

**BEFORE THE MISSISSIPPI STATE
BOARD OF DENTAL EXAMINERS**

**IN THE MATTER OF MISSISSIPPI:
DENTAL LICENSE NO. 3663-12**

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**JAMES AUSTIN RAHAIM, D.M.D.
101 REESE STREET
BAY ST LOUIS, MS 39520**

DOCKET NO. 2023-092

RESPONDENT

CONSENT ORDER

WHEREAS, RESPONDENT, JAMES AUSTIN RAHAIM, D.M.D., has been vested with the right and privilege to practice dentistry in the State of Mississippi by virtue of License No. **3663-12**, issued by the Mississippi State Board of Dental Examiners (hereinafter referred to as “Board”).

WHEREAS, RESPONDENT, JAMES AUSTIN RAHAIM, D.M.D., has agreed to enter into a **CONSENT ORDER** which would, upon approval and execution by the Board, avoid initiation of formal disciplinary proceedings.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FoF 1. **RESPONDENT** treated patient N (age 9) beginning on or about September 30th, 2022. Patient NM appeared for visits on or about September 30th, 2022, and January 20th, 2023, for x-rays and measurements, during which **RESPONDENT** was not in the office. **RESPONDENT** placed orthodontic braces on patient NM on or about March 01st, 2023, during **RESPONDENT’S** first face-to-face encounter with patient NM. Also on or about March 01st, 2023, **RESPONDENT** recommended patient N have eight (8) extractions performed. Patient N’s guardian elected not to pursue this treatment recommendation

following an appointment on April 26th, 2023, and Patient N sought a new treatment provider. Patient N had approximately six (6) in-person encounters at **RESPONDENT'S** office, of which **RESPONDENT** was only present for four (4).

FoF 2. The Board's investigator visited **RESPONDENT'S** office on or about Friday, August 18th, 2023, Friday, November 17th, 2023, and Friday, January 30th, 2024. The office located at 3149 Mallett Road in D'Iberville, MS, 39540, was open with patients present and without a licensed dentist physically on the premises.

- August 18th, 2023
 - **RESPONDENT** had appointments scheduled for thirty-nine (39) patients.
 - No licensed dentist was present.
 - Each patient seen at the office without a licensed dentist present constitutes a separate and distinct occurrence.
 - The Board's investigator witnessed an unlicensed and unpermitted person taking x-rays of a patient on or about August 18th, 2023.
 - The Board's investigator contacted **RESPONDENT** via phone and notified the **RESPONDENT** of the requirements for direct supervision found in Board Regulation 13.
- November 17th, 2023
 - **RESPONDENT** had appointments scheduled for nineteen (19) patients.
 - Each patient seen at the office without a licensed dentist present constitutes a separate and distinct occurrence.
 - No licensed dentist was present.
 - The Board's investigator encountered a licensed dental hygienist that stated she was hired by **RESPONDENT** in September of 2023 to be present in the office on Fridays while the staff took x-rays and obtained records.
- January 30th, 2024
 - **RESPONDENT** had appointments scheduled for twenty-four (24) patients.
 - No licensed dentist was present.

- Each patient seen at the office without a licensed dentist present constitutes a separate and distinct occurrence.

FoF 3. 30 Miss. Code Ann. Pt. 2301, R. 1.13 Board Regulation 13 – Supervision and Delegation of Duties to Auxiliary Personnel (1.)(A.) states, “*Direct Supervision: Miss. Code Ann. §§ 73-9-3(i) and 73-9-5(2) state that the work of dental auxiliaries shall at all times be under the direct supervision of a licensed Mississippi dentist. This level of supervision requires that a dentist be physically present in the dental office or treatment facility, personally diagnose the condition to be treated, authorize the procedures to be performed, remain in the dental office or treatment facility while the procedures are being performed by the auxiliary, and evaluate the performance of the dental auxiliary.*”

FoF 4. 30 Miss. Code Ann. Pt. 2301, R. 1.13 Board Regulation 13 – Supervision and Delegation of Duties to Auxiliary Personnel (2.) states in part, “*The Board has determined that the following procedures may not be delegated to dental auxiliary personnel. D. The taking of any impression of the human mouth or oral structure that will be used in the restoration, repair, or replacement of any natural or artificial teeth or for the fabrication or repair of any dental appliance. ...*”.

FoF 5. 30 Miss. Code Ann. Pt. 2301, R. 1.25 Board Regulation 25 – Radiology Permits (1.) states, “*General Provisions: Anyone other than a licensed dentist who desires to use ionizing radiation procedures in dentistry must obtain a radiology permit from the Board or be exempt as provided below.*”.

FoF 6. In his statement to the Board dated February 02nd, 2024, **RESPONDENT** admitted to, beginning late 2022, not being physically present in his office on Fridays for visits by Medicaid patients, during which dental auxiliaries took photographs, x-rays, and digital scans for pre-authorization of orthodontic treatment. **RESPONDENT** stated that upon being informed he was not meeting the requirements for direct supervision, he hired a part-time orthodontist to be physically present in the office on Fridays, beginning November 26th, 2023.

CHARGE 1. **RESPONDENT** agrees that sufficient evidence exists to constitute violation(s) of: Miss. Code Ann. § 73-9-61 (1)(b), in that **RESPONDENT** willfully violated any of the rules or regulations duly promulgated by the Board, or of any of the

rules or regulations duly promulgated by the appropriate dental licensure agency of another state or jurisdiction; namely, that **RESPONDENT** violated 30 Miss. Admin. Code Pt. 2301, R. 1.13, Board Regulation 13 – Supervision and Delegation of Duties to Auxiliary Personnel, in that **RESPONDENT** failed to provide direct supervision at all times to dental auxiliaries. Each patient seen at the office without a licensed dentist present constitutes a separate and distinct violation.

CHARGE 2. **RESPONDENT** agrees that sufficient evidence exists to constitute violation(s) of: Miss. Code Ann. § 73-9-61 (1)(i), in that **RESPONDENT** delegated professional responsibilities to a person who is not qualified by training, experience or licensure to perform them.

IT IS, THEREFORE, STIPULATED AS FOLLOWS:

1. That this **CONSENT ORDER** is entered into freely, willingly and voluntarily by all the parties without threats or promises, and further, such **CONSENT ORDER** is entered into in lieu of having a full administrative hearing before the Mississippi State Board of Dental Examiners.
2. That **RESPONDENT** hereby voluntarily, willingly, and freely waives all **RESPONDENT'S** due process rights, including but not limited to, the right to a hearing whereby **RESPONDENT** could:
 - a. Appear either personally or by counsel or both,
 - b. Cross-examine any witnesses who may testify against **RESPONDENT**,
 - c. Present testimony, evidence, and witnesses on **RESPONDENT'S** behalf, and
 - d. Have subpoenas issued by the Board on **RESPONDENT'S** behalf.
3. The Mississippi State Board of Dental Examiners is established pursuant to Title 73, Chapter 9 of the Mississippi Code of 1972, as amended, and is charged with the duty of licensing and regulating the practice of dentistry and dental hygiene in the State of

Mississippi. The **RESPONDENT** is the holder and/or applicant of a license issued by the Board and is, therefore, subject to Miss. Code Ann. § 73-9-1, et seq.

4. Pursuant to Miss. Code Ann. § 73-9-61 (1), upon satisfactory proof of the violation(s) enumerated herein, and in accordance with statutory provisions elsewhere set out for such hearings and protecting the rights of the accused as well as the public, the Board may deny the issuance or renewal of a license, may revoke or suspend the license of any licensee practicing in the State of Mississippi, or take any other action in relation to the license as the Board may deem proper under the circumstances.
5. That it is understood and agreed that the purpose of this **CONSENT ORDER** is to avoid a formal disciplinary proceeding, including a full administrative hearing before the Board. As such, **RESPONDENT** authorizes the Board to review and examine any documentary evidence or information concerning **RESPONDENT** prior to or in conjunction with its consideration of the **CONSENT ORDER**.
6. That this **CONSENT ORDER** shall be subject to approval by the Board. If the Board fails to approve the **CONSENT ORDER**, it shall have no force or effect on the parties.
7. That should this **CONSENT ORDER** not be approved by the Board, it is agreed that the presentation and consideration of the **CONSENT ORDER**, including any documentary evidence and information related thereto, shall not unfairly or illegally prejudice the Board or any of its members from participation in hearings or other proceedings pertaining to these or other matters regarding **RESPONDENT**.
8. **PENALTIES.** That upon approval and execution of this **CONSENT ORDER** by the Board, **RESPONDENT** agrees to the following penalties which are authorized by Miss Code Ann. § 73-9-61.
 - a. **SUSPENSION OF LICENSE.** **RESPONDENT'S** Mississippi Dental License shall be **SUSPENDED** for a minimum of **sixty (60) calendar days**.

- i. The period of **SUSPENSION** shall begin November 04th, 2024. However, **RESPONDENT** may submit a written request to the Board to begin the period of **SUSPENSION** prior to November 04th, 2024. Such request must be received by the Board no later than July 29th, 2024.
 - ii. During such time that **RESPONDENT’S** license is **SUSPENDED**, **RESPONDENT** shall NOT practice dentistry in the state of Mississippi.
 - iii. During such time that **RESPONDENT’S** license is **SUSPENDED**, **RESPONDENT’S** license status with the Board, including for purposes of license verification by the public, shall indicate “**SUSPENDED.**”
 - iv. After expiration of a minimum of sixty (60) calendar days’ **SUSPENSION**, **RESPONDENT** may be eligible for lifting of the **SUSPENSION**. Only upon the Board’s verification that **RESPONDENT** is compliant with all terms and conditions of this **CONSENT ORDER**, shall the Board lift the **SUSPENSION** from **RESPONDENT’S** license and update **RESPONDENT’S** license status to reflect lifting of the **SUSPENSION**.
- b. **FINE.** **RESPONDENT** shall pay a **FINE** in the amount of **\$50,000.00**. which must be received in the Board’s office within ninety (90) calendar days from the date the Board approves and executes this **CONSENT ORDER**. Certified checks for payment of the FINE should be made payable to the “Mississippi State Treasury.”
- c. **COSTS.** Pursuant to Miss. Code Ann. § 73-9-61 (4)(d), **RESPONDENT** shall pay the reasonable **COSTS** of these proceedings in an amount to be determined by the Board within thirty (30) calendar days from the date the Board sends the notice of **COSTS**. Certified checks for payment of the COSTS should be made payable to the Board.

- d. **JURISPRUDENCE EXAM.** Within thirty (30) days from the date the Board approves and executes this **CONSENT ORDER, RESPONDENT** shall successfully complete the MISSISSIPPI JURISPRUDENCE EXAMINATION.

- e. **REMEDIAL EDUCATION – PROFESSIONALISM/ETHICS.** Within ninety (90) days from the date the Board approves and executes this **CONSENT ORDER, RESPONDENT** shall successfully complete a minimum of ten (10) hours of Board-approved continuing education specifically focused on *Professionalism/Ethics*. Continuing education hours obtained in satisfaction of this requirement may not be utilized towards satisfaction of the continuation education requirements in Board Regulation 41 – Continuing Education (30 Miss. Admin. Code Pt. 2301, R. 1.41).

- f. **PROBE ETHICS & BOUNDARIES PROGRAM.** Within one-hundred-eighty (180) calendar days from the date the Board approves and executes this **CONSENT ORDER, RESPONDENT** shall successfully complete the PROBE (Professional/Problem-Based Ethics) Ethics & Boundaries Program. **RESPONDENT** must obtain an outcome of “Unconditional Pass” to successfully complete the Program. **RESPONDENT** agrees to execute the necessary release(s) to allow for sharing of information between PROBE Program personnel and the Board. Completion of the PROBE Ethics & Boundaries Program may not be utilized towards satisfaction of the continuation education requirements in Board Regulation 41 – Continuing Education (30 Miss. Admin. Code Pt. 2301, R. 1.41).

- g. **COMPLIANCE.** **RESPONDENT** shall comply with all terms and conditions of this **CONSENT ORDER**.
 - i. **RESPONDENT** shall comply with Miss. Code Ann. § 73-9-1 et seq., 30 Miss. Admin. Code Pt. 2301 et seq., and all laws and regulations related to the practice of dentistry in Mississippi.

- ii. **RESPONDENT** is responsible for ensuring the Board receives verifiable evidence of compliance with all terms of conditions of this **CONSENT ORDER** within the time frame(s) prescribed herein.
- h. **SUSPENSION FOR NON-COMPLIANCE.** In the event that **RESPONDENT** fails to comply with any terms or conditions of this **CONSENT ORDER**, **RESPONDENT’S** license shall be **SUSPENDED IMMEDIATELY** for a period of no less than (7) days.
- i. During such time that **RESPONDENT’S** license is **SUSPENDED**, **RESPONDENT** shall NOT practice dentistry in the state of Mississippi.
 - ii. During such time that **RESPONDENT’S** license is **SUSPENDED**, **RESPONDENT’S** license status with the Board, including for purposes of license verification by the public, shall indicate “**SUSPENDED.**”
 - iii. After expiration of a minimum of seven (7) days **SUSPENSION**, **RESPONDENT** may be eligible for lifting of the **SUSPENSION**. Only upon the Board’s verification that **RESPONDENT** is compliant with all terms and conditions of this **CONSENT ORDER**, shall the Board lift the **SUSPENSION** from **RESPONDENT’S** license and update **RESPONDENT’S** license status to reflect lifting of the **SUSPENSION**.
9. That **RESPONDENT** accepts the above penalties and acknowledges that **RESPONDENT’S** license is conditioned on full compliance with these terms. Failure to adhere to any of the terms of this **CONSENT ORDER** may result in further disciplinary action against **RESPONDENT’S** license.
10. That the **RESPONDENT** does hereby fully, completely and finally release the Board, its agents, servants or employees from any and all claims, charges, demands, damages, costs, expenses, actions and causes of action of every kind and nature which the **RESPONDENT** may now or hereafter have related to this **CONSENT ORDER**

between the **RESPONDENT** and the Board. The Mississippi State Board of Dental Examiners admits no liability in any way related to this **CONSENT ORDER**.

11. That upon approval and execution of this **CONSENT ORDER** by the Board, this document will be a public record and will be entered as a **FINAL ORDER** of the Board. Further, the **FINAL ORDER** will be reported as disciplinary action to the American Association of Dental Boards (AADB) and to all federally mandated data banks.

AGREED TO, on this day 07/19/24 .

Dr. Austin Rahaim
Dr. Austin Rahaim (Jul 19, 2024 09:36 CDT)

JAMES AUSTIN RAHAIM, D.M.D.

Approved as to Form & Substance:

W. Westley Mutziger

W. Westley Mutziger
Board Counsel, MSBDE

SO APPROVED & ORDERED, on this day, July 26, 2024 .

MISSISSIPPI STATE BOARD OF DENTAL EXAMINERS

BY: Michael D. [Signature]

MARK D. WILLIAMS, D.M.D.
PRESIDENT