

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF DENTISTRY

PROTHONOTARY

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Department of State

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

File No.: 18-46-01076

vs.

Ilya Babiner, D.D.S.,
d/b/a General Dentistry Number One, P.C.,
Respondent

Docket No: 0617 -46-18

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and Ilya Babiner, D.D.S. ("Respondent") stipulate as follows in settlement of the above-captioned case.

APPLICABLE LAW

1. This matter is before the State Board of Dentistry ("Board") pursuant to the Dental Law, Act of May 1, 1933, P.L. 216, No. 76, ("Act"), *as amended*, 63 P.S. §§ 120-130dd; and/or the Act of July 2, 1993, P.L. 345, No. 48 ("ACT 48"), *as amended*, 63 P.S. §§ 2201-2207.

LICENSURE STATUS

2. At all relevant and material times, Respondent held the following license to practice as a dentist in the Commonwealth of Pennsylvania: license no. DS031068L, which was originally issued on September 13, 1999, and which is currently set to expire on March 31, 2019.

3. At all relevant and material times, Respondent held the following authorization to perform radiological procedures in the Commonwealth of Pennsylvania: XD015601L, which was originally issued on January 20, 1995 and has no expiration date.

STIPULATED FACTS

4. The Respondent admits that the following allegations are true:
 - a. Absent further Board action, Respondent's license may be continually reactivated, renewed, or reinstated upon the filing of the appropriate documentation and payment of the necessary fees.
 - b. Respondent's last known address, as on file with the Board is: 703 Bridge View Road, Langhorne, PA 19053.
 - c. Respondent owned and operated a dental office, General Dentistry Number One, P.C., 332 Bustleton Pike, Rear Suite, Feasterville, PA 19053.
 - d. Respondent did not have a fictitious name permit to operate under the fictitious name General Dentistry Number One, P.C.
 - e. Between June 1, 2014 and May 31, 2016, Respondent knowingly or intentionally caused false or fraudulent claims for compensation to be submitted for services under Medical Assistance for which Respondent and/or General Dentistry Number One, P.C., were not entitled.
 - f. Between June 1, 2014 and May 31, 2016, Respondent knowingly made false entries in, or alteration of, records, documents or things belonging to, or received or kept by the government for information or record, or required by law to be kept by others for information of the government; knowing it to be false and with intent that it be taken as a genuine part of information or records.
 - g. On or about January 31, 2018, a Criminal Complaint and Affidavit of Probable Cause were filed before District Justice Sonya M. McKnight, Harrisburg, Pennsylvania, charging Respondent with the following:

(1) Five counts of Provider Prohibited Acts (False/Fraudulent Medical Assistance Claim, Submitting Claims for Services Not Rendered to Patients, Submitting Claims with False Information, Submitting Claims for Service Not Rendered by a Provider, and Unentitled Reimbursement), felonies of the third degree in violation of the Human Services Code, 62 P.S. §§1407 (a)(1), (4), (7), (9) and (12);

(2) One count of Theft By Deception, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §3922 (a)(1);

(3) Twenty-four counts of Criminal Use of a Communication Facility, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §7512 (a);

(4) Twenty-four counts of Tampering with Public Records or Information, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §4911 (a)(1);

(5) and one count of Conspiracy-Theft by Deception- False Impression, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §903.

h. On or about February 20, 2018, an Information was filed in the Court of Common Pleas, Dauphin County, charging Respondent with the following:

(1) Five counts of Provider Prohibited Acts (False/Fraudulent Medical Assistance Claim, Submitting Claims for Services Not Rendered to Patients, Submitting Claims with False Information, Submitting Claims for Service Not Rendered by a Provider, and Unentitled Reimbursement), felonies of the third degree in violation of the Human Services Code, 62 P.S. §§1407 (a)(1), (4), (7), (9) and (12);

(2) One count of Theft By Deception, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §3922 (a)(1);

(3) Twenty-four counts of Criminal Use of a Communication Facility, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §7512 (a);

(4) Twenty-four counts of Tampering with Public Records or Information, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §4911 (a)(1);

(5) and one count of Conspiracy-Theft by Deception- False Impression, a felony of the third degree in

violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A.

§903.

i. On or about January 31, 2018, a Criminal Complaint and Affidavit of Probable Cause were filed before District Justice Sonya M. McKnight, Harrisburg, Pennsylvania, charging General Dentistry Number One, P.C. with the following:

(1) Five counts of Provider Prohibited Acts (False/Fraudulent Medical Assistance Claims, Submitting Claims for Services Not Rendered to Patients, Submitting Claims with False Information, Submitting Claims for Service Not Rendered by a Provider, and Unentitled Reimbursement), felonies of the third degree in violation of the Human Services Code, 62 P.S. §§1407 (a)(1), (4), (7), (9) and (12);

(2) and twenty-five counts of Theft By Deception-False Impression, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §3922 (a)(1);

j. On or about February 20, 2018, an Information was filed in the Court of Common Pleas, Dauphin County, charging Respondent with the following:

(1) Five counts of Provider Prohibited Acts (False/Fraudulent Medical Assistance Claims, Submitting Claims for Services Not Rendered to Patients, Submitting Claims with False Information, Submitting Claims for Service Not Rendered by a Provider, and Unentitled

Reimbursement), felonies of the third degree in violation of the Human Services Code, 62 P.S. §§1407 (a)(1), (4), (7), (9) and (12);

(2) One count of Theft By Deception-False Impression, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §3922 (a)(1);

(3) and one count of Conspiracy-Theft by Deception- False Impression, a felony of the third degree in violation of the Pennsylvania Crimes Code, 18 Pa. C.S.A. §903.

k. True and correct copies of the records of the Court of Common Pleas, Dauphin County, Pennsylvania, Docket Numbers CP-22-CR-658-2018, *Commonwealth of Pennsylvania vs. General Dentistry Number One, P.C.*, and CP-22-CR-659-2018, *Commonwealth of Pennsylvania vs. Ilya Babiner*, are attached collectively and incorporated as **Exhibit A**.

l. Respondent has agreed to plead guilty to one count of Medicaid Fraud (felony of the third degree) and one count of Tampering with Public Records (felony of the third degree).

m. Respondent has agreed to accept/complete the following sentencing recommendation from the Pennsylvania Office of Attorney General:

(1) A sentence of seven years of state probation;

(2) Relinquish his license to practice dentistry;

(3) Pay restitution totaling \$1.5 million will be paid
by Respondent at the time of sentencing;

(4) Pay all court costs and fines imposed;

(5) Complete 500 hours of community service;

(6) Abide by any other standard conditions required
by the Pennsylvania Department of Probation and Parole

n. Respondent agrees, understands and acknowledges that by agreeing to the revocation of his dental license and authorization to perform radiological procedures that Respondent is forfeiting, relinquishing, and surrendering any and all rights, title and privilege to practice dentistry and/or practice as a dental assistant in the Commonwealth of Pennsylvania and all property rights in retaining, renewing and/or reactivating Respondent's license and authorization.

o. Respondent agrees, understands and acknowledges that the Board's acceptance of this Agreement constitutes a reportable disciplinary action of the Board with reporting to entities including, but not limited to, the National Practitioner Data Bank, the licensing authority of any state or jurisdiction, governmental entities including federal and state agencies, and any private or public health care facility.

p. Respondent is aware of and understands Respondent's right to have formal charges filed against Respondent and Respondent's right to an administrative hearing in this matter, and the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a

violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision. Nonetheless, Respondent knowingly and voluntarily waives these rights.

ALLEGED VIOLATIONS

5. The Commonwealth alleges that the Board is authorized to suspend, revoke, or otherwise restrict Respondent's license under Section 4.1(a) of the Act, 63 P.S. § 123.1; and/or impose a civil penalty upon Respondent under Section 10.1 of the Act, 63 P.S. § 129.1, and /or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at Section 4.1 (a)(8), 63 P.S. §123.1 (a)(8), in that Respondent engaged in unprofessional conduct.

PROPOSED ORDER

6. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

a. The Board finds that it is authorized to suspend, revoke, or otherwise restrict Respondent's license under Section 4.1(a) of the Act, 63 P.S. § 123.1; and/or impose a civil penalty upon Respondent under Section 10.1 of the Act, 63 P.S. § 129.1, and/or Section 5(b)(4) of ACT 48, 63 P.S. § 2205(b)(4); and/or impose the costs of investigation upon Respondent under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated the Act at Section 4.1 (a)(8), 63 P.S. §123.1 (a)(8), in that Respondent engaged in unprofessional conduct.

REVOCAATION

b. Respondent's license to practice as a dentist in the Commonwealth of Pennsylvania and Respondent's authorization to conduct radiological procedures, along with any other licenses, registrations, certificates, approvals, authorizations, or permits (hereinafter referred to collectively as "authorizations to practice the profession") issued by the Board to Respondent at the time this Consent Agreement is adopted by the Board, are hereby **REVOKED**.

c. Upon the effective date of this Consent Agreement, Respondent shall cease and desist practicing as a dentist in the Commonwealth, and shall not indicate any ability to practice the profession in the Commonwealth in any manner whatsoever while Respondent's authorizations to practice the profession are revoked.

d. Respondent waives his right to have formal charges filed in this matter and his right to an administrative hearing in this matter, as well as the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

e. Respondent acknowledges that pursuant to the provisions of the Act, unless ordered to do so by an appropriate court of competent jurisdiction, the Board may not entertain an application for reinstatement of his license to practice as a dentist in the Commonwealth of Pennsylvania until at least five (5) years have elapsed since the revocation of Respondent's license.

f. Unless otherwise specified in this Consent Agreement, Respondent agrees to not apply for the issuance or reissuance/reinstatement of any other authorizations to practice the profession issued by the Board until at least five (5) years have elapsed after the revocation of Respondent's authorizations to practice the profession.

g. After the expiration of at least five (5) years from the date Respondent's authorizations to practice the profession were revoked, Respondent may apply for the reinstatement of his authorizations to practice the profession.

h. If Respondent applies for the reinstatement of his authorizations to practice the profession reinstated, Respondent shall make such application for reinstatement in writing. If the Board has developed an application form for reinstatement, Respondent shall utilize the Board's form.

i. Respondent acknowledges that the statutory and/or regulatory requirements to be issued a license to practice as a dentist may change between the date of the Board's Order and the time Respondent submits an application for reinstatement. Respondent acknowledges that prior to having his license to practice as a dentist reinstated, he may be required to show compliance with all initial licensing requirements in effect at the time of Respondent's application for reinstatement, along with any additional statutory requirements for reinstatement of a revoked authorization to practice the profession. Examples of requirements which may be applicable for reinstatement of a revoked authorization to practice the profession include, but are not limited to:

(1) Demonstrating at a formal or informal hearing that Respondent has the requisite honesty, integrity, ability, competency and/or sobriety to again be entrusted with an authorization to practice the profession,

(2) Completing additional initial education to meet the then-current minimum standards for an authorization to practice the profession,

(3) Gaining additional supervised experience hours to meet the then-current minimum standards for an authorization to practice the profession, and/or

(4) Taking and passing the applicable examination.

j. In exchange for the Commonwealth not seeking, and the Board not imposing the maximum allowable civil penalties in addition to the revocation of Respondent's authorizations to practice the profession, Respondent agrees that while his authorizations to practice the profession are revoked, Respondent shall not:

(1) work as an unlicensed assistant to any person holding an authorization from the Board to practice the profession,

(2) possess a controlling interest in any organization requiring an authorization from the Board to practice the profession.

(3) possess a controlling interest in any organization whose employees require an authorization from the Board to practice the profession when conducting the business of the organization.

k. For purposes of this paragraph, the term 'controlling interest' shall include being an owner, officer, manager, director, partner, member, or associate, as well as owning any quantity of outstanding corporate stock sufficient to control or direct the actions of the firm.

l. Respondent shall, within ten (10) days of adoption of this Consent Agreement and Order, surrender Respondent's wall certificate, biennial renewal certificate and wallet card (or notarized affidavit of their loss or destruction) by mailing them to:

Paul J. Jarabeck
Senior Prosecutor in Charge
Bureau of Professional and Occupational Affairs
P.O. Box 69521
Harrisburg, PA 17106-9521

or by delivering them in person at:

Bureau of Professional and Occupational Affairs
One Penn Center
2601 North 3rd St.
Harrisburg, Pennsylvania

CEASE AND DESIST REGARDING CORPORATION

m. Respondent agrees to **CEASE AND DESIST** from the operation of, and any affiliation with, General Dentistry Number One, P.C.

ADDITIONAL TERMS AND CONDITIONS

n. This Order constitutes disciplinary action by the Board and shall be reported to other licensing authorities and any applicable national licensing databank as a disciplinary action by the Board.

o. This case shall be deemed settled and discontinued upon the Board issuing an Order adopting this Consent Agreement.

ADMISSIBILITY OF CONSENT AGREEMENT IN FUTURE PROCEEDINGS

7. Respondent agrees that if Respondent is charged with a violation of an Act enforced by this Board in the future, this Consent Agreement and Order shall be admitted into evidence without objection in that proceeding.

ACKNOWLEDGMENT OF NOTICE AND WAIVER OF HEARING

8. Respondent waives the filing of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and knowingly and voluntarily waives the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

ACKNOWLEDGMENT OF RIGHT TO ATTORNEY

9. Respondent acknowledges that he is aware that he has the right to consult with, and/or be represented by, private legal counsel of Respondent's choosing and at Respondent's expense when reviewing, considering and accepting the terms of this Consent Agreement. Respondent had an opportunity to consult with and has been advised by Attorney Mark B. Sheppard, Esquire, regarding this Consent Agreement.

WAIVER OF CLAIM OF COMMINGLING AND OTHER CONSTITUTIONAL CLAIMS

10. Respondent expressly waives any constitutional rights and issues, such as commingling of prosecutorial and adjudicative functions by the Board or its counsel, which may arise or have arisen during the negotiation, preparation and/or presentation of this Consent Agreement. Respondent specifically agrees that if the Board rejects this agreement, it may assume that the facts and averments as alleged in this Consent Agreement are true and correct for the limited purpose of recommending a sanction, based on those assumed facts, that would be acceptable to the Board before hearing the case. In the event that the Board does assume the facts and averments as alleged in this Consent Agreement are true for purposes of making a recommendation as to an acceptable sanction, such action shall not constitute commingling of prosecutorial and adjudicative functions by the Board or its counsel, and the Respondent expressly waives any constitutional rights and issues related to alleged commingling, bias, or violation of due process rights to have an unbiased and impartial adjudicator in any subsequent hearing. If a hearing is subsequently held, neither this Consent Agreement nor the proposed terms of settlement may be admitted into evidence and any facts, averments, and allegations contained in the Consent Agreement must be proven at hearing unless otherwise separately stipulated. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

NO MODIFICATION OF ORDER

11. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

AGREEMENT NOT BINDING ON OTHER PARTIES

12. The Office of General Counsel has approved this Consent Agreement as to form and legality; however, this Consent Agreement shall have no legal effect unless and until the Board issues the stipulated Order.

EFFECT OF BOARD'S REJECTION OF CONSENT AGREEMENT

13. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

ENTIRE AGREEMENT

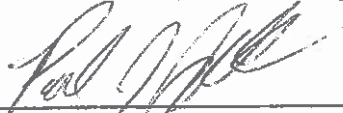
14. This agreement contains the whole agreement between the participants; provided however, that the captions printed in the various provisions of this agreement are for ease of reading only and are not to be interpreted as forming any part of this agreement. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

AGREEMENT DOES NOT PREVENT ADDITIONAL DISCIPLINE BASED ON OTHER COMPLAINTS

15. Nothing in this Order shall preclude the Prosecution Division for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement.

VERIFICATION OF FACTS AND STATEMENTS

16. Respondent verifies that the facts and statements set forth in this Consent Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Consent Agreement are made subject to the criminal penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.



Paul J. Jarabeck
Senior Prosecutor in Charge

DATED:

Babiner

Ilya Babiner, D.D.S.
Respondent

DATED: 3/6/18



Mark B. Sheppard, Esquire
Attorney for Respondent

DATED: 3/6/18