrocodone. The ages for this group of patients ranged from 24 years old to 46 years old at the time of treatment, and the patients ultimately had most if not all of their teeth pulled.

(e) On October 23, 2015, the DEA interviewed the Respondent regarding his prescribing practices. The Respondent admitted to extracting multiple teeth from many patients over a course of time and to issuing those patients multiple prescriptions for Hydrocodone. The Respondent further acknowledged that he knew some of his patients were having healthy teeth pulled just to get the Hydrocodone.

(f) At the time of his interview by the DEA, the Respondent had just completed a course entitled "Drug Diversion and Best Practices." The Respondent admitted to the DEA that he understood drug diversion and opiate addiction were rampant in West Virginia, however, the Respondent complained that if he turned away all the patients he suspected were having dental procedures done just to get opiate pills, he would lose a substantial portion of his patients. The Respondent admitted to the DEA that he does not conduct checks with the West Virginia Board of Pharmacy to ensure that his patients are not doctor shopping.

4. On or about November 17, 2015, the Board subpoenaed from the Respondent the complete patient files of the top ten (10) patients identified by DEA and of the two patients who

overdosed. Following the Board's review of the patient files, the Board concurred in the findings of the DEA and found probable cause to charge the Respondent with multiple violations of the Dental Practice Act based on his prescribing practices of pain medication.

5. During the pendency of the controlled substance prescribing charges against the Respondent, the Board received credible information that the Respondent was improperly billing the Medicaid program for teeth extractions. The Board subpoenaed the files of thirty (30) of the Respondent's patients who were Medicaid recipients and had the files reviewed by a forensic dentist. Based on the evaluation by the forensic dentist, those records established that the Respondent extracted multiple teeth from each patient, on multiple office visits; that each patient had most and in many cases all of their teeth extracted by the Respondent; and that in almost all instances the extractions were billed to Medicaid under the code D7220 (removal of an "impacted" tooth), but should have been billed under the codes D7140 or D7210 (extraction or surgical removal of an "erupted" tooth).

(a) Under the *American Dental Association's Code on Dental Procedures and Nomenclature*, which is universally used by the Dental Profession, the dental billing codes referenced in the preceding paragraph above are defined as follows:

(1) **D7140** – *"extraction, erupted tooth or exposed root (elevation and/or forceps removal) – includes routine removal of tooth structure, minor smoothing of socket bone, and closure, as necessary"*

(2) **D7210** – *"surgical removal of erupted tooth requiring removal of bone and/or sectioning of tooth, and including elevation of mucoperiosteal flap if indicated – includes related cutting of gingiva and bone, removal of tooth structure, minor smoothing of socket bone and closure"*

(3) D7220 - *“removal of impacted tooth – soft tissue - occlusal surface of tooth covered by soft tissue; requires mucoperiosteal flap elevation.”*

(b) The West Virginia Medicaid Program pays dental practitioners the following amounts for the type of extraction billed:

(1) D7140 - \$80 per tooth

(2) D7210 - \$130 per tooth

(3) D7220 - \$172 per tooth

See, “Dental Fee Schedule” at <http://www.dhhr.wv.gov/bms/FEES/Pages/default.aspx>.

(c) By billing most if not all of the extractions from each of the thirty (30) patients under D7220 (removal of an “impacted” tooth), when the extractions clearly were of “erupted” teeth and/or exposed root and should have been billed under D7140 or D7210, the Respondent was paid by the Medicaid program from \$42 to \$92 more *per tooth* than he should have been paid.

6. The acts described in paragraphs 3 through 5 above, if true, demonstrate that the Respondent violated the West Virginia Dental Practice Act and its legislative rules, as follows:

(a) By engaging in conduct, practices or acts while in a professional capacity which constitute professional negligence and/or a willful departure from accepted standards of professional conduct, i.e., excessive routine prescribing of pain medication to at least ten (10) patients, regardless of the patient or circumstances, including many instances where over-the-counter NSAIDs would have been sufficient and within the Dental profession’s standard of practice for the tooth extraction performed, in violation of W. Va. Code § 30-4-19(g)(3) and W. Va. Code. R. § 5-5-4;

(b) Committing fraud in connection with the practice of dentistry, i.e., billing the State Medicaid program for the removal of “impacted” teeth at a fee of \$172 per tooth, when the proper billing code should have been extraction or surgical removal of “erupted” teeth at a fee of \$80 to \$130 per tooth, with regard to at least thirty (30) patients, in violation of W. Va. Code § 30-4-19(g)(9);¹ and

(c) By violating the *Principles of Ethics and Code of Professional Conduct of the American Dental Association* (hereinafter the *ADA Code*), specifically:

(1) Committing fraud or deception, W. Va. Code § 30-4-19(g)(12)(A) (with regard to the Medicaid billings); and

(2) *ADA Code* § 5, requiring dentists to communicate truthfully and to be honest and trustworthy in the billing processes.

CONCLUSIONS OF LAW:

1. The Board has jurisdiction to take disciplinary action against the Respondent who is a licensee of the Board. W. Va. Code § 30-4-5.

2. Pursuant to West Virginia Code §§ 30-4-1, *et seq.*, the Board may deny or refuse to renew, suspend, restrict or revoke the license, certificate or permit of, or impose probationary conditions upon or take disciplinary action against, any licensee, certificate holder or permittee for violations of the Dental Practice Act, including violations of the *ADA Code*. W. Va. Code § 30-4-19(g).

3. Disciplinary action may include (1) reprimand; (2) probation; (3) restrictions; (4) suspension; (5) revocation; (6) administrative fine, not to exceed \$1,000 per day per violation;

¹“A person shall not make or present or cause to be made or presented to the Department of Health and Human Resources a claim under the medical programs of the Department of Health and Human Resources knowing the claim to be false, fraudulent or fictitious.” W. Va. Code § 9-7-5(b).

(7) mandatory attendance at continuing education seminars or other training; (8) practicing under supervision or other restrictions; or (9) requiring the licensee or permittee to report to the Board for periodic interviews for a specified period of time, W. Va. Code § 30-4-19(h).

4. In addition to any other sanction imposed, the Board may require a licensee or permittee to pay the costs of the proceeding. W. Va. Code § 30-4-19(i).

5. The Board has found probable cause exists to charge the Respondent with multiple violations of the Dental Practice Act as well as the *ADA Code*.

6. Although the Respondent disputes certain of the Board's allegations, the Respondent does not contest that the Board has probable cause to charge him with such violations.

7. As a means of compromise, the Board and the Respondent have hereby agreed to resolve this matter through a voluntary agreement and consent to disciplinary action, as more fully described under the terms and conditions set forth in this Order entitled "Consent of Licensee," with consideration given to appropriate safeguards for protection of the public.

CONSENT OF LICENSEE

The Respondent, by affixing his signature hereto, acknowledges the following:

1. The Respondent has been given the opportunity to consult with counsel and executes this Consent Decree and Order voluntarily, freely, without compulsion or duress, and is mindful that it has legal consequences.

2. No person or entity has made any promise or given any inducement whatsoever to encourage the Respondent to enter into this Consent Decree and Order, other than as set forth herein.

3. The Respondent hereby consents to a reprimand.

4. The Respondent further consents to a term of suspension from the practice of dentistry in the State of West Virginia, beginning on the day immediately following the date of entry of this Consent Order. The term of the suspension shall be for the length of time that it takes the Respondent to undergo an evaluation by the American Association of Dental Boards' D-PREP (Dentist Professional Review and Evaluation Program), for the Respondent to successfully complete any remediation courses recommended by the AADB D-PREP, and for the Respondent to successfully complete certain additional courses with the Case Western Reserve School of Medicine. The Respondent further consents to the imposition of a fine in the amount of Thirty Thousand Dollars (\$30,000.00); and to reimburse the Board its costs for this proceeding totaling Thirteen Thousand Eight Hundred Four Dollars (\$13,804.00). The Respondent further agrees that any remediation courses recommended by the D-PREP and the Case Western Reserve courses that he successfully completes shall be over and above the regular continuing education credits necessary to maintain his dental license. The Respondent further consents to ensure that his office manager or other staff are enrolled in and successfully complete certain training courses which have been agreed upon by the parties.

5. The Respondent further consents to voluntarily surrender his controlled substance privileges, DEA Registration No. BS2040272, to the United States Drug Enforcement Administration (DEA) by executing in the presence of two witnesses a DEA Form 104 "Voluntary Surrender of Controlled Substance Privileges."

6. In consideration thereof, the Board agrees not to further prosecute any of the violations alleged in the Second Amended Statement of Charges.

7. The 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.

8. The Respondent expressly acknowledges that the entire agreement is contained in this Consent Decree and Order and no representations, promises, or inducements have been made by or to Respondent other than as appear in this Consent Decree and Order.

9. The Respondent acknowledges 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 agencies, professional Boards or other organizations.

10. The Respondent waives any defense of laches, statute of limitations, estoppel and waiver that he may have otherwise claimed, as they may apply to the Board action that is the subject of this Consent Decree and Order.

11. The Respondent acknowledges that this Consent Decree and Order will be presented to the Board as soon as practical, but no later than the next scheduled meeting of the Board, with a recommendation for approval from the Complaint Committee.

12. The Respondent, by affixing his signature hereon, consents and agrees to the following terms and conditions affecting his license to practice dentistry in the State of West Virginia:

ORDER

The Board agrees to forego further prosecution of the complaint pursuant to this Consent Decree between the Board and the Respondent, and hereby ORDERS as follows:

1. The Respondent is hereby reprimanded.

2. The Respondent presently holds a license to practice dentistry in the State of West Virginia, that is, license number 3049.

3. The Respondent's license to practice dentistry in the State of West Virginia is hereby SUSPENDED, beginning on the day following the date of entry of this Consent Decree and Order, and shall remain suspended until such time that the Respondent has successfully completed the following, at his own expense:

(a) The Respondent shall undergo an evaluation through the American Association of Dental Boards' Dentist Professional Review and Evaluation Program (AADB D-PREP), and shall successfully complete any remediation curriculum recommended by the AADB D-PREP. The location where the Respondent undergoes the AADB D-PREP evaluation and takes the recommended remediation courses shall be of his choice; and

(b) The Respondent shall successfully complete (1) The Intensive Course in Controlled Substance Prescribing, and (2) The Intensive Course in Medical Documentation: Clinical, Legal and Economic Implications for Healthcare Providers, both of which are offered by the Case Western Reserve School of Medicine, Cleveland, Ohio.

(c) Any remediation courses taken by the Respondent as a result of his AADB D-PREP evaluation and the two Case Western Reserve Medical School courses shall be over and above the regular continuing education credits necessary to maintain his dental license.

(d) Following the completion of the D-PREP evaluation and courses provided in paragraphs 3(a) and (b) immediately above, the Respondent shall cause the AADB and Case Western Medical School, or their authorized designees, to provide certificates of completion or other written documentation to the Board to establish that the Respondent has successfully completed the courses.

(e) The Respondent shall not practice nor engage in the profession of dentistry in the State of West Virginia in any manner or form during his period of suspension. The Board shall notify the Respondent, in writing, when and if his period of suspension has been lifted. The Respondent shall coordinate with another dentist to treat his patients and to address emergency situations while the Respondent is on suspension.

(f) During the period of suspension, the Respondent shall also ensure that his office manager or other staff are enrolled in and successfully complete the Certified Medical Office Manager Class, offered by the West Virginia State Medical Association and the Practice Management Institute, or equivalent course.

(g) Immediately upon the lifting of his term of suspension, the Respondent shall be on probation for a period of three years during which time the Respondent shall abide by all federal, state and local rules and regulations including, but not limited to, the West Virginia Dental Practice Act and the rules and regulations promulgated thereunder, and the American Dental Association's Principles of Ethics and Code of Professional Conduct.

6. The Respondent shall pay a fine of Thirty Thousand Dollars (\$30,000.00) to the Board as a penalty for the violations described herein.

7. The Respondent shall reimburse the Board the sum of Thirteen Thousand Eight Hundred Four Dollars (\$13,804.00) for the costs incurred by the Board in the investigation and prosecution of this matter.

8. The fine and costs reimbursement shall be paid to the Board in full within sixty (60) days of the date of entry of this Consent Decree, in the form of two cashier's checks, each made payable to the West Virginia Board of Dentistry, and mailed to the Board office at P. O. Box 1447, Crab Orchard, West Virginia, 25827; and

9. Should the Respondent violate and/or fail to comply with any part of this Consent Decree and Order, the Board may vacate this Consent Decree and pursue the violations alleged in the Second Amended Statement of Charges and/or issue a new Statement of Charges and take such further action as may be deemed necessary to effect disciplinary proceedings against the Respondent for such violations or noncompliance.

10. Should any other governmental entity (federal, state or local) pursue any civil or criminal remedies against the Respondent and obtain a judgment or conviction against him for the conduct forming the bases of this disciplinary action, the Board reserves the right to reconsider the status of the Respondent's license in such instance, regardless of whether or not he has completed the period of suspension and paid the monetary penalties.

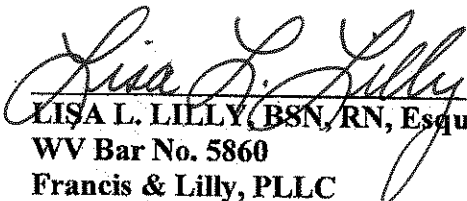
ENTERED this 20th day of July, 2017.


By:


STANLEY W. KACZKOWSKI, DDS, President
WEST VIRGINIA BOARD OF DENTISTRY

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