

**BEFORE THE WEST VIRGINIA BOARD OF DENTISTRY****WEST VIRGINIA BOARD OF DENTISTRY,****Complainant,**

v.

**CASE NO. 2016-DB-0035D****ARTHUR V. YACENDA, DDS,****Respondent.****CONSENT DECREE AND ORDER**

Now comes the West Virginia Board of Dentistry (hereinafter "the Board"), and Arthur V. Yacenda, DDS, by counsel, David L. Shuman, 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 may file a Statement of Charges 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 professional negligence and 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 parties mutually desire to settle the issues 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. The Respondent, at all times relevant to this investigation, was a licensee of the Board, possessing License No. 2226, and is subject to the licensing and regulatory requirements of the Board. The Respondent's license is set to expire on February 1, 2017.
3. The Respondent maintains an office in Yukon, McDowell County, West Virginia.
4. On or about October 5, 2016, the Board was notified by the United States Drug Enforcement Administration (DEA) that since approximately 2006 the Respondent has been, *inter alia*, purchasing, storing and prescribing both controlled and non-controlled substances for personal use, which he used to treat medical conditions the Respondent was experiencing that were outside the scope of the practice of dentistry. The most recent incident occurred in January 2016 when the Respondent attempted to purchase a quantity of controlled and non-controlled substances from a licensed pharmaceuticals distributor in New York. The Respondent also allegedly treated and prescribed medication for family members. The Respondent further failed to maintain adequate records regarding the purchase and dispensing of controlled substances, and failed to provide adequate safeguards for the protection of such controlled substances. The

Respondent and the DEA entered into a Memorandum of Agreement resolving the allegations brought by the DEA following its investigation.<sup>1</sup>

5. The Board has reviewed the information provided by the DEA including, but not limited to, the Memorandum of Agreement signed by the Respondent in which the Respondent admitted to: (a) purchasing controlled and non-controlled substances for personal use from the New York pharmaceuticals distributor; (b) self-prescribing such controlled and non-controlled substances without the knowledge of his personal care physician; (b) self-prescribing such controlled substances for medical conditions which were outside the scope of the practice of dentistry; (c) storing controlled substances at an unregistered and unauthorized location, i.e., his residence; and (d) treating and prescribing controlled substances to family members.

6. The Board hereby finds that the acts described in paragraphs 4 and 5 above demonstrate that the Respondent violated the West Virginia Dental Practice Act and its legislative rules including, but not limited to, the following:

(a) By engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public, that is, by failing to provide effective controls against theft and diversion of controlled substances and storing controlled substances at an unauthorized location, in violation of W. Va. Code § 30-4-19(g)(7); and

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<sup>1</sup>The DEA alleged the Respondent violated the following federal regulations: 21 C.F.R. § 1304.11(c) (failure to take a biennial inventory); 21 C.F.R. § 1304.21(a) (failure to maintain accurate records of receipt and distribution of substances manufactured, imported, received, sold, delivered, exported, or otherwise disposed by him); 21 C.F.R. § 1304.04(a) (failure to keep and maintain inventory and other required records for a minimum of two (2) years); and 21 C.F.R. § 1301.71(a) (failure to provide effective controls against theft and diversion of controlled substances). The Respondent also allegedly violated 21 C.F.R. §§ 1301.71, 1301.75 (storing controlled substances at an unregistered location).

(b) By engaging in conduct constituting a willful departure from the accepted standards of professional practice and the American Dental Association's principles of ethics and code of professional conduct, including but not limited to, (1) purchasing controlled and non-controlled substances for personal use; (2) self-prescribing such controlled and non-controlled substances without a valid prescription and without the knowledge of his personal care physician; and (3) self-prescribing such controlled substances for medical conditions outside the scope of the practice of dentistry, in violation of W. Va. Code § 30-4-19(g)(12) and W. Va. Code R. § 5-5-4.

**CONCLUSIONS OF LAW:**

1. The Respondent is a licensee of the Board and is subject to its licensing requirements.
2. The Board has jurisdiction to take disciplinary action against the Respondent.
3. It is a violation of the Dental Practice Act for a licensee to engage in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public, in violation of W. Va. Code § 30-4-19(g)(7).
4. It is a violation of the Dental Practice Act for a licensee to engage in conduct that is a willful departure from the accepted standards of professional practice and the American Dental Association's principles of ethics and code of professional conduct, in violation of W. Va. Code § 30-4-19(g)(12) and W. Va. Code R. § 5-5-4.
5. The Respondent does not contest that the Board has established probable cause to issue a Complaint and/or Statement of Charges against him for one or more violations of the Dental Practice Act with regard to the allegations at issue in this matter.

6. Pursuant to W. Va. Code § 30-4-19(g), the Board may deny, refuse to renew, suspend, restrict, or revoke a 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 principles of ethics and professional conduct.

7. 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; (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).

8. 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).

9. As a means of compromise, the Board and the Respondent have hereby agreed to resolve this matter by and through a voluntary agreement and consent to disciplinary action, 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 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. 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.

5. 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. Neither the Board nor its legal counsel shall take any affirmative steps to refer the Respondent's underlying conduct in this matter to any prosecutorial or law enforcement authorities, however, should such prosecutorial or law enforcement authorities make any inquiries of the Board regarding any action taken against the Respondent, the Board reserves the right to respond to such inquiries as authorized or mandated by law.

6. 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.

7. 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. This 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.

8. The Respondent, by affixing his signature hereon, consents and agrees to the entry of the following Order affecting his license in the State of West Virginia.

ORDER

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

1. The Respondent shall comply with all federal and state laws and regulations regarding the purchase, storage, recordkeeping, distributing, dispensing and prescribing of controlled and non-controlled substances.
2. The Respondent shall abstain from purchasing, dispensing and prescribing controlled and non-controlled substances for his own consumption and for the consumption of his family members.
3. The Respondent shall report to the West Virginia Dental Recovery Network or similar program, within 30 days from the date of entry of this Consent Order, for an evaluation regarding his usage of controlled and non-controlled substances. The Respondent agrees to abide by and fulfill any recommendations made for him by such program.
4. The Respondent shall pay a fine of One Thousand Dollars (\$1,000.00) to the Board as a penalty for the violations described herein.
5. The Respondent shall reimburse the Board the sum of One Thousand Five Hundred Dollars (\$1,500.00) for the costs incurred by the Board associated with this matter.
6. The fine and costs of investigation shall be paid to the Board in full within thirty (30) days of the date of entry of this Order, by two separate cashier's checks, each made payable to the West Virginia Board of Dentistry;

7. The Respondent's 2017 application for renewal of his license to practice dentistry shall not be denied or otherwise affected by his entering into this Consent Decree or on the conduct underlying it; and

8. Should the Respondent fail to comply with any part of this Consent Decree and Order, the Board may issue a Statement of Charges against the Respondent and proceed with a disciplinary action against the Respondent on the original allegations, as well as any additional violations that may arise as a result of violating the terms of this Consent Decree.

ENTERED this 20<sup>th</sup> day of January, 2017.

By: 

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

Reviewed and Approved by:



ARTHUR V. YACENDA, DDS  
Respondent



DAVID L. SHUMAN, Esquire  
W. Va. Bar No. 3389  
Counsel for Respondent