

IN THE MATTER OF	*	BEFORE THE MARYLAND
JAMES MANWARING, D.M.D.	*	STATE BOARD OF
Respondent	*	DENTAL EXAMINERS
License Number: 6645	*	Case Number: 2007-268
* * * * *	*	* * * * *

CONSENT ORDER

I. BACKGROUND

The Maryland State Board of Dental Examiners (the "Board") charged JAMES MANWARING, D.M.D. ("Dr. Manwaring" or the "Respondent"), date of birth: 04/19/51, License Number 6645, under the Maryland Dentistry Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 4-101 *et seq.* for violations of H.O. § 4-315(a).

The Respondent has agreed to enter into this Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

II. FINDINGS OF FACT

1. At all times relevant to these charges, the Respondent was and is licensed to practice dentistry in the State of Maryland. The Respondent initially received his license to practice dentistry in Maryland on June 7, 1978, under License Number 6645.
2. At all times relevant to these charges, the Respondent was affiliated with a dental practice located at 16220 Frederick Road, Suite 400, Gaithersburg, Maryland 20877.
3. On or about January 6, 1993, the Board issued an Order for Summary Suspension of License to Practice Dentistry against the Respondent pursuant to Md. State Gov't Code Ann. § 10-405(b)(1984),¹ finding that the public health, safety and welfare imperatively required emergency action. The Board took such action after making the following admissions to Board investigators: that during the course of providing professional services, he self-administered approximately 25 to 30 milligrams of a narcotic that had been left in a syringe after use for a patient procedure; that he was "on probation" resulting

¹This provision is currently codified as Md. State Gov't Code Ann. § 10-226(c)(2).

from a criminal proceeding in which he was charged with "writing prescriptions for someone else"; and that he had a history of chemical dependency and treatment for such dependency.

4. By letter dated January 14, 1993, the Respondent requested a hearing on the Board's action. The Board granted the Respondent's request and convened an evidentiary hearing on February 17, 1993.

5. On or about May 7, 1993, the Board issued disciplinary charges against the Respondent, alleging that he violated various provisions of the Act.

6. On or about May 10, 1993, the Board issued an Order affirming its previously issued Order for Summary Suspension. In its Order, the Board concluded the following:

Respondent has an eleven year history of substance abuse, including abuse of medication which he obtained in his dental office or which he obtained by illegally using his dental license and his DEA license. Since Respondent's last inpatient admission in 1991, he has on at least three occasions relapsed into substance abuse. In May, 1992, Respondent knowingly accepted a prescription for Fiorinal with codeine, a substance to which he had been addicted in the past. In July, 1992, Respondent knowingly accepted a prescription for narcotic medication for relief of pain when he could have been treated with a non-narcotic pain reliever. In July, 1992, he injected himself in the dental office with Demerol, which had been left over from treatment of a patient.

Throughout this eleven year history of drug addiction, Respondent has received both inpatient and outpatient treatment, including urine surveillance, specifically for substance abuse. Although Respondent's treating psychiatrist was aware of the first two relapses, Respondent attempted to conceal his abuse of Demerol on July 23, 1992 by failing to keep his next appointment with his therapist where he would be required to submit to urine surveillance. Moreover, he failed to inform his therapist of his abuse until after he was confronted by his therapist.

Finally, Respondent has been arrested on three occasions since 1990 for crimes relating to his substance abuse. Indeed, Respondent was on probation with the Circuit Court for Montgomery County for driving under the influence of drugs and alcohol at the time he injected himself in his office with a narcotic.

Respondent and his partner in his dental practice established an office protocol to minimize Respondent's access to narcotics; however, the office was operating under the protocol when Respondent obtained the Demerol. Respondent's partner subsequently properly destroyed all narcotics in the office and further developed the office protocol to limit the office's use to non-narcotic methods of pain relief and to ensure

that Respondent would not have access to nitrous oxide. However, previous controls, including outpatient treatment with urine surveillance and criminal probation, have not been sufficient.

Through testimony of Respondent's psychiatrist, Respondent acknowledges he has a substance abuse problem. Although Respondent, through his psychiatrist's testimony, offers explanations for his three recent relapses in May and July 1992, the Board is not convinced that relapses will not occur again. In light of Respondent's significant history of substance abuse, the Board finds that the risk of relapse is significant. Respondent attempts to assure the Board that the risk of relapse has been minimized by regular outpatient therapy, increased urine surveillance, increased attendance at support groups, the removal of narcotics from the dental office and the additional office protocol governing nitrous oxide. However, the evidence indicates that these mechanisms have failed in the past. Moreover, if licensed to practice dentistry,

Respondent would continue to hold a DEA license, which authorizes him to prescribe controlled dangerous substances, including barbiturates and narcotics. Even with access to narcotics in the dental office being removed, Respondent could continue to obtain narcotics in the hospital where he has privileges or by writing prescriptions for himself.

Based on the above, the Board concludes that the public health, safety, and welfare imperatively requires the summary suspension of Respondent's license to practice dentistry. The Board is charged with the responsibility of assuring the provision of safe, quality dental care to the citizens of this State. Respondent's history of substance abuse, combined with several recent relapses, present a serious potential of continued abuse in the future. Because the evidence indicates that Respondent's drug use presents a significant threat to the safety of his patients, the Board concludes that summary suspension is required.

6. On or about July 28, 1993, the Respondent entered into a Consent Order with the Board, which resolved the charges the Board issued against him on May 7, 1993. In this Consent Order, the Board found as matters of fact that the Respondent: admitted writing "illegal" prescriptions for Fiorinal #3, a Schedule III controlled dangerous substance, for "fictitious people and then picked them up, assuming their identities," after which he ingested the drugs for non-dental reasons; and self-administered a narcotic that had been left in a syringe after use for a patient procedure, during the course of providing professional services.

7. The Board found as matters of law that the Respondent's actions constituted a violation of the following provisions of the Act: H.O. § 4-315(a)(2), fraudulently or deceptively uses a license; H.O. § 4-315(a)(5), provides professional services while: (i) under the influence of alcohol; or (ii) using any narcotic or controlled dangerous substance, as defined in Article 27 of the code, or other drug that is in

excess of therapeutic amounts or without valid medical indication; and H.O. § 4-315(a)(16), behaves dishonorably or unprofessionally.

8. Pursuant to the terms of the Consent Order, the Board suspended the Respondent's dental license for a period of thirty (30) months, after which the suspension would be stayed, conditioned upon a favorable recommendation from the Committee for the Rehabilitation of Dentists; and that if the suspension were stayed, the Respondent would be placed on probation for a period of eight (8) years, subject to various terms and conditions, including compliance with all recommended treatment programs and testing, and notification of all positive test results.

9. On or about April 24, 2007, a representative of the Montgomery County Police Department notified the Board that he was investigating the Respondent for alleged prescription fraud and requested that the Board initiate an investigation of the Respondent.

10. On or about June 7, 2007, the Respondent submitted an application for renewal of his dental license to the Board. On page three (3) of the application, under Section III-Character and Fitness, the Respondent responded "YES" to Question (j), which states:

SINCE JULY 2005

j. Has the use of drugs and/or alcohol resulted in an impairment of your ability to practice your profession?

11. The Respondent supplemented his response to Question (j), stating, "I am participating with the Dentist Well-Being Program. Please contact Dr. Robert Miller, Chairman of the Committee, for more information."

12. Board investigation determined that the Respondent was admitted for inpatient opiate abuse treatment in or around April 2007. The Respondent disclosed that he had relapsed and developed a drug dependency in or around April 2006, and that since that time, his use of Percocet (a Schedule II controlled dangerous substance) had increased to 16 to 20 tablets per day. The Respondent further disclosed that over the three week period prior to his admission for opiate dependence, he had used as many as 25 tablets of Percocet per day.

13. On or about September 17, 2007, the Respondent was charged under Case Number 2D00200895 with several counts of controlled dangerous substance violations in Montgomery County, Maryland, based on the investigation by the Montgomery County Police Department. The application in support of the Statement of Charges stated that on multiple occasions, the Respondent fraudulently wrote

prescriptions for narcotic medications (specifically, Percocet) in the name of his practice partner for various patients, and presented and attempted to fill those prescriptions at a Rockville area pharmacy, for his own use. The investigating detective confirmed with the Respondent's practice partner that the Respondent had been using his practice partner's name to write false prescriptions.

14. On or about December 13, 2007, the Respondent appeared in the District Court of Maryland for Montgomery County and entered a plea of guilty to one count of obtaining a drug by fraud, occurring on or about April 7, 2007, in violation of Md. Criminal Law Code Ann. § 8-610(b)(3).³ The Respondent was sentenced to a term of incarceration of two years, which was suspended in its entirety, and was placed on probation for three years, subject to probationary conditions including a fine of \$250.00, imposition of costs and community service.

15. On or about March 3, 2008, the court revised the original sentence and granted the Respondent probation before judgment, pursuant to Md. Criminal Procedure Code Ann. § 6-220(b).

16. The Board conducted an investigation of the Respondent's prescribing practices and independently determined that in 2007, he fraudulently created/wrote prescriptions in his practice partner's name for actual and fictitious patients, but filled the prescriptions for his own personal use. The Respondent did so without his practice partner's permission or knowledge.

17. On or about August 8, 2008, the Respondent, under Citation Number OFE59208, was arrested in Montgomery County for driving/attempting to drive while under the influence of alcohol, in violation of Md. Transportation Article Code Ann. § 21-902(a)(1).

18. On or about March 9, 2009, the Respondent appeared in the District Court of Maryland for Montgomery County and entered a plea of guilty to driving while under the influence of alcohol, in violation of Md. Transportation Article Code Ann. § 21-902(a)(1).

19. The Respondent was sentenced to a term of incarceration of one (1) year, with all but three (3) months of said sentence suspended, to be served through home detention, commencing on or about April 17, 2009. The Respondent was also ordered to: pay a fine of \$1000.00, of which \$500.00 was suspended; pay court costs; and follow additional probationary conditions.

20. On or about March 31, 2009, the Respondent appeared in the District Court of Maryland for Montgomery County on a violation of his probation for obtaining a drug by fraud. The Court found the Respondent in violation of his probation and continued his probation.

III. CONCLUSIONS OF LAW

Dr. Manwaring's fraudulent prescribing practices and abuse of controlled substances, as described above, constitute, in whole or in part, a violation of one or more of the following provisions of the Act: fraudulently or deceptively using a license, in violation of H.O. § 4-315(a)(2); providing professional services while using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication, in violation of H.O. § 4-315(a)(5); behaving dishonorably or unprofessionally, or violating a professional code of ethics pertaining to the dentistry profession, in violation of H.O. § 4-315(a)(16); and/or willfully making or filing a false report or record in the practice of dentistry, in violation of H.O. § 4-315(a)(20).

The Board finds that Dr. Manwaring's actions were both dishonorable and unprofessional. The Dr. Manwaring's actions, as described above, constitute, in whole or in part, a violation of Section 2.D. of the Principles of Ethics and Code of Professional Conduct (2005) of the American Dental Association. Dr. Manwaring's treatment of patients while under the influence of Percocet. The Board finds that Dr. Manwaring violated H.O. § 4-315(a)(16).

Dr. Manwaring's plea of guilty to obtaining a drug by fraud, as described above, constitutes, in whole or in part, being convicted of or pleading guilty or nolo contendere to a felony or a crime involving moral turpitude, whether any appeal or other proceeding is pending to have the conviction or plea set aside, in violation of H.O. § 4-315(a)(4). The crime of obtaining drugs by fraud is also a violation of the Board's practice act. Accordingly, the Board finds that this crime was also a fraudulent use of his license in violation of H.O. § 4-315(a)(2). ~

IV. ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby:

- A. Respondent's license to practice as a dentist is suspended for six (6) months, starting on April 2, 2012;
- B. Respondent will be placed on probation for a period of four (4) years, starting April 2, 2012, subject to the following conditions:
 1. Respondent shall comply with all provisions within his Maryland Dentist Well Being Committee (the "WBC") contract dated and signed April 1, 2012 for a minimum of three (3) years in duration;
 2. No later than ten (10) days from the date of the signed Consent Order, Respondent will present himself to a drug testing laboratory for the on-site

collection of hair follicle samples for testing. He shall have this testing done at least every ninety (90) days through his probationary period. Compliance will be monitored by the WBC;

3. Prior to the Board lifting the suspension imposed, the Respondent shall take and pass Board approved ethics tutorial;
4. After the suspension is lifted, the Respondent may return to his dental practice. He shall arrange for his business partner to submit semi-annual written reports to the Board summarizing the Respondent's practice and whether there are any concerns. An unsatisfactory report will be considered a violation of the Order;
5. The Respondent shall submit semi-annual written reports to the Board describing his progress.
6. In the event the Respondent moves permanently or temporarily, the Respondent shall notify the Board of the new address and phone number within three days of the move;
7. Failure to comply with any of the terms of this Agreement, including a positive drug screen will result in immediate suspension of The Respondent's Maryland dental license without either prior notice or an opportunity to be heard, provided that he is afforded an opportunity for a show cause hearing before the Board at the next scheduled meeting of the Board. After a notice and a hearing, and a determination of a violation, the Board may impose any other disciplinary sanctions it deems appropriate, including but not limited to revocation or suspension, said violation being proved by a preponderance of the evidence. A resulting order shall be public in nature with this Agreement incorporated there in;
8. Any violation of the Maryland Dentistry Act or of its regulations shall constitute a violation of this Agreement and may subject The Respondent to disciplinary action by the Board;
9. 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 this Agreement and may subject The Respondent to disciplinary action by the Board; and

10. The Respondent shall be responsible for all costs incurred under this Order.

ORDERED that this is a formal order of the Maryland Board of Dental Examiners and as such is a public document pursuant to the Md. Code Ann., State Gov't, § 10-617(h).

6-6-12

Date

T. Earl Flanagan, Jr. D.D.S.

T. Earl Flanagan, Jr., D.D.S.

President, Maryland Board of Dental Examiners

CONSENT OF JAMES MANWARING, D.M.D.

I, **JAMES MANWARING, D.M.D., LICENSE NUMBER: 6645**, by affixing my signature hereto, acknowledge that:

1. I have had the opportunity to consult with counsel, Pamela Diedrich, Esq. before signing this document.
2. I am aware that I was entitled to a formal evidentiary hearing before the Board, pursuant to Md. Health Occ. Code Ann. § 4-318 (2009 Repl. Vol. and 2011 Supp.) and Md. State Govt. Code Ann. §§ 10-201 *et seq.* (2009 Repl. Vol. and 2011 Supp.).
3. I acknowledge the validity of this Consent Order entered into after a formal evidentiary hearing in which I 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, and agree to abide by the terms and conditions set forth herein. I waive any right to contest the Findings of Fact and Conclusions of Law.
5. I acknowledge that by failing to abide by the conditions set forth in this Consent Order, and, following proper procedures, I may be subject to disciplinary action, which may include reprimand, suspension or revocation of my license to practice as a dental hygienist 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.

X 05/30/12
Date

X James R. Manwaring
James Manwaring, D.M.D.

Pamela D. Diedrich
Review and approved by:
Pamela Diedrich, Esq.

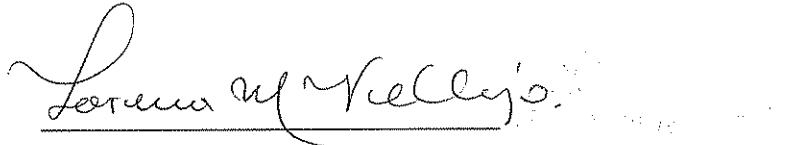
NOTARY

STATE OF MARYLAND

CITY/COUNTY OF Montgomery:

I HEREBY CERTIFY that on this 30 day of May, 2012 before me a Notary Public of the foregoing State of Maryland and the City/County aforesaid, personally appeared James Manwaring, D.M.D., License Number 6645, and made oath in due form of law that signing the foregoing Consent Order was her voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.



Notary Public

LORENA M. VALLEJO
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires: ~~Commission Expires December 15, 2013~~