Suspended, Revoked, and Convicted

Effective Cooperation between Law Enforcement and Regulators
“Two Virginia 'Dirty Docs' sentenced Wednesday for adding to the opioid crisis”


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Dr. JOEL SMITHERS, D.O.

TIMELINE

• Arrested August 2017
• *Summary Suspension of License May 2018*
• Convicted May 2019
  • 861 federal drug charges
• Sentenced October 2019
  • 40 years
STATEMENT OF ALLEGATIONS

The Board alleges that:

1. At all times relevant hereto, Joel Adams Smiethers, D.O., was licensed to practice osteopathic medicine in the Commonwealth of Virginia.

2. Joel Adams Smiethers, D.O., violated Virginia Code § 54.1-2915(A)(8), (10), (13), (17), and (18) in that:

   a. On March 7, 2017, Drug Enforcement Agency ("DEA") agents executed a search warrant on Dr. Smiethers's personal vehicle parked at Smiethers Community Health Care, the practice he owns, and at which he practiced from approximately September 2015 to August 2017. Pursuant to the search warrant, the agents found controlled and non-controlled substances packaged in empty vitamin bottles (as detailed in the table below), inside a black backpack, and $26,532.00 in cash in the vehicle's glove box.

| Hyland's Nerve Tonic #1 | 2 hydrocodone 10/250 |
|                        | 15 hydromorphone 2mg |
|                        | 12 half-pills hydromorphone 2mg |
|                        | 4 small pieces hydromorphone 2mg |
|                        | 1 Methadone 10mg |
|                        | 8 hydromorphone 4mg |
|                        | 28 Tramadol 50mg |

| Hyland's Nerve Tonic #2 | 19 OxyContin 30mg |
|                        | 8 Tramadol 50mg |

| Nature's Way MEGA- DHA Premium Fish Oil | 40 oxymorphone 10mg (divided into 4 small baggies with 10 tablets each) |
|                                        | 69 oxymorphone HCL ER 5mg |
|                                        | 53 hydromorphone 4mg |
|                                        | 10 hydromorphone HCL 4mg |
|                                        | 156 Opana ER 5mg |
|                                        | 40 Opana ER 10mg |
|                                        | 6 Opana ER 20mg |
POTENTIAL FRICTION POINTS Between Law Enforcement and Regulators

- Different missions/objectives
- Different laws
- Different confidentiality/transparency requirements
- Different timelines for investigations
- Different burdens of proof
- Different processes for adjudication

LACK OF MUTUAL UNDERSTANDING
LACK OF COMMUNICATION
LACK OF SHARED STRATEGY
Mission:

*To ensure safe and competent patient care* by licensing health professionals, enforcing standards of practice, and providing information to healthcare practitioners and the public.

The agency’s 13 health regulatory boards issue over 400,000 licenses across 60+ professions.
Mission:

The mission of DEA's Diversion Control Division is to prevent, detect, and investigate the diversion of controlled pharmaceuticals and listed chemicals from legitimate sources while ensuring an adequate and uninterrupted supply for legitimate medical, commercial, and scientific needs.
“Any reports, information or records received and maintained by the Department of Health Professions or any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding, shall be strictly confidential.”
“This section shall not prohibit the Director of the Department of Health Professions, following consultation with the relevant health regulatory board president or his designee, from disclosing information about a suspected violation of state or federal law or regulation to . . . state or federal law-enforcement agencies having jurisdiction over the suspected violation . . . Such disclosure shall not exceed the minimum information necessary to permit the state or federal agency having jurisdiction over the suspected violation of state or federal law to conduct an inspection or investigation. . . Nothing in this subsection shall require the Director to make any disclosure. . .”
THE CODE OF VIRGINIA § 54.1-2400.2.G
CONFIDENTIALITY

“Whenever a complaint or report has been filed about a person licensed, certified, or registered by a health regulatory board, the source and the subject of a complaint or report shall be provided information about the investigative and disciplinary procedures at the Department of Health Professions. Prior to interviewing a licensee who is the subject of a complaint or report, or at the time that the licensee is first notified in writing of the complaint or report, whichever shall occur first, the licensee shall be provided with a copy of the complaint or report and any records or supporting documentation, unless such provision would materially obstruct a criminal or regulatory investigation.”
• It is DHP’s goal for boards to reach a final determination and close patient care cases within 250 business days from the date the agency received the complaint.

• In order to reach that goal, Enforcement Division investigators are expected to complete investigations within 90 business days.
BURDEN OF PROOF

• Criminal: Beyond a Reasonable Doubt

• Regulatory: Clear and Convincing OR Preponderance of the Evidence
  • Varies by state

• Civil: Preponderance of the Evidence
REGULATORY DISCIPLINARY HEARINGS IN VIRGINIA

DHP’s informal conferences and formal hearings are open to the public.

Potentially, a regulatory hearing may take place before a criminal trial.
You have a right to the information on which the Board will rely in making its decision, to be represented by counsel at this proceeding, to subpoena witnesses and/or documents, and to present relevant evidence on your behalf.
DR. GARY HARTMAN, D.D.S.

TIMELINE

• **Summary Suspension**
  December 2018

• **License Revoked March 2019**

• Pled Guilty May 2019

• Sentenced October 2019
  • 8 ½ years

STATEMENT OF ALLEGATIONS

The Board alleges that:

1. At all times relevant hereto, Gary A. Hartman, D.D.S., was licensed to practice dentistry in the Commonwealth of Virginia.

2. Dr. Hartman violated Virginia Code §§ 54.1-2706(4), (5), (9), (10), (11), (12), and (15), 54.1-3303(A), 54.1-3408(A), and 18 VAC 60-20-170(4) [for conduct prior to December 2, 2015] and 18 VAC 60-21-60(A)(3) [for conduct on or after December 2, 2015] of the Regulations Governing the Practice of Dentistry (“Regulations”), in that on numerous occasions, he excessively and without adequate dental justification prescribed controlled substances (including narcotic pain medications) to patients who he knew or should have known were drug abusers/addicts, and/or prescribed controlled substances for non-therapeutic purposes outside the usual course of dental treatment, including, at times, for his own personal and unauthorized use. Specifically:

   a. With respect to Patient A:

      (i) In an interview with Drug Enforcement Administration (“DEA”) agents in July 2018, Patient A stated that Dr. Hartman was prescribing pain medications to her and her brother, Patient N, in exchange for performing dental work for Patient A, as set forth below:

         • Patient A, who did not have dental insurance, stated that, after two or three visits, Dr. Hartman informed her that she could pay for her dental procedures by filling pain medicine prescriptions for him. She stated that Dr. Hartman would send her text messages and they would meet in the pharmacy parking lot, where he gave her the prescriptions to be filled and the money to pay for them. She then filled the prescriptions and gave the pills to Dr. Hartman.

         • On a few occasions, Dr. Hartman dropped off prescriptions for her to fill at her residence, where she was living with Patient C. On other occasions, Patient A was instructed to pick up the prescriptions at Dr. Hartman’s residence.
EFFECTIVE COOPERATION

1) DEVELOP MUTUAL UNDERSTANDING
2) COMMUNICATE!!!
3) STRATEGIZE FOR SHARED SUCCESS

- Appreciate and respect each other’s Missions/Objectives
- Understand differences in laws
- Communicate about confidentiality/transparency requirements
- Strategize on timelines
- Strategize evidence collection, so each organization meets its burden of proof
- Understand differences between regulatory and criminal proceedings