

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

Spencer B. Howard, D.D.S.  
(License No. 7614)

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**CONSENT ORDER OF  
PERMANENT SURRENDER**

THIS MATTER is before the North Carolina State Board of Dental Examiners ["Board"] as authorized by G.S. § 90-41.1(b) for consideration of a Consent Order of Permanent Surrender at the request of Spencer B. Howard, D.D.S. ["Dr. Howard" or "Respondent"] in lieu of a formal administrative hearing. Respondent acknowledges that the Board has significant and sufficient evidence to prove and establish the findings of fact and conclusions of law and to warrant the order of discipline. Respondent was represented by Charles George. Douglas J. Brocker and K. Brooke Ottesen represented the Investigative Panel of the North Carolina State Board of Dental Examiners. Based upon the consent of the parties hereto, the Board enters the following:

**FINDINGS OF FACT**

1. The Dental Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding pursuant to the authority granted to it in Chapter 90 of the North Carolina General Statutes, including the Dental Practice Act and the Rules and Regulations of the North Carolina State Board of Dental Examiners.

2. Spencer B. Howard, D.D.S. was licensed to practice dentistry in North Carolina on June 12, 2003 and holds license number 7614. He has remained licensed to practice dentistry in North Carolina up through the date of this Consent Order and was subject to the Dental Practice Act and the Board's Rules and Regulations at all times relevant hereto.

3. At all times relevant hereto, Respondent Spencer B. Howard, D.D.S. worked as an oral surgeon in North Carolina in his dental practice, Spencer B. Howard, D.D.S., P.A. When referred to herein concerning any action or failure to act, the term "Respondent" also refers to Dr. Spencer B. Howard's dental practice and includes employees, agents, or others under his control or acting at his direction.

4. At all times relevant hereto, Respondent was an approved dental provider for the North Carolina Division of Medical Assistance ["DMA" or "Medicaid"] and was required to abide by Medicaid's billing policies and guidelines.

5. At all times relevant hereto Medicaid required its providers to submit claims for their services using the codes set out in the American Dental Association's Code of Dental Terminology ["CDT"].

***Improper Billing for General Anesthesia***

6. From at least 2009 through 2014, Respondent improperly billed Medicaid by routinely submitting claims for CDT Codes that misrepresented the services he provided to patients and thereby obtained unwarranted payment and reimbursement from DMA.

7. Specifically, Respondent improperly billed Medicaid between the period of 2009 and 2014 by routinely submitting claims for administering general anesthesia for a significantly longer time than had actually been administered.

8. For example, in numerous instances during this time frame, Respondent billed Medicaid for administering more than 24 hours of general anesthesia in a single day.

9. During 2009-2014, Respondent submitted far more claims to Medicaid for administering general anesthesia than any other provider in North Carolina, and in several of these years Dr. Howard submitted more claims than the next two or three Medicaid providers combined.

10. By routinely submitting these false claims, Respondent repeatedly misrepresented to Medicaid that he administered general anesthesia to patients while he remained in continuous attendance, when he had not done so.

11. In reliance upon Respondent's misrepresentations noted above, Medicaid paid Dr. Howard significant funds to which he was not entitled for services he had not provided in an amount exceeding \$1,000,000.

***Improperly Billing Medicaid for Dr. John S. Won***

12. From at least December 2011 through July 2013, Respondent improperly billed Medicaid by routinely submitting claims to DMA under his National Provider Identifier ["NPI"] where Dr. Howard had not performed all of the services for which he submitted the claims.

13. The Division of Medical Assistance Program Integrity Unit suspended all Medicaid payments to another oral surgeon who practiced in Cary, North Carolina, Dr. John S. Won, effective September 7, 2011 based on credible allegations of fraud and the NC Attorney General's Medicaid Investigations Division ["MID"] investigation of Dr. Won's Medicaid billing practices.

14. After Dr. Won's suspension of payments from Medicaid became effective on September 7, 2011, Respondent entered into an improper arrangement with Dr. Won at the end of 2011 that continued until at least July 2013.

15. Under the arrangement, Dr. Won performed oral surgeries for his Medicaid patients and Dr. Howard submitted claims to Medicaid under Dr. Howard's NPI for the services that Dr. Won performed.

16. By routinely submitting these false claims, Respondent repeatedly misrepresented to Medicaid that he had performed all the services where he had not done so.

17. In reliance upon the Respondent's repeated improper billing and misrepresentations noted above, Medicaid paid Respondent for performing services that Respondent had not performed in an amount exceeding \$1,000,000.

18. After receiving these improper payments from Medicaid, Respondent paid Dr. Won a portion of the payments contemporaneously in a collective amount exceeding \$1,000,000.

19. The arrangement with Dr. Howard permitted Dr. Won to collect from Medicaid over \$1,000,000 during times when Dr. Won was prohibited from doing so and allowed Dr. Won to circumvent Medicaid's payment prohibition through the agreement to falsely misrepresent to DMA that Dr. Howard performed all the services when he had not done so.

### CONCLUSIONS OF LAW

1. The Board has jurisdiction over the person of Respondent and the subject matter of this proceeding.

2. Respondent was properly notified of this matter and has agreed to the entry of this Consent Order.

3. Respondent obtained fees through fraud, misrepresentation or deceit in violation of N.C. Gen. Stat. § 90-41(a)(11), committed fraudulent or misleading acts in the practice of dentistry in violation of N.C. Gen. Stat. § 90-41(a)(17), engaged in such immoral conduct as to discredit the dental profession in violation of N.C. Gen. Stat. § 90-41(a)(10), and engaged in acts violative of Article 2 of Chapter 90 of the North Carolina General Statutes in violation of N.C. Gen. Stat. § 90-41(a)(6) by:

- a. repeatedly and routinely submitting false claims and obtaining payment from Medicaid for providing services that he did not provide; and
- b. repeatedly and routinely submitting false claims and obtaining payment from Medicaid under Respondent's NPI where Dr. Howard had not performed all the services for which he submitted the claims, and thereby

enabling Dr. Won to obtain significant payments from Medicaid, through Respondent, while Dr. Won was prohibited from doing so.

4. Either of the above repeated violations separately would warrant a permanent surrender of Respondent's dental license or similar disciplinary action.

5. This consent to permanent surrender shall have the same effect as a permanent revocation pursuant to N.C. Gen. Stat. 90-41.

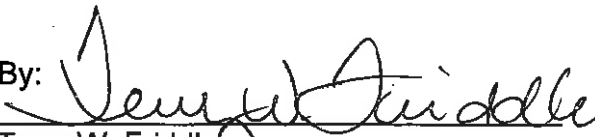
Based upon the foregoing Findings of Fact and Conclusions of Law and with the consent of the parties hereto, it is ORDERED as follows:

#### ORDER OF DISCIPLINE

1. Respondent permanently surrenders his license to practice dentistry, which becomes effective upon entry of this Consent Order, and acknowledges and agrees that he cannot reapply for or regain a license in North Carolina at any time in the future. Respondent has submitted to the Dental Board his original license and all 2016 renewals in connection with his permanent surrender.

This the 21<sup>st</sup> day of November, 2016.

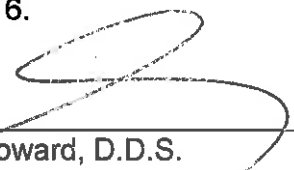
THE NORTH CAROLINA STATE  
BOARD OF DENTAL EXAMINERS

By:   
Terry W. Friddle  
Director of Investigations

**STATEMENT OF CONSENT**

I, Spencer B. Howard, D.D.S., do hereby certify that I voluntarily and knowingly elect to permanently surrender my dental license and acknowledge and agree that I cannot reapply for a dental license in North Carolina at any time in the future. I understand that I can never regain my dental license in this State, and that the Board will not consider nor hold any hearing on any possible future attempt to reapply, reinstate or regain my license. I have read the foregoing Consent Order in its entirety. I assent to its terms and conditions set out herein. I freely and voluntarily acknowledge that the Board has significant and sufficient evidence to prove and establish the findings of fact and conclusions of law and to warrant the order of discipline. I voluntarily waive any rights to appeal this order and will not contest the findings of fact, the conclusions of law, or the order of discipline in any potential further proceedings before this Board. I understand that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order will become part of the Board's permanent public record. I also understand that the reporting of this Consent Order may have adverse consequences to me in other contexts and that such other consequences will not be a basis to reconsider this Consent Order or to reapply or regain my dental license in North Carolina. I have consulted with my counsel before signing this Consent Order

This the 18<sup>th</sup> day of ~~October~~<sup>November</sup>, 2016.

  
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Spencer B. Howard, D.D.S.