

IN THE MATTER OF	*	BEFORE THE MARYLAND
NEIL R. WHITTAKER, D.D.S.	*	STATE BOARD OF
Respondent	*	DENTAL EXAMINERS
License Number: 12504	*	Case Number: 2007-020

* * * * *

CONSENT ORDER

On or about September 5, 2007, the Maryland State Board of Dental Examiners (the "Board") charged NEIL R. WHITTAKER, D.D.S. ("Respondent"), date of birth: 11/2/67, license number: 12504, under the Maryland Dentistry Act, Md. Health Occ. ("H.O.") Code Ann. §§ 4-101 *et seq.* (2005 & Supp. 2006) for violations of H.O. § 4-315(a). The charges were served at the Respondent's home on October 11, 2007. The pertinent provisions of H.O. § 4-315(a), and those under which the charges were brought, are as follows:

(a) *License to practice dentistry.* -- Subject to the hearing provisions of § 4-318 of this subtitle, the Board may deny a general license to practice dentistry...reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the...licensee:

(6) Practices dentistry in a professionally incompetent manner or in a grossly incompetent manner; and

(16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession.

The Code of Ethics provisions violated by the Respondent are: American Dental Association, Principles of Ethics and Code of Professional Conduct, §§ 1.B., 2.G. and 3 which provide:

1.B. PATIENT RECORDS

Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient.

2.G. PERSONAL RELATIONSHIPS WITH PATIENTS

Dentists should avoid interpersonal relationships that could impair their professional judgment or risk the possibility of exploiting the confidence placed in them by a patient.

3. BENEFICENCE

The dentist has a duty to promote the patient's welfare.

As a result of negotiations between the Office of the Attorney General, by Kimberly S. Cammarata, Assistant Attorney General, the Respondent, by Gertrude C. Bartel, Esquire, and the Board, the parties agreed to enter into this Consent Order, consisting of Findings of Fact, Conclusions of Law and Order, as set forth herein.

FINDINGS OF FACT

1. The Respondent is, and at all times relevant to these charges, was licensed to practice dentistry in the State of Maryland, initially receiving his license on June 19, 2000.
2. On or about August 3, 2006, the Board received a phone call and a facsimile from the Anne Arundel County Police alleging that the Respondent was prescribing controlled dangerous substances ("CDS") to Patient A,¹ a person with whom he had a personal relationship, or that Patient A was forging the Respondent's signature to prescriptions. The Board referred the case for investigation.

¹ In order to protect patient privacy and the confidentiality of health care records, patient names are not used in this Consent Order.

3. The Board issued subpoenas to numerous pharmacies within the general geographic vicinity of the Respondent's office requesting a listing of any and all prescriptions written by the Respondent to Patient A.

4. The pharmacy profile information revealed that the Respondent has written significant quantities of medications, including CDS to Patient A over a long period of time. The investigation revealed the following prescriptions written:

<u>PHARMACY</u>		<u>DATE</u>	<u>DRUG</u>	<u>QUANTITY</u>	<u>STRENGTH (MG)</u>
GIANT		5/30/05	OXYCODONE/APAP ²	20	5/325
WEIS	F ³	6/4/05	CIPROFLOXACIN ⁴	14	500
GIANT		6/11/05	LORAZEPAM ⁵	30	1
WEIS	R	8/5/05	OXYCODONE/APAP	40	5/325
SAFEWAY		8/8/05	OXYCODONE/APAP	40	5/325
SHOPPER'S		10/23/05	OXYCODONE/APAP	30	5/325
SAFEWAY		12/2/05	HYDROCODONE/APAP ⁶	40	7.5/325
K-MART	C ⁷	12/11/05	OXYCODONE/APAP	30	5/325
GIANT	C	12/29/05	IBUPROFEN	90	800
GIANT	C	12/29/05	CYCLOBENZAPRINE ⁸	30	10
WEIS	R,C	12/29/05	ENDOCET ⁹	40	10/325
K-MART		2/15/06	ENDOCET	30	10/325
K-MART		3/7/06	ENDOCET	30	7/325
WEIS	R	4/25/06	ENDOCET	30	10/325
WEIS		5/4/06	ENDOCET	40	7.5/325
WEIS	R	5/4/06	AMOX/K ¹⁰	30	500
WEIS	F	5/27/06	ENDOCET	20	10/325
SHOPPER'S	C	6/12/06	HYDROCODONE/IBUP	20	7.5/200
K-MART		6/15/06	HYDROCODONE/IBUP	30	7.5/200

² Oxycodone/APAP is an opioid analgesic and antitussive. It is a Class II CDS. APAP is the acronym for acetaminophen.

³ Those which the Respondent admitted to writing are noted in the chart with an "R" and those which were forged are noted with an "F" in this chart.

⁴ Ciprofloxacin (Cipro) is an anti-infective drug.

⁵ Lorazepam is a benzodiazepine used to treat anxiety. It is a Class IV CDS.

⁶ Hydrocodone/APAP is an opioid analgesic and antitussive. It is a Class III CDS.

⁷ "C" denotes those prescriptions that were recorded in the patient chart.

⁸ Cyclobenzaprine (Flexeril) is a muscle relaxant.

⁹ Endocet is hydrocodone with acetaminophen.

¹⁰ Amox/K is a penicillin, an anti-infective drug.

GIANT	R	6/20/06	HYDROCODONE/IBUP ¹¹	40	7.5/200
K-MART		6/25/06	HYDROCODONE/APAP	40	5/500
WEIS	R	7/5/06	HYDROCODONE/IBUP	40	7.5/200
WEIS	F	7/26/06	ENDOCET	40	7.5/325
GIANT		9/22/06	PROMETHAZINE ¹²	30	25
WEIS	R	10/18/06	AZITHROMYCIN ¹³	6	250
GIANT	F	11/15/06	HYDROMORPHONE ¹⁴	30	2
PARK	R	11/25/06	ENDOCET	12	7.5/325
PARK	R	12/5/06	ENDOCET	30	10/325
WEIS	R,C	12/16/06	ENDOCET	30	10/325
SAFEWAY		12/18/06	OXYCODONE/APAP	40	7.5/325
PARK	F	12/18/06	HYDROMORPHONE	30	2
K-MART		12/23/06	ENDOCET	30	7.5/325
GIANT	F	12/29/06	PERCOCET ¹⁵	30	25/325

5. The Respondent was interviewed regarding which prescriptions he wrote to Patient A. The Respondent admitted to writing some of the prescriptions obtained by the investigator and noted that others were stolen and his signature forged by Patient A. The Respondent advised that he was unaware that Patient A had an addiction problem until she was arrested by the Anne Arundel County Police in on or around August 2006. He admitted, however, to continuing to write prescriptions for her after gaining knowledge of her addiction.

6. The Board also subpoenaed a complete copy of Patient A's dental chart from the Respondent. In response to the subpoena, the Respondent forwarded a chart which contained an undated tooth chart and examination form and progress notes from 8/4/04 through 12/16/06. There was no health history or other information contained in the chart. The Respondent noted in the patient chart that he prescribed the following:

¹¹ Hydrocodone/Ibup is hydrocodone with ibuprofen.

¹² Promethazine is an antihistamine.

¹³ Azithromycin is an anti-infective.

¹⁴ Hydromorphone is an opioid analgesic and antitussive. It is a Schedule II CDS.

¹⁵ Percocet is oxycodone and acetaminophen.

- a. 11/16/04 – Vicoprofen,¹⁶ # 30 for pain; the Respondent performed Zoom bleaching on this date.
- b. 4/7/05 – Cipro, 500 mg., # 14 and Endocet, 5/325 mg., # 20; the Respondent noted patient presented with pain to upper left side.
- c. 12/11/05 – Endocet, 5/325 mg., # 30; The Respondent noted TMJ pain.
- d. 12/29/05 - Flexeril, 10 mg., # 30, Endocet, 10/325 mg., # 40 and Motrin, 800 mg., # 90; the Respondent noted pain.
- e. 6/12/06 – Vicoprofen, neither the amount nor strength are recorded; the Respondent noted TMJ pain.
- f. 6/26/06 – Percocet, # 40; the Respondent entered no other information in the chart.
- g. 9/15/06 - Endocet, 10/325 mg., # 20; the Respondent noted TMJ pain.
- h. 12/16/06 – Percocet, 10/325 mg., # 30; the Respondent noted TMJ pain.

7. The Respondent's records did not reference adequate documentation to justify the prescriptions provided. The records also revealed that the Respondent did not document each prescription written to Patient A.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent has violated Md. Health Occ. Code Ann. § 4-315 (6) and (16).

The Board also concludes that the Respondent violated the American Dental Association's, Principles of Ethics and Code of Professional Conduct, §§ 1.B., 2.G. and 3.

¹⁶ Vicoprofen is hydrocodone and ibuprofen.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the Maryland State Board of Dental Examiners, hereby:

ORDERED that the Respondent's license to practice dentistry in the State of Maryland is **SUSPENDED** for Nine (9) Months; and it is further

ORDERED that the **SUSPENSION** shall be IMMEDIATELY STAYED; and it is further

ORDERED that the Respondent shall notify the Board, within thirty (30) days, in the event he resumes the practice of dentistry in the State of Maryland¹⁷; and it is further

ORDERED that from the date of this Consent Order the Respondent shall be placed on **PROBATION** for a period of **THREE (3) YEARS**, subject to the following terms and conditions:

1. Within sixty (60) days of the effective date of the Consent Order, that date being the date that the Board executes the Consent Order, the Respondent shall be evaluated by a Board approved physician for the purpose of determining the Respondent's substance abuse status. Said evaluator shall receive a copy of this Consent Order, and any other material in the Board's file, at the discretion of the Board. The Respondent shall allow the evaluator to submit a written report to the Board regarding the Respondent's evaluation, to include recommendations, if any, for substance abuse treatment and other psychological and/or psychiatric treatment.

¹⁷ The Respondent is currently enlisted in the United States Air Force having sold his dental practice.

2. The Respondent shall comply with any treatment recommendations of the evaluator, including but not limited to recommendations for substance abuse treatment and other psychiatric and/or psychological treatment. Should the evaluator recommend treatment, the Respondent shall be required to appear before the CRC of the Board for amendments to this Consent Order.

3. The Respondent shall be prohibited from prescribing, dispensing, or administering any scheduled controlled substances in Maryland and has, as of the date of this Consent Order, surrendered his Maryland Controlled Dangerous Substances Certificate Number D39174 and his Drug Enforcement Agency ("DEA") Permit Number BW6869967 to the Drug Enforcement Agency. One (1) year from the date of this Consent Order, the Respondent may petition the Board to allow him to apply for a Controlled Dangerous Substances Certificate and DEA permit.

4. Within one (1) year of the date of this Consent Order, the Respondent shall enroll in and successfully complete an intensive course in the proper prescribing of controlled dangerous substances, which must be pre-approved by the Board. The Respondent shall submit a written request for approval to the Board's Case Manager. The Respondent shall submit written verification to the Board's Case Manager of his enrollment and shall submit proof of having successfully completed the course.

5. In the event the Respondent resumes the practice in the State of Maryland, the Respondent shall enroll in and successfully complete a course in ethics, which must be pre-approved by the Board. The Respondent shall submit a written request for approval to the Board's Case Manager. The Respondent shall submit

written verification to the Board's Case Manager of his enrollment and shall submit proof of having successfully completed the course.

6. In the event the Respondent resumes the practice in the State of Maryland, the Board will appoint a clinical practice reviewer to supervise the practice of the Respondent.

7. The Respondent shall meet with his practice reviewer on a quarterly basis¹⁸ to review his patient charts, at random, to ensure that the Respondent is not prescribing CDS. The practice reviewer shall submit quarterly reports to the Board's Case Manager addressing the Respondent's prescribing practices. The quarterly reviews shall continue for the duration of the probationary period or until such time as the Respondent obtains a CDS Certificate and/or DEA permit, at which time the conditions of ¶ 8 shall apply.

8. In the event that the Respondent obtains his CDS Certificate and/or DEA permit, the Respondent shall maintain a log of all CDS prescriptions written as well as a copy of the actual prescriptions written. The Respondent shall meet with his practice reviewer on a quarterly basis to review all of the Respondent's CDS prescriptions. The practice reviewer shall submit a quarterly written report to the Board's Case Manager addressing the Respondent's prescribing practices. In the event that the practice reviewer's report indicates to the Board that the Respondent's prescribing practices fail to meet appropriate standards, the Board may, in its discretion, modify the terms and conditions set forth in this Consent Order after giving the Respondent the opportunity to be heard before the CRC of the Board. In addition, the Respondent may be subject to further disciplinary action by the Board; and it is further

¹⁸ The first meeting shall take place within 90-100 days after the Respondent returns to practice.

ORDERED that the Respondent shall at all times cooperate with the Board, any of its agents or employees, and with his practice reviewer, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order, including the Respondent causing to be submitted at his own expense, written reports, records and verifications of actions that may be required by the Board; and it is further

ORDERED that the Respondent shall comply with the Maryland Dentistry Act and regulations. Failure to do so shall constitute a Violation of Probation and of this Consent Order, and the Respondent may be subject to further disciplinary action by the Board; and it is further

ORDERED that the Respondent shall obey all laws of the United States, the State of Maryland and its political subdivisions. A guilty verdict or probation before judgment sentence for any crime, except minor traffic offenses (not involving drugs or alcohol), shall constitute a violation of Probation and of this Consent Order, and the Respondent may be subject to further disciplinary action by the Board; and it is further

ORDERED that if the Respondent violates any of the terms of this Consent Order, the Board may immediately suspend the Respondent's license without either prior notice or and opportunity to be heard, provided that the Respondent is given the opportunity for a show cause hearing before the Board at the next regularly scheduled meeting of the Board and after notice and a hearing, and a determination of violation, the Board may impose any other disciplinary sanctions it deems appropriate, including but not limited to revocation or suspension, said violation being proven by a preponderance of the evidence; and it is further

ORDERED that two (2) years from the date of this Consent Order, the Respondent may petition the Board for changes in his probationary status. If the Respondent has satisfactorily complied with all conditions of probation and there are no outstanding complaints regarding the Respondent, the Board may change and/or terminate the probation. At the conclusion of the three (3) year period, if not previously terminated, the Respondent may petition the Board for termination of his probationary status. If the Respondent has satisfactorily complied with all conditions of probation and there are no outstanding complaints regarding the Respondent, the Board shall terminate the probation; and it is further

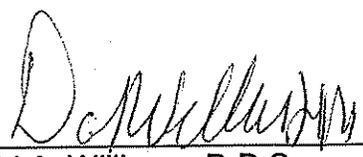
ORDERED that this Consent Order does not resolve any possible charges under the Act that may result from a conviction, guilty plea or *nolo contendere* to any criminal charges that result from the circumstances which lead to this Consent Order, and the Respondent may be separately charged for such a conviction, guilty plea or *nolo contendere* under Md. Health Occ. Code Ann. § 4-315(a)(4); and it is further

ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. § 10-617(h) (Supp. 2007), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and the Board may disclose to any national reporting bank or other entity to whom the Board is mandated to report; and it is further

ORDERED that this is a Final Order of the Board, and as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Govt. Code Ann. §§ 10-611, *et seq.* (2004 & Supp. 2007).

12/19/07
Date



David A. Williams, D.D.S.
President
State Board of Dental Examiners

CONSENT OF NEIL R. WHITTAKER, D.D.S.

I, **Neil R. Whittaker, D.D.S.**, License No. 12504, by affixing my signature hereto, acknowledge that:

1. I have had the opportunity to consult with counsel, Gertrude C. Bartel, Esquire, before signing this document.

2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 4-318 (2005) and Md. State Gov't. Code Ann. §§10-201 *et seq.* (2004 & Supp. 2007).

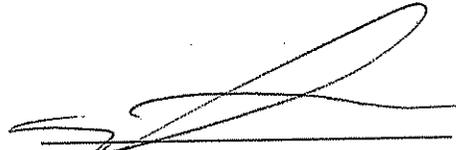
3. I acknowledge the validity of this Consent Order as if entered into after a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by law.

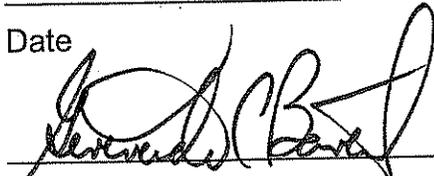
4. I voluntarily enter into and consent to the foregoing Findings of Fact, Conclusions of Law and Order, provided that the Board adopts the foregoing Consent Order in its entirety. I waive any right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, as set forth above, and any right to appeal this Consent Order as set forth in § 4-318 of the Act and Md. State Gov't. Code Ann. §§ 10-201 *et seq.* (2004 & Supp. 2007).

5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, and, following proper procedures, I may suffer disciplinary action, which may include revocation of my license to practice dentistry in the State of Maryland.

6. I sign this Consent Order without reservation as my voluntary act and deed. I acknowledge that I fully understand and comprehend the language, meaning, and terms of this Consent Order.

19 Dec 07
Date


Neil R. Whittaker, D.D.S.

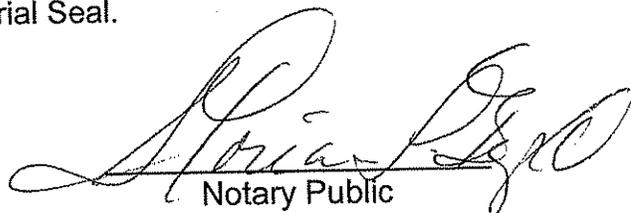

Reviewed and approved by: Gertrude C. Bartel, Esquire

NOTARY

STATE OF Maryland
CITY/COUNTY OF Baltimore

I HEREBY CERTIFY THAT on this 19th day of December, 2007, before me, a Notary Public for the State of Maryland and the City/County aforesaid, personally appeared Neil R. Whittaker, D.D.S., and made oath in due form of law that the foregoing Consent Order was his voluntary act and deed.

AS WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: 1/1/08

