

BEFORE THE WEST VIRGINIA BOARD OF DENTAL EXAMINERS

**WEST VIRGINIA BOARD OF
DENTAL EXAMINERS,**

Complainant,

v.

Case No.: 2007-DB-0007D

MARK S. TUBEROSO, DMD,

Respondent.

CONSENT DECREE AND ORDER

Whereas, the West Virginia Board of Dental Examiners (Board) filed a Complaint and Notice of Hearing against Mark S. Tuberoso, DMD.

Whereas, Mark S. Tuberoso, the Respondent, acknowledges that the Board has filed a Complaint against his license alleging that he has violated certain acts of West Virginia Code § 30-4-1 *et seq.*, and West Virginia Code R. § 5-5-1 *et seq.* which acts, if proven to be true, would constitute an act of patient abandonment and failure to provide for reasonable continuity of care for a patient in continued need of treatment, such conduct would be unethical and unprofessional and a departure from, and a 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 parties mutually desire to settle the issue 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, Mark S. Tuberoso, DMD and that his agreement and consent to these terms do not constitute an admission of guilt or culpability on his part.

It is hereby stipulated and agreed between the undersigned parties that this matter be settled and resolved upon the following terms:

VOLUNTARY WAIVER OF RIGHTS

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice and has done so. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this Consent Decree, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Consent Decree only after a careful reading of it and a full understanding of all of its terms.

The Respondent is fully aware of the rights to contest the charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any Formal Complaint filed, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to compulsory process to secure the attendance of the witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the Formal Complaint, and the right to obtain judicial review of the Board's decision. All of these rights are being voluntarily

waived by the Respondent in exchange for the Board's acceptance of this Consent Decree.

JURISDICTION

The Board asserts it has jurisdiction over the Respondent and the conduct which has precipitated this Consent Decree. See West Virginia Code § 30-4-1 *et seq.* and/or the legislative rules promulgated thereunder. The Board asserts it has the legal power to take disciplinary action against the Respondent's license to practice dentistry upon proof of the allegations in the Formal Complaint that the Board has filed against the Respondent.

The Respondent disputes the Board's assertion of jurisdiction but will consent to very limited jurisdiction for the sole purpose of this Consent Decree and the enforcement of the terms and conditions set forth in this Consent Decree until the same have been met. Respondent reserves his right to dispute jurisdiction in the event the Statement of Charges is reinstated for any reason or in the event the Board attempts to take any other action against Respondent.

PUBLICATION OF SETTLEMENT

The Respondent acknowledges that, this Consent Decree 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.

EFFECT UPON LICENSURE STATUS

That the Board agrees to forego further prosecution of the complaint and all other

matters arising out of Respondent's relocation to Florida pursuant to the Consent Decree between the Board and Respondent, Mark S. Tuberoso, DMD as follows:

1. The Respondent obtained a license to practice dentistry in the State of West Virginia on September 3, 2002 and was assigned License No. 3555;

2. The Respondent's West Virginia license to practice dentistry expired on or about February 2006;

3. On or about January 2006, the Respondent relocated to the State of Florida;

4. The Board filed its Statement of Charges in or around March 2007.

5. The Respondent agrees that should he desire to practice dentistry in the State of West Virginia that he shall submit an application for licensure and comply with all the licensure requirements of West Virginia Code § 30-4-1 *et seq.* and/or the legislative rules promulgated thereunder;

6. Further, in the event that the Respondent applies for licensure, the Board reserves the right to review, consider and use any and all materials relating to his fitness for practice, including, but not limited to, all documents, statements and complaints currently contained within the Board's file on the Respondent. The Board specifically reserves the right to consider the facts, statements and allegations relating to the above-styled complaint number, including the entry of this agreement, in any future determination of the Respondent's fitness for practice.

7. That the Respondent shall publish a legal advertisement once a week for four (4) consecutive weeks in the local Greenbank, West Virginia newspaper advising his former

Patients how they may obtain a full and complete copy of their dental records upon request by such patient. Upon receiving such request for records, the Respondent shall make reasonable arrangement to honor the request.

8. That the Respondent shall reimburse the Board the sum of Two Thousand Dollars (\$2,000.00) for the costs incurred by the Board associated with the Investigation and prosecution of this matter. Such payment shall be paid to the Board in full within ten (10) months of the date of entry of this Order; and

9. Should the Respondent fail to comply with any part of the Consent Decree and Order, the Board may reinstate its Statement of Charges against Respondent.

ACCEPTANCE BY THE BOARD

This Consent Decree will not be submitted for Board consideration until after it has been agreed to and executed by the Respondent and Respondent's Counsel. 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 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 six (6) 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. This being a full and complete rendition

of all of the matters in the above designated case the same is hereby concluded and service of an attested copy of this Consent Decree on all parties shall serve as notice of the contents of the same.

The Respondent by entering his signature hereto in this Consent Decree and Order, confirms these terms and conditions as set forth herein.

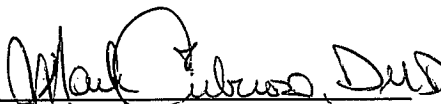
ACKNOWLEDGMENT OF LICENSEE

I have reviewed the provisions of this Consent Decree and Order. I agree to abide by the terms set out herein and to be bound by them.

Inspected and Approved by:



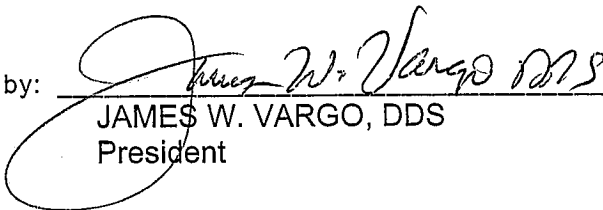
HOLLY G. DICOCO, ESQUIRE
Counsel for Respondent



MARK S. TUBEROSO, DMD
Respondent

By agreement of the West Virginia Board of Dental Examiners, it is so ORDERED and entered this 17th day of March, 2008.

WEST VIRGINIA BOARD OF DENTAL EXAMINERS

by: 

JAMES W. VARGO, DDS
President