

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

Scott M. Jensen, D.M.D.
(License Number 5555

)
)
)
)
)

AMENDED CONSENT ORDER

THIS MATTER is before the North Carolina State Board of Dental Examiners (the "Board"), as authorized by G.S. 90-41 and 90-41.1(b), for consideration of an Amended Consent Order in lieu of a formal administrative hearing. Respondent Scott M. Jensen, D.M.D. ("Respondent") was represented by Carrie E. Meigs. The Investigative Panel ("IP") was represented by Douglas J. Brocker and Dauna L. Bartley. The parties freely and voluntarily consent to the following:

FINDINGS OF FACT

1. The Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding pursuant to the authority granted to it in Chapter 90 of the North Carolina General Statutes, including the Dental Practice Act and the rules and regulations of the Board.

2. Respondent was licensed to practice dentistry in North Carolina in September 1986 and holds license number 5555. Respondent was issued and has held a general anesthesia permit since April 10, 2013.

3. At all times relevant hereto, Respondent was subject to the Dental Practice Act and the Board's rules and regulations.

Respondent's Prior Disciplinary Orders

4. On September 15, 2003, the Board and Respondent entered into a Consent Order (the "2003 Consent Order"). The 2003 Consent Order suspended Respondent's

dental license but stayed the suspension indefinitely, conditioned on Respondent's compliance with various terms and conditions including signing and complying with a contract with the North Carolina Caring Dental Professionals (CDP).

5. On October 24, 2003, the Board summarily suspended Respondent's license to practice dentistry after he relapsed.

6. On February 4, 2004, the Board and Respondent entered into a second Consent Order (the "2004 Consent Order"). In the 2004 Consent Order, Respondent's dental license was provisionally restored indefinitely, conditioned on Respondent's compliance with various terms and conditions including signing and complying with a new CDP contract.

7. On September 5, 2008, after a settlement conference regarding a 2007 violation of his CDP contract, the Board and Respondent entered into a third Consent Order (the "2008 Consent Order"). The 2008 Consent Order suspended Respondent's dental license but stayed the suspension indefinitely, conditioned on Respondent signing and complying with a new CDP contract and complying with all other terms of the 2004 Consent Order which remained in place and binding on Respondent.

8. On March 17, 2014, after a settlement conference regarding violations of the 2008 Consent Order and the Dental Practice Act, the Board and Respondent entered into a fourth Consent Order (the "2014 Consent Order"). The 2014 Consent Order suspended Respondent's dental license for a period of five (5) years and provisionally restored his license after a fourteen (14) day active suspension, conditioned on Respondent's compliance with various terms and conditions for an indefinite period of

time including complying with all the terms and conditions of the 2004 Consent Order and the 2008 Consent Order which remained binding and in effect.

Patient Mickey V.

9. On July 8, 2019, patient Mickey V., a 36-year-old male, presented to the hospital ER with acute right-sided dental pain and swelling. The hospital's records show the patient's health history included non-Hodgkin's lymphoma, fibromyalgia, obstructive sleep apnea, gastroesophageal reflux disease, penicillin allergy, and daily cigarette use.

10. Patient Mickey V. was provided IV clindamycin and prescriptions for clindamycin and tramadol and was advised to follow up with a dentist.

11. On July 10, 2019, patient Mickey V. returned to the hospital ER complaining of worsening right-sided facial swelling. The patient reported he had been taking the antibiotics until that morning when he was unable to swallow the tablet. He reported that his throat was getting tighter, and the hospital records show there was significant trismus. The dental abscess caused swelling, cellulitis, and inflammation in the adjacent right face/neck, including in the sublingual, masticator, parapharyngeal, and carotid spaces.

12. Later that same day, patient Mickey V. was admitted to the hospital for IV clindamycin and further assessment for oral surgery.

13. On the morning of July 11, 2019, Respondent was on call at the hospital for oral surgery. Respondent reviewed patient Mickey V.'s CT scan online and provided a consultation. There is no indication that Respondent reviewed the hospital's records for patient Mickey V.'s health history.

14. As a result of the consultation, Respondent requested that patient Mickey V. be discharged to be seen in his office to remove three teeth and drain the abscess.

15. That same day, patient Mickey V. was discharged and presented to Respondent's office for oral surgery.

16. Respondent's records for patient Mickey V. include the patient's past medical history of non-Hodgkin's lymphoma, penicillin allergy, and 1 pack per day cigarette use, and also documented the trismus to 15mm.

17. Respondent's records included an American Society of Anesthesiologists (ASA) physical status classification of 1 (one) for patient Mickey V, which does not accurately describe this patient's level of anesthetic risk.

18. Respondent did not document patient Mickey V.'s other active problems reported by the hospital: obstructive sleep apnea, fibromyalgia, and gastroesophageal reflux disease. These issues present a greater anesthetic risk that Respondent did not document, acknowledge, or address.

19. Respondent administered general anesthesia to patient Mickey V. and the patient began having respiratory difficulty. Patient Mickey V. developed respiratory depression requiring an oral airway, and his tongue was lacerated during Respondent's efforts to open the airway.

20. Surgery was aborted, and patient Mickey V. was transported back to the hospital by EMS and admitted. Patient Mickey V. recovered and remained admitted for oral surgery.

21. The surgery was later completed at the hospital on July 12, 2019, under general anesthesia using a glidescope for intubation to secure the airway, and patient Mickey V. was discharged two days later.

22. Respondent timely submitted an adverse occurrence report to the Board on July 16, 2019, as required by 21 NCAC 16Q .0703(b).

23. On September 17, 2019, the IP and Respondent entered into a Consent Order Summarily Restricting General Anesthesia Permit (the "Summary Restriction"). The Summary Restriction provided that, while the investigation was pending and until further order of the Board, Respondent would only administer general anesthesia or sedation utilizing the services of either a Certified Registered Nurse Anesthetist or another provider authorized to administer general anesthesia without supervision.

24. Pursuant to 21 NCAC 16Q .0202(e), a general anesthesia permit holder is required to evaluate a patient for health risks before starting any anesthesia procedure.

25. The standard of care for dentists licensed to practice dentistry in North Carolina requires dentists to perform and document adequate preoperative assessment and patient selection prior to any anesthesia or sedation treatment to identify, among other things, any potential difficult airway concerns or other anesthetic risks and also to assess the proper facility and circumstances to perform any such procedure.

26. Respondent's treatment of Mickey V. did not comply with 21 NCAC 16Q .0202(e) or the standard of care for dentists licensed to practice dentistry in North Carolina regarding patient preoperative assessment, selection, and planning in providing general anesthesia.

Based upon the foregoing Findings of Fact and with the consent of the parties hereto, the Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter of this action and over Respondent.
2. Respondent was properly notified of this matter and has consented to the entry of this Amended Consent Order.
3. Respondent violated N.C. Gen. Stat. § 90-41(a)(6) and (12) and 21 NCAC 16Q .0202(e) in his care and treatment of patient Mickey V. as set forth in Findings of Fact 9-21 and 24-26 above.

**ADDITIONAL FINDINGS AND FACTORS RELEVANT TO DISCIPLINE
PURSUANT TO 21 NCAC 16N .0607**

1. Respondent caused or contributed to a patient's physical injury and subsequent hospitalization.
2. Respondent's violations resulted in harm or potential harm to a patient.
3. Respondent took prompt, appropriate actions to address and rectify the patient's distress and medical emergency.
4. Respondent has a lengthy prior disciplinary history:
 - a. Letter of Reprimand, February 20, 1995;
 - b. The 2003 Consent Order;
 - c. The 2004 Consent Order;
 - d. The 2008 Consent Order; and
 - e. The 2014 Consent Order.

5. Respondent made timely and voluntary disclosure to the Board and had a cooperative attitude toward the proceedings.

6. Respondent had substantial experience and had been licensed to practice dentistry for over 30 years at the time of these actions.

7. Respondent voluntarily consented to the Summary Restriction on his permit, effective September 17, 2019, during the pendency of the IP's investigation.

8. At the IP's request, Respondent completed a continuing education course especially designed for him by the University of North Carolina School of Dentistry in conjunction with, and approved in advance by, the Board. The continuing education course covered preoperative assessment and patient selection issues in the administration of general anesthesia and IV sedation. This course is in addition to, and does not count toward, the continuing education required by the Board for renewal of Respondent's dental license.

9. In light of Respondent's prompt action to address the medical emergency for the patient, his cooperation with the IP's investigation, and his completion of the additional continuing education, the Board does not find that activation of the license suspension provided in the 2014 Consent Order is warranted under the circumstances; however, the Board finds that an additional condition to the 2014 Consent Order is warranted by the circumstances.

Based upon the foregoing Findings of Fact, Conclusions of Law, and Additional Findings and Factors Relevant to Discipline, and with the consent of the parties hereto, it is ORDERED as follows:

ORDER OF DISCIPLINE

1. The terms and conditions of the 2014 Consent Order remain in effect and binding but are amended with the provisions, terms, and conditions set out herein.

2. License number 5555 issued to Respondent for the practice of dentistry in North Carolina remains suspended for a period of five (5) years but conditionally restored with no active suspension, subject to the requirements in paragraph 3.

3. Respondent's license to practice dentistry remains restored and the Summary Restriction on Respondent's general anesthesia permit is lifted, provided that Respondent adheres to the following probationary terms and conditions for an indefinite period of time:

- a. Respondent shall violate no provision of the Dental Practice Act or the Board's rules.
- b. Respondent shall neither direct nor permit any of his employees to violate any provision of the Dental Practice Act or the Board's rules.
- c. Respondent shall allow the Board or its authorized agents to inspect and observe his office, conduct random reviews of patient chart records, and interview his employees and coworkers at any time during normal office hours.
- d. All the terms and conditions of Respondent's 2004 Consent Order and 2008 Consent Order remain binding and in effect.

e. Respondent shall engage, with the IP's prior review and approval, a licensed North Carolina dentist to serve as an anesthesia practice monitor (the "Monitor"). The Monitor shall meet with Respondent regularly and no less than quarterly to review example anesthesia patient charts selected by the Monitor, not by Respondent or employees at the office(s) where he practices. During these meetings, the Monitor shall examine the example anesthesia patient records to determine Respondent's compliance concerning: (i) recordkeeping, including documentation of preoperative assessment and patient selection, and all required elements of patient treatment and sedation records; and (ii) any other issues identified by the Monitor related to Respondent's compliance with the Dental Practice Act and the Board's rules and regulations. Respondent shall ensure that the Monitor prepares and submits to the Board quarterly reports with the findings concerning those issues for the quarter, including identifying the specific patient treatment records reviewed. The IP reserves the right to review the charts that the Monitor selects for his/her report, which records Respondent shall provide to the IP upon its request. The reports shall be due no later than April 1, July 1, October 1, and January 1 for the previous quarter in each year. Respondent is responsible for any and all payment of costs associated with this monitoring. If the Monitor reports information to the Board indicating that Respondent may be engaging in a violation of the Dental Practice Act, the Board's rules, or this Order, Respondent

understands that such findings may result in further disciplinary action by the Board, including potential activation of his suspension, following notice to Respondent and an opportunity to be heard. If the Monitor's reports and the Board's inspections demonstrate no violations of the Dental Practice Act or the Board's rules for three (3) consecutive years, then Respondent may petition the Board to eliminate the monitoring requirement.

6. Respondent recognizes that the conditions, limitations, or requirements set forth in this Amended Consent Order may present him with certain practical difficulties. The Board concludes that each one is necessary to ensure public protection and it does not intend to modify or eliminate any of the conditions, limitations, or requirements set forth herein based on such potential difficulties.

7. If Respondent fails to comply with any provision of this Order or breaches any term or condition thereof, the Board shall promptly schedule a public Show Cause Hearing to allow Respondent an opportunity to show cause as to why Respondent's suspension shall not be activated for violating a valid order of the Board. If after the Show Cause Hearing, the Board is satisfied that Respondent failed to comply or breached any term or condition of this Order, the Board shall activate the suspension and may enter such other discipline or conditions as the evidence warrants for proven violations of the Dental Practice Act or of the Board's rules occurring after entry of this Order. The Investigative Panel shall have discretion to investigate and attempt to resolve instances of noncompliance with or breach of this Order by way of proposed consent order or other settlement prior to the Board's initiation of a Show Cause Hearing.

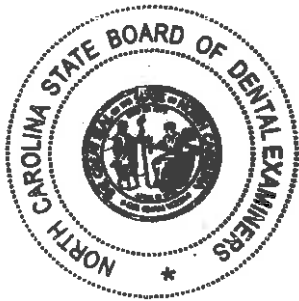
This the 20th day of August, 2020

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By:



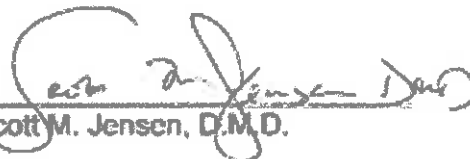
Dr. Millard W. Wester, President



STATEMENT OF CONSENT

I, Scott M. Jensen, D.M.D., do hereby certify that I have read the foregoing Consent Order in its entirety. I assent to its terms and conditions set out herein. I freely and voluntarily acknowledge that there is sufficient evidence to form a factual basis for the Findings of Fact herein, that the Findings of Fact support the Conclusions of Law, that I will not contest the Findings of Fact, the Conclusions of Law, or the Order in any future proceedings before or involving the Board, including if future disciplinary proceedings or action is warranted in this matter. I knowingly waive any right to appeal or otherwise later challenge this Consent Order once entered. I understand that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order will become part of the Board's permanent public record. I further acknowledge that this required reporting may have adverse consequences in other contexts and any potential effects will not be the basis for a reconsideration of this Consent Order. I have consulted with my counsel before signing this Consent Order.

This the 20 day of April, 2020.



Scott M. Jensen, D.M.D.