

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

Commonwealth of Pennsylvania  
Bureau of Professional and  
Occupational Affairs

vs.

Anthony Farole, D.M.D.  
Respondent

File No.: 14-46-00954

Docket No: 0455-46-15

Department of State

2015 JUL 15 AM 9: 09

PROTHONOTARY

CONSENT AGREEMENT AND ORDER

PARTIES

The Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs ("Commonwealth") and Anthony Farole, D.M.D. ("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"), 63 P.S. §§ 2201-2207, *as amended*.

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. DS022779L, which was originally issued on May 21, 1982, and which is currently set to expire on March 31, 2017.

3. At all relevant and material times, Respondent held an unrestricted anesthesia permit in the Commonwealth of Pennsylvania: permit no. DA022779A, which was originally issued on November 13, 1998, and is current through March 31, 2017.

STIPULATED FACTS

4. The Respondent admits that the following allegations are true:
  - a. 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 office address, as on file with the Board is:  
191 Presidential Blvd, Ste W2, Bala Cynwyd, PA 19004.
  - c. Respondent is a solo practitioner in Bala Cynwyd, PA.
  - d. Respondent is an oral and maxillofacial surgeon.
  - e. From April 1, 2013 through July 29, 2014, Respondent's unrestricted anesthesia permit number DA022779A was lapsed, expired and not current with the Board.
  - f. On or about March 27, 2013, Respondent issued a check made payable to the Commonwealth of Pennsylvania to renew his unrestricted anesthesia permit.
  - g. Respondent's check was returned because some of his continuing education credits were not accepted.
  - h. Respondent's office was also required to pass an onsite anesthesia evaluation before his anesthesia permit could be renewed.
  - i. Respondent was unable to have someone perform the onsite anesthesia evaluation before the time that Respondent's unrestricted anesthesia permit expired.

j. During the period from April 1, 2013 through July 29, 2014, Respondent administered deep sedation/general anesthesia under code D9220 approximately two hundred thirty-two (232) times.

k. During the period from April 1, 2013 through July 29, 2014, Respondent administered deep sedation/general anesthesia under code D9221 approximately one hundred forty-two (142) times.

#### **ALLEGED VIOLATIONS**

5. The Commonwealth alleges that the Board is authorized to suspend or revoke, or otherwise restrict Respondent's license under Section 4.1(a) of the Act, 63 P.S. § 123.1; or impose a civil penalty 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 under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated:

a. Section 4.1(a)(6) of the Act, 63 P.S. § 123.1(a)(6), by and through Respondent's violation of 49 Pa. Code. § 33.332, in that Respondent violated a lawful regulation promulgated by the board by failing to possess a current permit issued by the board before administering, or supervising the administration of, general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia in a dental office; and

b. Section 4.1(a)(8) of the Act, 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 it is authorized to suspend or revoke, or otherwise restrict Respondent's license under Section 4.1(a) of the Act, 63 P.S. § 123.1; or impose a civil penalty 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 under Section 5(b)(5) of ACT 48, 63 P.S. § 2205(b)(5), because Respondent violated:

(1) Section 4.1(a)(6) of the Act, 63 P.S. § 123.1(a)(6), by and through Respondent's violation of 49 Pa. Code. § 33.332, in that Respondent violated a lawful regulation promulgated by the board by failing to possess a current permit issued by the board before administering, or supervising the administration of, general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia in a dental office; and

(2) Section 4.1(a)(8) of the Act, 63 P.S. § 123.1(a)(8), in that Respondent engaged in unprofessional conduct.

**PUBLIC REPRIMAND**

b. A **PUBLIC REPRIMAND** shall be placed on Respondent's permanent disciplinary record with the Board.

**CIVIL PENALTY**

c. A **CIVIL PENALTY** of ten thousand dollars (\$10,000.00) is levied upon Respondent. Respondent shall tender the full sum of ten thousand dollars (\$10,000.00) with this executed Consent Agreement and shall be paid by certified

check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.). Payment shall be made payable to the "Commonwealth of Pennsylvania," and shall be valid for a period of at least one hundred eighty (180) days. Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check.

#### **COSTS OF INVESTIGATION**

d. An assessment for the **COSTS OF INVESTIGATION** of five hundred seventy-two dollars and eighty cents (\$572.80) is levied upon Respondent. Respondent shall tender the full sum of five hundred seventy-two dollars and eighty cents (\$572.80) with this executed Consent Agreement and shall be paid by certified check, cashier's check, attorney's check, or money order issued by a usual, customary, and reputable issuer (e.g. U.S. Postal Money Order, Western Union Money Order, etc.). Payment shall be valid for a period of at least 180 days and shall be made payable to the "Commonwealth of Pennsylvania." Respondent agrees that payment shall only be made by one of the methods indicated above and shall not be made by uncertified personal or corporate check. Payment of the costs of investigation and payment of the civil penalty may be combined into a single payment instrument.

#### **SUSPENSION**

e. Respondent's license to practice as a dentist in the Commonwealth of Pennsylvania, 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 **SUSPENDED** for a period of one (1) year.

f. Respondent shall, within ten (10) days of the beginning of any period of active suspension, surrender his wall certificate, biennial renewal certificate and wallet card (or notarized affidavit of their loss or destruction) by mailing them to:

Lindsay D. Szymanski  
Prosecuting Attorney  
Bureau of Professional and Occupational Affairs  
P.O. Box 2649  
Harrisburg, PA 17105-2649

or by delivering them in person at:

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

g. During any period of active suspension, Respondent shall cease and desist from practicing as a dentist, and shall not represent himself as a Board licensee in any matter during any period of active suspension.

h. Respondent is advised that if the period of active suspension continues past the end of the current renewal period, prior to Respondent's license being reinstated, Respondent will be required to comply with the requirements for renewal of his license in effect at that time.

#### **PROBATION**

i. The suspension of Respondent's authorizations to practice the profession shall be immediately **STAYED IN FAVOR OF PROBATION** subject to the following terms and conditions:

(1) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice as a dentist in this Commonwealth or any other state or jurisdiction in which Respondent holds an authorization to practice the profession. Provided, however, summary traffic violations shall not constitute a violation of this Order;

(2) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Bureau of Enforcement and Investigation ("BEI") and its agents and employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order, including Respondent causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Bureau, BEI or any of its agents or employees;

(3) Respondent's failure to fully cooperate with and successfully comply with the terms and conditions of this probation shall be deemed a violation of this Consent Agreement and Order;

(4) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order;

(5) Respondent shall notify BEI, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any other legal action (civil or administrative) pertaining to the Respondent's practice as a dentist, and/or the initiation, action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction.

(6) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the name(s) and address(es) of the place(s) at which Respondent will practice as a dentist and a description of Respondent's duties and responsibilities at such places of practice;

(7) Respondent shall notify BEI by telephone within seventy-two (72) hours, and shall notify both BEI and the Board in writing within ten (10) days of any change in the Respondent's home address and/or telephone number.



(8) If Respondent will be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days, Respondent must notify BEI, in writing, of Respondent's absence and must provide a list of the jurisdiction(s) in which Respondent intends to stay more than forty-eight (48) hours. Respondent consents to the release by the Bureau or BEI of any information or data produced as a result of this Agreement or probation to the proper licensing authority of any jurisdiction in which Respondent intends to remain for greater than forty-eight (48) hours.

(9) During any period of Active Suspension or Ordered Probation, Respondent shall supply any current professional employer with a copy of this Consent Agreement and Order.

(10) Within fifteen (15) days of the date of this Order, and within (15) days of the date of any change in professional employer Respondent shall have his professional employer submit to BEI written verification that the professional employer *a)* has received a copy of this Consent Agreement and Order, *b)* understands the conditions of this probation, and *c)* agrees to report any suspected violation by Respondent of this probation. If

Respondent is or becomes self-employed, Respondent shall submit a statement to that effect to BEI and shall produce any requisite documentation to BEI to substantiate such a statement,

(11) Respondent consents to the release by the Bureau or BEI of any information or data produced as a result of this probation to any professional employer or prospective professional employer,

(12) Unless otherwise directed, Respondent, his professional employer, and any other person needing or required to make reports under this Order concerning Respondent's practice and contact information shall cause those reports, data or other information to be filed with BEI at:

Probation Compliance Officer Bureau of Enforcement and Investigation Box 2649 Harrisburg, PA 17105-2649
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**VIOLATION(S) OF PROBATION**

j. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the entire period of suspension of Respondent's authorizations to practice the profession in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which alleges that Respondent has violated any terms or conditions of this Consent Agreement and Order other than failure to complete the Ordered remedial education in a timely manner;

(2) Upon a probable cause determination that Respondent has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order vacating the stay of the suspension in this matter, terminating the period of probation and activating the entire period of suspension of Respondent's authorizations to practice the profession, without credit for any period of suspension stayed in favor of probation;

(3) Notification of the Board's Preliminary Order shall be mailed to Respondent within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board. If service by mail is unsuccessful, the Commonwealth is authorized to attempt service by personal service and/or publication of legal notice in a

newspaper of general circulation in the county of Respondent's last known address.

(4) Within twenty (20) days of mailing of the notification of the Board's action, Respondent may answer the Commonwealth's Petition and request that a formal hearing be convened concerning Respondent's alleged violation of probation, in which Respondent may seek relief from the Preliminary Order activating the suspension.

**The answer shall be set forth in numbered paragraphs corresponding to the numbered paragraphs of the Petition. Respondent shall admit or deny each of the allegations set forth in the paragraphs in the Petition.**

Respondent shall mail the original answer and request for hearing, and all other pleadings to

Office of Prothonotary Bureau of Professional and Occupational Affairs 2601 N. 3rd Street P.O. Box 2649 Harrisburg, PA 17105-2649
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(5) Respondent shall send a copy of the answer, request for hearing, and all subsequent filings in the matter to the prosecuting attorney for the Commonwealth;

(6) If a request for a formal hearing is received from Respondent, the Board shall convene a formal hearing

within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing;

(7) If Respondent files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order activating the suspension shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing;

(8) The facts and averments in paragraphs 3 & 4 of this Consent Agreement and Order shall be deemed admitted and uncontested for purposes of the hearing;

(9) If the Board after such hearing makes a determination adverse to Respondent, the Board will issue a Final Order activating the suspension of Respondent's license and imposing any additional disciplinary measures it deems appropriate;

(10) If a request for a formal hearing is not received from Respondent within the prescribed twenty (20) day period, the Board's Preliminary Order shall become a Final Order twenty (20) days after the date of its mailing;

(11) If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and

conditions pertaining to the active practice of the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent;

k. Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

l. 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.

m. 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 acknowledges receipt 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 Attorney Gary V. Gittleman, 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;




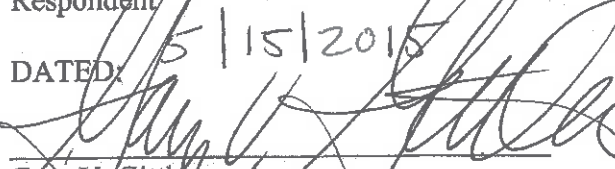
VERIFICATION OF FACTS AND STATEMENTS

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.

  
Lindsay Dearing Szymanski,  
Prosecuting Attorney

DATED:

  
Anthony Farole, D.M.D.  
Respondent

DATED: 5/15/2015  


Gary V. Gittleman  
Attorney for Respondent

DATED: 5/20/2015

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

Commonwealth of Pennsylvania  
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vs.

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**ORDER**

*AND NOW*, this 10<sup>th</sup> day of *July* 2015, the STATE BOARD OF DENTISTRY ("Board") adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 6, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BUREAU OF PROFESSIONAL AND  
OCCUPATIONAL AFFAIRS

  
\_\_\_\_\_  
Ian J. Harlow  
Commissioner

For the Commonwealth:

For the Respondent:

Date of mailing:

BY ORDER:  
STATE BOARD OF DENTISTRY

  
\_\_\_\_\_  
John V. Erhard, III, D.D.S.  
Chairman

Lindsay Dearing Szymanski, Esquire  
2601 North Third Street  
P.O. Box 69521  
Harrisburg, PA 17106-9521

Gary V. Gittleman, Esquire  
Naulty, Scaricamazza & McDevitt, LLC  
One Penn Center, Suite 750  
1617 JFK Boulevard  
Philadelphia, PA 19103

*July 16, 2015*