

**STATE OF VERMONT
BOARD OF DENTAL EXAMINERS**

In re: James L. Culver

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Docket No. DE 21-0205

SUPPLEMENTAL ORDER

On July 13, 2005 parties submitted to the Board a Stipulation in which Dr. Culver admitted unprofessional conduct. The Stipulation had been originally presented to the Board at its meeting on June 8, 2005. The Board deferred a decision because it wanted more information about the case and its options.

The Stipulation contained an agreement which included several conditions to be imposed on Dr. Culver's license. Section 17 of the Stipulation indicated that the parties would submit separate proposed orders, one from the Prosecution, one from the Respondent. The proposed orders were identical except for one provision: the proposed order submitted by the State contained a suspension of Dr. Culver's license effective February 15, 2005 through the close of business on June 8, 2005.

At the July 13, 2005 hearing the Board took testimony from witnesses and listened to the arguments of counsel. We note that this case came to the Board on a stipulation and agreement on all but one term. It did not come after a contested hearing on the merits of the unprofessional conduct, or with no agreement. If either were the case, the Board could have imposed different or additional terms or periods of suspension. The options available to the Board in this case were circumscribed by the parties' proposals. The Board was limited to accepting them or rejecting them in their entirety. The evidence presented by the parties was limited to some extent by the format of their agreement. The Board accepted the Stipulation and agreed upon license conditions because they were in the range of sanctions which would be appropriate for this case.

The Board adopted the order proposed by the State. Dr. Culver's license was ordered suspended retroactively from February 15, 2005 through June 8, 2005.

The Board agreed that the parties could submit, if they wished, requested Findings of Fact within 10 days, i.e., July 23, 2005. The State would have 10 days to respond. The Respondent would file requested findings only if he elected to appeal the suspension order. The parties agreed and stipulated that no other part of the Board's order would be subject to appeal. By letter dated July 19, 2005 Dr. Culver, through counsel, informed the Board that he would not pursue an appeal.

Despite the lack of an appeal, the Board feels an obligation to provide a rationale for the suspension it imposed. For the suspension in this case to be more than a hollow gesture, practitioners and the public should know why a suspension is appropriate. The rationale for the

suspension is explained below.

The Board is charged by the legislature with protecting the public health, safety, and welfare. It is authorized to hold disciplinary hearings. It may find unprofessional conduct whether or not specific injury to a client, patient, or customer has occurred. The statutes permit action after conduct which creates a risk of harm. When unprofessional conduct is found, the Board possesses broad discretion to fashion appropriate sanctions. Among available sanctions is license suspension.

A license suspension affects not only the respondent. It conveys messages to the public and to other practitioners. A suspension tells the public that the Board considers certain unprofessional conduct to be of such gravity that to impose a lesser sanction diminishes its seriousness. As such, a suspension informs other practitioners of what can happen if they engage in similar conduct. Another licensee who might be tempted to engage in similar conduct will make a connection between that conduct and its consequences. The suspension protects the public because other licensees learn that similar conduct can carry an unacceptable professional price. While a suspension may appear punitive to the individual involved, even after the fact, the very fact of a suspension makes similar conduct by others less likely. A license suspension is therefore a general deterrent.

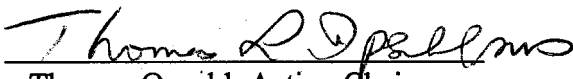
A suspension serves also as a specific deterrent to the Respondent. He knows that any future similar conduct can result in a more serious sanction against his license. In this sense, a suspension serves a rehabilitative function. It provides additional resolve to an individual enabling him to better resist the temptation of addictive substances in the future.

The Board notes that had this case been presented to it in February when Dr. Culver's drug abuse became known, a summary suspension would have been appropriate to protect the public. Dr. Culver had admitted to an OPR investigator and the DEA that he had ordered over 5,000 Vicodin pills in the preceding year, had been self-administering them since 2000. As of February 2005 he admitted to a daily Vicodin consumption of approximately 5-10 pills.

This case reached the Board after Dr. Culver took himself out of practice to begin his recovery. The Board weighed how Dr. Culver's drug abuse was discovered and brought to light. It considered the amount of drugs he had taken over the years, and the risks that drug abuse by a practicing dentist can pose. The Board weighed Dr. Culver's efforts at rehabilitation. We concluded that to impose no suspension in this case would be imprudent.

Based on the facts of this case, we believe the suspension of Dr. Culver's license, even retroactively, forwards the policy considerations discussed above.

Vermont Board of Dental Examiners

By: 
Thomas Opsahl, Acting Chair

Dated: 8/10/05

OFFICE OF PROFESSIONAL REGULATION

DATE OF ENTRY: 8/12/05

STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF DENTAL EXAMINERS

IN RE:)
JAMES L. CULVER, D.D.S.)
License No: 016-0000685)

Docket No. DE21-0205

ORDER

NOW COMES the Board of Dental Examiners in the above-entitled matter and hereby issues the following Order based upon the facts and circumstances set forth in the Stipulation submitted herewith:

A. Respondent's actions described in the Stipulation demonstrate grounds for discipline because Respondent committed unprofessional conduct pursuant to:

1. 3 V.S.A. §129(a)(3) (Failure to comply with the provisions of state statutes or rules governing the practice of the profession); and

2. 26 V.S.A. §809(2) (Addiction to narcotics, habitual drunkenness or rendering professional services to a patient if the dentist or hygienist is intoxicated or under the influence of drugs).

B. The Board of Dental Examiners hereby suspends the Respondent's license effective February 15, 2005 through the close of business on June 8, 2005. Furthermore, Respondent's license is hereby conditioned as follows:

1. Respondent must, within 20 days for the entry of this Order, furnish the Board with proof that he has successfully completed the in-house portion of his treatment at the Talbot Recovery Campus located in Atlanta, Georgia.

2. Respondent shall successfully participate in and complete, to the satisfaction of the Board, all counseling or treatment as recommended by Talbot or by any counselor or treatment provider to whom he is referred by Talbot.

3. Respondent shall take any and all drug screenings required by his treatment providers. Copies of all such screenings shall be provided to the Board within 30 days of the date they are completed.

4. Respondent may not take any prescription medications without a valid prescription.

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Office of
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5. Respondent shall inform the Board and his treatment providers of all prescriptions for narcotics, painkillers and/or Schedule II drugs.

6. Respondent shall not be convicted of any crime involving the use or possession of any regulated substance or alcohol.

7. Respondent shall provide the Board with all releases needed for the Board to verify attendance and satisfactory participation in, and completion of, all counseling and treatment as required by this Stipulation.

8. Respondent shall provide to the Board copies of all correspondence involving the Federal Drug Enforcement Agency (DEA) from February 2005 to the present within 30 days, and copies of all other correspondence within one week of receipt of transmission.

9. Respondent shall abide by any and all agreements with the DEA.

10. Respondent shall supply to the Board any other information it reasonably deems necessary to supervision of his license for the period his license is conditioned pursuant to this Stipulation. This section does not entitle the Board to counseling and treatment records beyond what is needed to verify attendance and satisfactory participation.

11. Respondent's license shall be conditioned for five years from the date of entry of this Order.

12. The Board may, if the Respondent is not being randomly screened pursuant to treatment, request, at reasonable intervals, that he be screened for drug use. He shall have the screening conducted within 48 hours of the request.

C. The Stipulation and Order shall be a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

D. The Stipulation and Order will remain part of the Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

E. All references to the Board include the Board's designee.

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APPROVED AND SO ORDERED:

VERMONT BOARD OF
DENTAL EXAMINERS

7/13/

By: Thomas L. Orell
Chairperson
Acting chairperson

Date of Entry: 7/15/05

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**STATE OF VERMONT
SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF DENTAL EXAMINERS**

IN RE:)
JAMES L. CULVER, D.D.S.)
License No: 016-0000685)

Docket No. DE21-0205

STIPULATION

NOW COMES the State of Vermont, by and through State Prosecuting Attorney Robert H. Backus, and Respondent James L. Culver, D.D.S., in person and through his attorney, Gary D. McQuesten, Esquire, who stipulate and agree as follows:

BOARD AUTHORITY

1. The Board of Dental Examiners ("Board") has jurisdiction to investigate and adjudicate complaints of unprofessional conduct against dentists pursuant to 3 V.S.A. §129 and 129a; 26 V.S.A. §767 and 809; the Administrative Rules of the Board of Dental Examiners; and the Rules of the Office of Professional Regulation.

FACTS

2. The Respondent, James L. Culver, is licensed in Vermont as a dentist under license number 016-0000685.

3. The Respondent's license was originally issued on May 1, 1980 and the Respondent's license is currently set to expire on September 30, 2005.

4. At all times relevant, the Respondent was employed as a dentist and maintained a dental office at 417 U.S. Route 302 in Barre, Vermont.

5. From October 2003 through February 2005 the Respondent ordered 6,500 Vicodin 5/500mg tablets and 1,200 Vicodin 10/350mg tablets from the Henry Schein Company. The Henry Schein Company, located in Melville, New York, is a distributor of dental, medical and veterinary health care products, services and supplies.

6. By way of information, Vicodin is a Schedule III opiate, also known as Hydrocodone Bitartrate.

7. On February 15, 2005, the Respondent admitted to State Investigator Amy Carlson and U.S. Drug Enforcement Administration ("DEA") Investigators John Hennessey and Ray Clooney that he had ordered approximately 5,000 Vicodin pills from the Henry Schein Company over the

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past year for his own personal use. The Respondent stated that he had been self-administering Vicodin since 2000 and that he had a daily Vicodin consumption of approximately 5-10 pills.

8. As a result of the DEA investigation, the Respondent voluntarily agreed to relinquish his DEA registration and an incoming shipment from the Henry Schein Company of 1,000 Vicodin 5/500mg tablets and 200 Vicodin 10/350mg tablets was destroyed.

9. In February 2005, the Respondent entered a substance abuse treatment program at the Talbot Recovery Campus in Georgia. Upon information and belief, the Respondent will complete the program in May 2005 and will be returning to Vermont.

10. The acts, omissions and/or circumstances described above constitute grounds for discipline because Respondent violated 3 V.S.A. §129a(a)(3) (Failure to comply with the provisions of state statutes or rules governing the practice of the profession).

UNDERSTANDINGS

11. Respondent understands that the Board of Dental Examiners must review and accept the terms of the Consent Order. If the Board rejects any portion, the entire Stipulation and Consent Order shall be null and void.

12. Respondent has read and reviewed this entire document and agrees that it contains the entire agreement between the parties.

13. Respondent voluntarily enters into this agreement after the opportunity to consult with legal counsel and is not being coerced by anyone into signing this Stipulation and Consent Order.

14. The parties agree that the following are appropriate conditions which may be added to the Respondent's license:

A. Respondent must, within 20 days for the entry of this Order, furnish the Board with proof that he has successfully completed the in-house portion of his treatment at the Talbot Recovery Campus located in Atlanta, Georgia.

B. Respondent shall successfully participate in and complete, to the satisfaction of the Board, all counseling or treatment as recommended by Talbot or by any counselor or treatment provider to whom he is referred by Talbot.

C. Respondent shall take any and all drug screenings required by his treatment providers. Copies of all such screenings shall be provided to the Board within 30 days of the date they are completed.

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D. Respondent may not take any prescription medications without a valid prescription.

E. Respondent shall inform the Board and his treatment providers of all prescriptions for narcotics, painkillers and/or Schedule II drugs.

F. Respondent shall not be convicted of any crime involving the use or possession of any regulated substance or alcohol.

G. Respondent shall provide the Board with all releases needed for the Board to verify attendance and satisfactory participation in, and completion of, all counseling and treatment as required by this Stipulation.

H. Respondent shall provide to the Board copies of all correspondence involving the Federal Drug Enforcement Agency (DEA) from February 2005 to the present within 30 days, and copies of all other correspondence within one week of receipt of transmission.

I. Respondent shall abide by any and all agreements with the DEA.

J. Respondent shall supply to the Board any other information it reasonably deems necessary to supervision of his license for the period his license is conditioned pursuant to this Stipulation. This section does not entitle the Board to counseling and treatment records beyond what is needed to verify attendance and satisfactory participation.

K. Respondent's license shall be conditioned for five years from the date of entry of this Order.

L. The Board may, if the Respondent is not being randomly screened pursuant to treatment, request, at reasonable intervals, that he be screened for drug use. He shall have the screening conducted within 48 hours of the request.

15. The Stipulation shall be a matter of public record and may be reported to other licensing authorities as provided in 3 V.S.A. §129(a).

16. This Stipulation will remain part of the Respondent's licensing file and may be used for purposes of determining sanctions in any future disciplinary matter.

17. The parties are unable to agree as to an appropriate Order and each of the parties hereby submits their own proposed Order for the Board's consideration.

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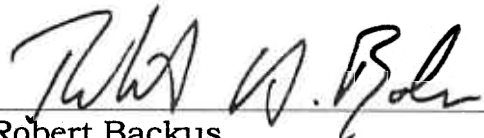
AGREED TO:

STATE OF VERMONT
SECRETARY OF STATE

Date

6/8/05

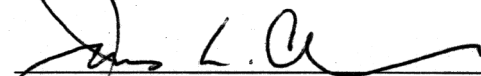
By:


Robert Backus
State Prosecuting Attorney

Date

6/8/05

JAMES L. CULVER
RESPONDENT


James L. Culver

Date

6/8/05


Gary D. McQuesten, Esquire
Attorney for Respondent

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SECRETARY OF STATE
OFFICE OF PROFESSIONAL REGULATION
BOARD OF DENTAL EXAMINERS**

IN RE:)
JAMES L. CULVER, D.D.S.) Docket No: DE 21-0205
License No. 016-0000685)

SPECIFICATION OF CHARGES

Board Authority

1. The Board of Dental Examiners ("Board") has jurisdiction to investigate and adjudicate complaints of unprofessional conduct against dentists pursuant to 3 V.S.A. §§129 and 129a; 26 V.S.A. §§767 and 809; the Administrative Rules of the Board of Dental Examiners; and the Rules of the Office of Professional Regulation.

Statement of Facts

2. The Respondent, James L. Culver, is licensed in Vermont as a dentist under license number 016-0000685.
3. The Respondent's license was originally issued on May 1, 1980 and the Respondent's license is currently set to expire on September 30, 2005.
4. At all times relevant, the Respondent was employed as a dentist and maintained a dental office at 417 U.S. Route 302, Barre, Vermont.
5. From October 2003 through February 2005, the Respondent ordered 6,500 Vicodin 5/500mg tablets and 1200 Vicodin 10/350mg tablets from the Henry Schein Company. The Henry Schein Company, located in Melville, New York, is a distributor of dental, medical and veterinary health care products, services and supplies.
6. By way of information, Vicodin is a Schedule III opiate, also known as Hydrocodone Bitartrate.
7. On February 15, 2005, the Respondent admitted to State Investigator Amy Carlson and U.S. Drug Enforcement Administration ("DEA") Investigators John Hennessey and Ray Clooney that he had ordered approximately 5,000 Vicodin pills from the Henry Schein Company over the past year for his own personal use.

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The Respondent stated that he had been self-administering Vicodin since 2000 and that he had a daily Vicodin consumption of approximately 5-10 pills.

8. As a result of the DEA investigation, the Respondent voluntarily agreed to relinquish his DEA registration and an incoming shipment from the Henry Schein Company of 1,000 Vicodin 5/500mg tablets and 200 Vicodin 10/350mg tablets was destroyed.

9. In February 2005, the Respondent entered a substance abuse treatment program at the Talbot Recovery Campus in Georgia. Upon information and belief, the Respondent will complete the program in May 2005 and will be returning to Vermont.

Charges

10. The facts as set out above establish that the public health, safety, or welfare imperatively requires emergency action.

11. The above acts and circumstances, alone or in combination, constitute unprofessional conduct pursuant to:

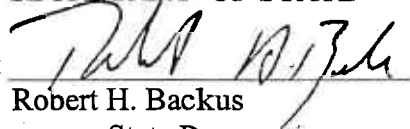
- i 26 V.S.A. §809(2) (Addiction to narcotics, habitual drunkenness or rendering professional services to a patient if the dentist or hygienist is intoxicated or under the influence of drugs); and
- ii. 3 V.S.A. §129a(a)(3) (Failure to comply with the provisions of state statutes or rules governing the practice of the profession).

Relief Requested

WHEREFORE, the Respondent's license should be summarily suspended, pursuant to 3 V.S.A. §814, pending a formal resolution of the above matter(s).

Dated at Montpelier, Vermont this 8th day of June 2005.

STATE OF VERMONT
SECRETARY OF STATE

By: 

Robert H. Backus

State Prosecuting

Attorney

de.culver.soc

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