

IN THE MATTER OF  
DAVID FUDERICH, D.M.D.  
APPLICANT

*License # 14683*

BEFORE THE MARYLAND  
STATE BOARD OF  
DENTAL EXAMINERS  
CASE NUMBER: 2009-063

\* \* \* \* \*

**CONSENT ORDER**

The Maryland State Board of Dental Examiners (the "Board") notified David Fuderich, D.M.D., (the "Applicant"), D.O.B. 01/14/1963, of the Board's intent to initially deny his application for dental licensure under the Maryland Dentistry Act (the "Act"), Md. Health Occ. Code. Ann. ("H.O.") §§ 4-101 et seq., (Repl. Vol. 2005 & Supp. 2008).

The pertinent provisions state:

**H.O. § 4-302. Qualification of applicant.**

(a) *In general.* – Except as otherwise provided in this title, to qualify for a license, an applicant shall be an individual who meets the requirements of this section.

(b) *Moral character* - the applicant shall be of good moral character.

**H.O. § 4-315. Denials, reprimand, probations, suspensions, and revocations – Grounds.**

(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, a limited license to practice dentistry, or a teacher's license to practice dentistry to any applicant, reprimand any licensed dentist, place any licensed dentist on probation, or suspend or revoke the license of any licensed dentist, if the applicant or licensee:

(4) Is convicted of or pleads guilty or nolo

contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

- (7) Has had a license to practice dentistry revoked or suspended in any other state;
- (16) Behaves dishonorably or unprofessionally, or violates a professional code of ethics pertaining to the dentistry profession;
- (19) Is disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes.

### **FINDINGS OF FACT**

The Board finds that:

1. On or about April 24, 2008, the Board received the Applicant's application for dental licensure.

2. On his application for dental licensure, the Applicant answered "Yes" to the following questions:

a. Has any licensing or disciplinary board of any jurisdiction, including Maryland, or any federal or state entity denied your application for licensure, reinstatement or renewal, or taken any action against your license, including but not limited to reprimand, suspension, revocation, a fine, or non judicial punishment?

b. Have any investigations or charges been brought against you or are any currently pending in any jurisdiction, including Maryland, by any licensing or disciplinary board or any federal or state entity?

c. Has your application for a dentist been withdrawn for any reason?

f. Have you pled guilty, nolo contendere, had a conviction or receipt of probation before judgment or other diversionary disposition of any criminal act, excluding minor traffic violations?

g. Have you pled guilty, nolo contendere, had a conviction, or receipt of probation before judgment or other diversionary disposition for an alcohol or controlled dangerous substance offense, including but not limited to driving while under the influence of alcohol or controlled dangerous substance?

h. Are there any criminal charges against you in any court of law, excluding minor traffic violations?

i. Have you surrendered or allowed your license to lapse while under investigation by any licensing or disciplinary board any jurisdiction, including Maryland, or any federal or state entity?

n. Has your employment been affected or have you voluntarily resigned from employment, in any setting, or have you been terminated or suspended, from any hospital, related health care or other institution, or federal or state entity for any disciplinary reasons or while under investigation for disciplinary reasons?"

### **FACTS PERTAINING TO THE APPLICANT'S CONVICTIONS**

3. In or around January 2005, the Applicant was charged by way of a criminal information by the Attorney General for the Commonwealth of Pennsylvania with one (1) count of Insurance Fraud, a third degree felony, in violation of 18 PA C.S § 4117 (a) (2), one (1) count of violating the Controlled Substance, Drug, Device and Cosmetic Law, obtaining a controlled substance by misrepresentation and one (1) count of violating of the Pharmacy Act 63 P.S. 390- 8 (13) (i) ( A copy of the Police Criminal Complaint and Criminal Information in *Commonwealth of Pennsylvania v. David Fuderich*, Docket No. 2689 of 2004 is attached hereto and incorporated herein as **Exhibit A**).

4. On or about December 2, 2005, the Applicant pled guilty, in the Court of Common Pleas of Washington County, Pennsylvania, to one (1) count of Insurance

Fraud, in violation of 18 PA C.S § 4117 (a) (2), and one (1) count of violating the Controlled Substance, Drug, Device and Cosmetic Act, obtaining a controlled substance by misrepresentation, 35 P.S. § 780-113(a) (12) (a copy of the Plea of Guilty in *Commonwealth of Pennsylvania v. David Fuderich*, Docket No. 2689 of 2004, is attached hereto and incorporated herein as **Exhibit B**).

5. On or about December 2, 2005, the Applicant was found guilty by Judge Paul Pozonsky of the Court of Common Pleas of Washington County, Pennsylvania.

6. Judge Pozonsky sentenced the Applicant to twenty three (23) months and suspended all but three (3) months to be served on electronic home detention. The Applicant was also ordered to pay a fine and restitution (a copy of the Sentence, the Order and the Criminal Docket, in *Commonwealth of Pennsylvania v. David Fuderich*, Docket No. 2689 of 2004 are attached hereto and incorporated herein as **Exhibit C**).

**FACTS PERTAINING TO DISCIPLINARY ACTION TAKEN AGAINST APPLICANT'S PENNSYLVANIA LICENSE**

7. On or about January 23, 2006, the Applicant's license to practice dentistry in the Commonwealth of Pennsylvania was automatically suspended. (a copy of the Notice and Order of Automatic Suspension and Final Adjudication and Order are attached hereto and incorporated herein as **Exhibit D**).

8. The Applicant's automatic suspension was based on the Applicant's guilty plea and felony conviction in the Washington County Court of Common Pleas in *Commonwealth of Pennsylvania vs. David Fuderich*, Docket No. 2689 of 2004.

9. The allegations, as set forth above, indicate that the Applicant lacks good moral character and also constitute grounds for denial of the Applicant's application for dental licensure under to H.O. § 4-302 (a) and (b).

10. The action taken by the Commonwealth of Pennsylvania Board of Dentistry suspending the Applicant's dental license constitutes disciplinary action by a licensing or disciplinary authority for acts that are grounds for disciplinary action and constitute grounds for denial of the Applicant's application for dental licensure under H.O. § 315 (a) (7) and (19).

11. The Applicant's guilty plea, his felony convictions, and his crimes involving moral turpitude, as set forth above, constitutes ground for denial of the Applicant's application under H.O. 315 (a) (4) and (16).

#### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board concludes that the Applicant lacks good moral character and, therefore, fails to meet the qualifications for dental license to practice under H.O. § 4-302 (a) and (b). The Board also concludes that the disciplinary action taken against the Applicant's Pennsylvania dental license, Applicant's guilty plea and conviction to felonies and crimes involving moral turpitude, as set forth above, is a violation of H.O. §4- 315-(a) (4), (7), (16), and (19).

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, on this 7<sup>th</sup> day of October 2009, the Board, by a majority of the quorum of the Board, it is hereby

**ORDERED** that the Applicant shall be granted a license to practice dentistry in Maryland; and it is further

**ORDERED** that the Applicant shall be placed on **PROBATION** for a period of five (5) years; and it is further

**ORDERED** that within ten (10) days from the effective date of this Consent Order, the Applicant shall enter into a new five (5) year contract with the Maryland Dentist Well Being Committee ("WBC"); and its is further

**ORDERED** that the Applicant shall submit to quarterly drug and alcohol screening, at a site chosen by the WBC. The drug and alcohol screening shall include hair analysis testing. The Applicant shall submit to his first drug and alcohol screening within ten (10) days of signing his new WBC contract; and it is further

**ORDERED** that the Applicant shall comply with any and all recommendations made by WBC; and it is further

**ORDERED** that the Applicant's failure to comply with any recommendation made by WBC shall be deemed a violation of this Consent Order; and it is further

**ORDERED** that for a period of two (2) years, the Applicant shall not own and/or operate a dental practice. After the two (2) year period has elapsed, the Applicant may petition the Board to allow him to own and/or operate a dental practice in Maryland; and its is further

**ORDERED** for a period of two (2) years, the Applicant shall be prohibited from prescribing, dispensing, or administering scheduled controlled dangerous substances. After the two (2) year period has elapsed, the Applicant may petition the Board to allow him to apply for a CDS certificate and DEA permit; and it is further

**ORDERED** that in the event that the Applicant obtains his CDS certificate and/or DEA permit, he shall maintain a daily log of all CDS prescriptions written, as well and a copy of the actual prescriptions written, in each patient's file; and it is further

**ORDERED** that within thirty (30) days of the issuance of a CDS certificate and/or DEA permit, the Applicant shall engage, at his expense, a Board approved clinical practice reviewer. For a period of one (1) year following the issuance of a CDS certificate and/or DEA permit the Applicant shall be required to undergo clinical practice reviews conducted by a clinical practice reviewer. The Applicant shall: (1) allow the clinical practice reviewer to conduct random quarterly practice reviews of patient charts to ensure that the Applicant is not inappropriately prescribing controlled dangerous substances; and (2) ensure that the clinical practice reviewer submits quarterly reports to the Board's Case Manager addressing the Applicant's prescribing practices.

**ORDERED** that should the Applicant's prescribing practices fail to meet appropriate standards, the Board at its discretion, may modify the terms and conditions set forth in this Consent Order, including taking further disciplinary action, after giving the Applicant an opportunity to be heard; and it is further

**ORDERED** that the Applicant shall at all times cooperate with the Board and any of its agents or employees in the monitoring and investigation of the Applicant's compliance with the terms and conditions of this Consent Order; and it is further

**ORDERED** that the Applicant shall obey all federal and state laws, including any laws and/or regulations pertaining to the practice of dentistry; and it is further

**ORDERED** that if the Applicant violates any of the terms of this Consent Order and probationary terms set forth herein, the Board may immediately suspend the Applicant's license, without either prior notice or an opportunity to be heard, provided that the Applicant is given the opportunity for a show cause hearing before the Board at the next regularly scheduled meeting of the Board. After notice, 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 the burden of proof for any action brought against the Applicant as a result of a breach of the conditions of the Order or of Probation shall be on the Applicant to demonstrate compliance with the Order or conditions; and it is further

**ORDERED** that, at the conclusion of the five (5) year probationary period the Applicant may file a written petition with the Board for termination of his probationary status. If he has satisfactorily complied with all conditions of probation and there are no outstanding complaints, the Board shall terminate the probation; and it is further

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

**ORDERED** that the effective date of this Order is the date that it is signed by the Board; and it is further


**ORDERED** that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. § 10-617(h) (2005 Repl. Vol. and 2008 Supp.), this document consists



of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and be it further

**ORDERED** that this Consent Order is a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (2005 Repl. Vol. & 2008 Supp.).

10/7/09  
Date

  
Jane S. Casper, R.D.H.  
State Board of Dental Examiners

**CONSENT OF DAVID FUDERICH, D.M.D**

I, David Fuderich, D.M.D., by affixing my signature hereto, acknowledge that:

1. I am represented by an attorney, March Cohen, Esquire..
2. I am aware that I am entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 4-316 (Repl. Vol. 2005) and Md. State Govt. Code Ann. §§ 10-201 et seq. (Repl. Vol. 2004 & Supp. 2008).
3. I acknowledge the validity and enforceability of this Consent Order as if entered 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. I am waiving those procedural and substantive protections.
4. I voluntarily enter into and consent to the foregoing Findings of Fact, Conclusions of Law, and Order and agree to abide by the terms and conditions set forth herein as a resolution of the Board's case based on the Findings set forth herein.
5. I waive my right to contest the Findings of Fact and Conclusions of Law, and I waive my right to a full evidentiary hearing, and any right to appeal this Consent Order, as set forth in Md. Health Occ. Code Ann. § 4-316 (Rep. Vol. 2005) and Md. State Govt. Code Ann. §§ 10-201 et seq. ( Rep. Vol. 2004 and Supp. 2008).
6. I acknowledge that, by failing to abide by the terms and conditions set forth in this Consent Order, and, following proper procedures, I may be subject to disciplinary action, which may include revocation of my license to provide dental services in the State of Maryland.

7. 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 Order.

9/29/09  
Date

David Fuderich  
David Fuderich, D.M.D.

Marc K. Cohen  
Reviewed and Approved by: Marc Cohen, Esquire

**NOTARY**

STATE OF PENNSYLVANIA

CITY/COUNTY OF BEAVER

I HEREBY CERTIFY THAT on this 29<sup>th</sup> day of SEPTEMBER, 2009, before me, a Notary Public for the State and the City/County aforesaid, personally appeared David Fuderich, D.M.D. 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.

Mark W. Zurick

Notary Public

My Commission Expires: 8/16/12

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Mark W. Zurick, Notary Public  
Ambridge Boro, Beaver County  
My Commission Expires Aug. 16, 2012  
Member, Pennsylvania Association of Notaries