

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

WEST VIRGINIA BOARD OF
DENTAL EXAMINERS,

Complainant,

v.

Case No. 2007-DB-0040D

TIMOTHY SPEARS, 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 Timothy Spears, DDS (hereinafter "Respondent") violated the Dental Practice Act pursuant to West Virginia Code §§ 30-4-1 *et seq.*, 30-4A-1 *et seq.* and West Virginia Code R. § 5 -1-1 *et seq.*

WHEREAS, 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.

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 a State entity created by W. Va. Code § 30-4-1 *et seq.* and is empowered to regulate the practice of dentistry.

2. That Respondent is a licensee of the Board, possessing License No. 2555 and is subject to the license requirements of the Board.

3. The Board asserts Respondent exceeded the scope of dental practice by prescribing scheduled controlled substances for various patients from 2003 through 2006, and that the patient's records do not support the need for the quantity, amount and frequency of controlled substances prescribed.

4. That from July 8, 2005 through October 9, 2006, Respondent administered, to various patients, a combined sedation using a sedative and nitrous oxide without the required Class II or III permit and that patient records did not illustrate a proper sedation record was kept or that patients were monitored appropriately.

CONCLUSIONS OF LAW

1. That the Board has jurisdiction to take disciplinary action against 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. Respondent is a licensee of the West Virginia Board of Dental Examiners and is subject to license requirements of the Board.

4. The Respondent's actions constitute a violation of W. Va. Code §30-4-20(a)(3), i.e., incompetence, professional negligence in the performance of services, or a willful departure from accepted standards and professional conduct.

5. The Respondent's actions, by administering conscious sedation without a proper permit, constitute a violation of W. Va. Code § 30-4a-1 *et seq.*

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 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.

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. Respondent acknowledges that this Consent Decree and Order 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.

7. Respondent consents to the entry of the following Order affecting his license in the State of West Virginia.

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

ORDER

The Board agrees to forego further prosecution of the Complaint pursuant to the Consent Decree between the Board and Respondent, Timothy Spears, DDS as follows:

1. The license of the Respondent to practice dentistry in the State of West Virginia shall be **SUSPENDED** for a period of one year; with all but thirty (30) calendar days **STAYED**. The suspension shall commence on August 1, 2009, with the day stay to commence on September 1, 2009.

2. The Respondent shall be placed on probation for a period of three (3) years commencing August 1, 2010 until July 31, 2013.

3. During the Stayed suspension period, and the probation period, Respondent is subject to the following terms and conditions:

A. Respondent shall enroll in and successfully complete a twenty-hour course on dental pharmacology and record keeping through the Dental Pharmacotherapy and Documentation Update Program administered by Dr. Michael O'Neil and Dr. Jeremy Fox through the University of Charleston. The pharmacology course shall include an intense course in the proper prescribing of dangerous controlled substances. Further, the Respondent shall complete Courses 1-6 offered by the American College of Dentists, Courses Online Dental Ethics (CODE). All courses shall be pre-approved by the Board and

the final results shall be sent directly to the Board from the educational institution. Completion of these classes does not count as credit for regular continuing education hours required by law.

B. Respondent shall enroll in and successfully complete the Jurisprudence, Ethics and Risk Management (JERM) examination, administered by the North East Regional Board of Dental Examiners, Inc. (NERB) within one year after entry of this Consent Decree and Order.

C. Respondent shall enroll in and successfully complete the Dental law examination given by the West Virginia Board of Dental Examiners within one year after entry of this Consent Decree and Order.

D. Respondent shall submit written verification to the Board of his enrollment of all courses on or before December 31, 2009. The Respondent shall be responsible for all costs incurred for these courses.

E. The Respondent shall be prohibited from prescribing, dispensing, or administering any scheduled controlled substances in West Virginia until he has successfully completed the educational requirements and conditions of subparagraphs A, B, and C of paragraph 3 above. Upon successful completion of all the terms and

conditions, the Respondent's right to prescribe scheduled controlled substances shall be reinstated subject to the provisions of paragraph 3 G.

F. Respondent shall surrender his Anesthesia permit(s). For a period of thirty (30) calendar days, commencing September 1, 2009 through October 1, 2009, the Respondent shall refrain from utilizing nitrous oxide. Upon the Respondent resuming the utilization of nitrous oxide, the Respondent shall maintain a separate log detailing the patient name, date and time of administering the nitrous oxide, the name of the nitrous oxide monitor and an explanation for utilizing nitrous oxide. Further, the Petitioner shall maintain a log of all controlled substances ordered for office use and attach a copy of the order form to the log. A copy of these logs shall be sent to the Board quarterly. The logs shall also be made available upon request by the Board or its designee at any time.

*for a period of 1 yr
JMD
Done*

G. Upon reinstatement of the privilege to prescribe controlled substances, the Respondent shall maintain a separate log detailing all controlled substances prescribed, administered and dispensed for a period of one (1) year. Respondent shall list the name of the medication prescribed, administered or dispensed and the quantity of said medication, along with an explanation of the prescribing, administering or dispensing of the medication. A copy of this log shall be sent to the Board quarterly. The log shall also be made available upon request by the Board or its designee at any time.

H. Respondent shall obey all laws of the United States, the State of West Virginia and its political subdivisions.

I. Respondent shall comply with the West Virginia Dental Practice Act and its rules and regulations. Respondent shall neither direct nor permit his employees to violate any provisions of the WV Dental Practice Act, or its rules and regulations.

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

K. Respondent shall reimburse the Board in the amount of Four Thousand Dollars (\$4,000.00) for all costs incurred by the Board in the investigation and disposition of this case.

L. Respondent shall, in good faith, cooperate with the Board, including, but not limited to, submitting any and all records requested by the Board.

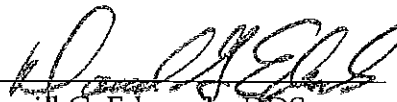
M. Respondent shall be responsible for any expense associated with the monitoring of his practice during the probation period as well as any expenses associated with written reports, records or verifications of actions that may be required by the Board.

N. Respondent acknowledges that the suspension period and the probation period are conditioned upon Respondent's compliance with all the terms and conditions of the Consent Decree. Respondent acknowledges that to engage in acts or practices


outside the terms of this Consent Decree will constitute an immediate danger to the public, and, as such, the Board may suspend or revoke Respondent's license prior to hearing. At the hearing to determine the permanence of such suspension or revocation, if Respondent is found to have violated the terms of this Consent Decree, then the events giving rise to this Consent Decree shall also be considered in the determination of the kind and extent of sanctions to be subsequently imposed.

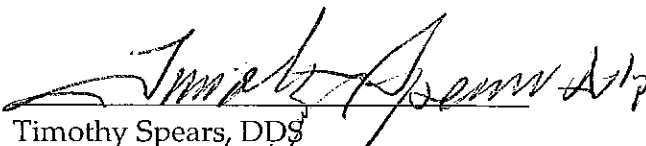
Entered this 15th day of June 2009.

West Virginia Board of
Dental Examiners:


David G. Edwards, DDS
Board President

Reviewed and Agreed to by:


James E. Casey, Esquire (WV Bar #667)
PO Box 427
Point Pleasant, West Virginia 25550-0427


Timothy Spears, DDS
Respondent