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8

9 **BEFORE THE**
DENTAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. DBC 02-2005-2168

13 JAMES SHEN, DDS
18751 Beach Blvd.
14 Huntington Beach, CA 92648

THIRD AMENDED ACCUSATION

15 Dental Certificate No. 31978

16 Respondent.
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18
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20 Complainant alleges:

21 **PARTIES**

22 1. Robert Hedrick, Executive Officer of the Dental Board of California

23 (Complainant) brings this Third Amended Accusation solely in his official capacity. This Third
24 Amended Accusation supersedes in its entirety all previous version of Accusation DBC-02-2005-
25 2168. The additions in this Third Amended Accusation are italicized for ease of reference.

26 **LICENSE HISTORY RE JAMES SHEN, DDS**

27 2. On or about August 1, 1983, the Dental Board of California issued Dental
28 Certificate Number 31978 to James Shen (Shen). The Dental Certificate was in full force and

1 effect at all times relevant to the charges brought herein except as noted below, and will expire
2 on December 31, 2007, unless renewed.

3 *An ex parte partial Interim Order of Suspension (ISO) issued against Respondent's*
4 *dental license on or about June 30, 2006, pursuant to Business & Professions Code section 494.*
5 *A full ISO completely suspending Respondent's dental license issued on October 4, 2006,*
6 *pursuant to Business & Professions Code section 494.*

7 3. Accusation No. DBC 2004-105, a separate case, is currently pending against
8 Respondent.

9 JURISDICTION

10 4. This Accusation is brought before the Dental Board of California (Board),
11 Department of Consumer Affairs, under the authority of the following laws. All section
12 references are to the Business and Professions Code unless otherwise indicated:

13 A. Section 1601.2 provides that the highest priority of the Dental Board is to protect
14 the public. Wherever that priority conflicts with other interests sought to be promoted, public
15 protection is paramount.

16 B. Section 1670 states:

17 "Any licentiate may have his license revoked or suspended or be reprimanded or be
18 placed on probation by the board for unprofessional conduct, or incompetence, or gross
19 negligence, or repeated acts of negligence in his or her profession, or for the issuance of a license
20 by mistake, or for any other cause applicable to the licentiate provided in this chapter. The
21 proceedings under this article shall be conducted in accordance with Chapter 5 (commencing
22 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board
23 shall have all the powers granted therein."

24 C. Section 1680 states in pertinent part:

25 "Unprofessional conduct by a person licensed under this chapter [Chapter 4 (commencing
26 with section 1600)] is defined as, but is not limited to, the violation of any one of the following:

27 "....

28 "(n) The violation of any of the provision of this division.

1 ". . . .

2 "(p) The clearly excessive prescribing or administering of drugs or treatment, or the
3 clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or
4 treatment facilities, as determined by the customary practice and standards of the dental
5 profession. . . .

6 ". . . ."

7 D. Section 1684 states:

8 "In addition to other acts constituting unprofessional conduct under this chapter, it is
9 unprofessional conduct for a person licensed under this chapter to perform, or hold himself or
10 herself out as able to perform, professional services beyond the scope of his or her license and
11 filed or fields of competence as established by his or her education, experience, training, or any
12 combination thereof. . . ."

13 E. Section 1648.10, effective January 1, 1993, provides as follows:

14 "(a) The Board of Dental Examiners of California shall develop and distribute a fact
15 sheet describing and comparing the risks and efficacy of the various types of dental restorative
16 materials that may be used to repair a dental patient's oral condition or defect. The fact sheet
17 shall include:

18 (1) A description of the groups of materials that are available to the profession for
19 restoration of an oral condition or defect.

20 (2) A comparison of the relative benefits and detriments of each group of materials.

21 (3) A comparison of the cost considerations associated with each group of materials.

22 (4) A reference to encourage discussion between patient and dentist regarding materials
23 and to inform the patient of his or her options.

24 "(b) This fact sheet shall be made available by the Board of Dental Examiners of
25 California to all licensed dentists.

26 "(c) The Board of Dental Examiners of California shall update the fact sheet described
27 in subdivision (a) as determined necessary by the Board."

28 ///

1 F. Section 1648.15, effective January 1, 2002, provides as follows:

2 "The fact sheet set forth by Section 1648.10 shall be provided by a dentist to every new
3 patient and to patients of record prior to the performance of dental restoration work. The dentist
4 needs to provide the fact sheet to each patient only once pursuant to the previous requirements of
5 this section. An acknowledgment of the receipt of the fact sheet by the patient shall be signed by
6 the patient and a copy of it shall be placed in the patient's dental record. If updates to the fact
7 sheet are made by the board, the updated fact sheet shall be given to patients in the manner
8 provided above. A dentist shall also provide the fact sheet to the patient upon request."

9 G. Section 1648.20, effective January 1, 1993, provides as follows:

10 "(a) This article shall not apply to any surgical, endodontic, periodontic, or orthodontic
11 dental procedure in which dental restorative materials are not used.

12 "(b) For purposes of this article, 'dental restorative materials' means any structure or
13 device placed into a patient's mouth with the intent that it remain there for an indefinite period
14 beyond the completion of the dental procedure, including material used for filling cavities in, or
15 rebuilding or repairing the organic structure of, a tooth or teeth, but excluding synthesized
16 structures or devices intended to wholly replace an extracted tooth or teeth, such as implants."

17 H. Section 125.3 of the Code provides, in pertinent part, that the Board may request
18 the administrative law judge to direct a licentiate found to have committed a violation or
19 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
20 and enforcement of the case.

21 I. Section 494 provides in pertinent part as follows:

22 ". . . .

23 "(i) Failure to comply with the interim order issued pursuant to subdivision
24 (a) or (b) shall constitute a separate cause for disciplinary action against any
25 licentiate, and may be heard at, and as a part of, the notice hearing provided
26 for in subdivision (f). Allegations of noncompliance with the interim order may
27 be filed at any time prior to the rendering of a decision on the accusation.
28 Violation of the interim order is established upon proof that the licentiate was

1 headaches and back pain and that the metal in mouths causes electrical action between two
2 different metals, such as the gold crowns and the fillings, and that that electrical action can kill
3 the teeth.

4 10. Respondent told P.M. that the mercury needed to be removed now from his teeth
5 for health reasons but that he would leave the crowns alone for the time being. He explained
6 how bad mercury is and discussed Mad Hatter disease.

7 11. P.M. asked about root canals and what was wrong with doing them. Respondent
8 stated that it kills the tooth, the tooth then decays and toxins from the decay then go into and
9 affect the system. Respondent then asked P.M. to observe how close the teeth are to the brain.

10 12. While Respondent showed P.M. the intra-oral camera photos of his mouth, P.M.
11 asked Respondent if Respondent was saying that he (P.M.) had mercury poisoning. Respondent
12 answered "Yes." P.M. then asked if taking out the amalgam fillings would make him feel better.
13 Respondent answered "Yes."

14 13. Respondent stated that P.M. would also receive IV vitamin-C therapy concurrent
15 to the removal of the amalgams and post-treatment.

16 14. P.M. stated that he could not believe he had just come in for tooth pain and has
17 mercury poisoning. Respondent again said, "Yes."

18 15. Respondent proposed to inject the scar site with local anesthetic on the third
19 treatment visit to see if it would help with the mouth pain.

20 16. Respondent did not refer the patient to a medical doctor for any evaluation and/or
21 testing for mercury poisoning.

22 17. In fact, P.M. requires no restorative work of any kind. His existing silver
23 amalgam fillings are intact and doing well, as are his crowns. He has no caries nor any
24 significant periodontal problems. He has only some asymptomatic clicking and popping in the
25 left TMJ area.

26 18. On or about May 16, 2006, P.M. returned to Respondent Shen's office.
27 Respondent again stated that P.M. had mercury everywhere; that he had mercury poisoning; and
28 that he would think and feel better after the proposed treatment to remove the amalgam fillings

1 and the adjunctive therapies.

2 19. As of January 1, 2002, Respondent was required to comply with Business &
3 Professions Code section 1648.15. In June, 2006, 46 patient files were seized from
4 Respondent's office pursuant to a search warrant. Of those 46 files, 29 patient files showed
5 evidence of issues concerning tooth restoration and/or proposed treatment or actual tooth
6 restoration treatment and involved the time period of January 1, 2002 or thereafter when
7 Respondent was required to comply with Code section 1648.15. None of the relevant 29 files
8 contain any version of the Dental Board Dental Materials Fact Sheet or the patient
9 acknowledgment form for the fact sheet.

10 20. On or about June 2, 2004, Respondent treated dental patient #49 for a plugged
11 left ear by administering intravenous ozone therapy.

12 21. On or about December 2, 2003, Respondent also treated dental patient #49 for
13 "flu symptoms, nasal congestion, coughing" by, among other things, a trigger point injection of
14 Echinacea into the patient's left deltoid muscle. Respondent also conducted a "Heart Rate
15 Variability Analysis" on patient 49 and diagnosed brain and heart functions and pancreas
16 functions.

17 22. On or about November 14, 2001, Respondent treated dental patient #19 by
18 injecting the patient's blood mixed with ozone into the patient's left deltoid muscle.

19 23. On or about July 19, 2005, Respondent also treated dental patient #19's itchy
20 right hand scar by injecting it with Procaine.

21 24. On or about February 28, 2002, Respondent also administered an intramuscular
22 injection to patient 19's right glutens and on March 14, 2002, Respondent also administered an
23 intramuscular injection to patient #19's left shin.

24 25. On or about June 14, 2006, Respondent injected surgical scars on both wrists of
25 patient #42, a patient with rheumatoid arthritis, by report. Respondent also administered, or
26 caused to have administered, approximately 12 intravenous treatments between March 7, 2006
27 and June 2, 2006. These treatments were either what he calls "Immune Augmentation Therapy"
28 (IAT) and/or "ALA" or Vitamin C.

1 C. Shen failed to refer the patient to a physician for evaluation of the alleged mercury
2 poisoning;

3 D. Shen clearly excessively prescribed unnecessary and excessive treatment of this
4 patient.

5 **Second Cause for Discipline**

6 **(Unprofessional Conduct: Excessive Prescribing of Treatment)**

7 31. Respondent James Shen is subject to disciplinary action under section 1680 (p) for
8 unprofessional conduct in that he clearly excessively prescribed treatment for patient P.M. as
9 more particularly alleged above and incorporated herein by reference.

10 **Third Cause for Discipline**

11 **(Unprofessional Conduct: Practicing Outside Scope of License re Patient P.M.)**

12 32. Respondent James Shen is subject to disciplinary action under section 1684 for
13 unprofessional conduct in that his diagnosing of mercury poisoning and prescribed treatment for
14 P.M. because of alleged mercury poisoning, as more particularly alleged above and incorporated
15 herein by reference, constitutes practice outside Shen's scope of practice under his dental license,
16 to wit, the practice of medicine.

17 **Fourth Cause for Discipline**

18 **(Unprofessional Conduct: Practicing Outside Scope of License - Patient #19)**

19 33. Respondent James Shen is subject to disciplinary action under section 1684 for
20 unprofessional conduct in that with patient #19 Respondent practiced outside the scope of
21 practice under his dental license, as more particularly alleged in paragraphs 22 through 24,
22 incorporated herein by reference.

23 **Fifth Cause for Discipline**

24 **(Unprofessional Conduct: Practicing Outside Scope of License - Patient #49)**

25 34. Respondent James Shen is subject to disciplinary action under section 1684 for
26 unprofessional conduct in that with patient #49 Respondent practiced outside the scope of
27 practice under his dental license, as more particularly alleged in paragraphs 20 and 21,
28 incorporated herein by reference.

1 Sixth Cause for Discipline

2 **(Unprofessional Conduct: Practicing Outside Scope of License -Injections)**

3 35. Respondent James Shen is subject to disciplinary action under section 1684 for
4 unprofessional conduct in that he practiced outside the scope of practice under his dental license,
5 to wit, the practice of medicine, as more particularly alleged in paragraph 29, incorporated
6 herein by reference.

7 Seventh Cause for Discipline

8 **(Unprofessional Conduct: Practicing Outside Scope of License - Patient #42)**

9 36. Respondent James Shen is subject to disciplinary action under section 1684 for
10 unprofessional conduct in that with patient #42 Respondent practiced outside the scope of
11 practice under his dental license, as more particularly alleged in paragraph 25, incorporated
12 herein by reference.

13 Eighth Cause for Discipline

14 **(Unprofessional Conduct: Practicing Outside Scope of License - Patient #26)**

15 37. Respondent James Shen is subject to disciplinary action under section 1684 for
16 unprofessional conduct in that with patient #26 Respondent practiced outside the scope of
17 practice under his dental license, as more particularly alleged in paragraph 26, incorporated
18 herein by reference.

19 Ninth Cause for Discipline

20 **(Unprofessional Conduct: Practicing Outside Scope of License - Patient #60)**

21 38. Respondent James Shen is subject to disciplinary action under section 1684 for
22 unprofessional conduct in that with patient #60 Respondent practiced outside the scope of
23 practice under his dental license, as more particularly alleged in paragraph 27, incorporated
24 herein by reference.

25 Tenth Cause for Discipline

26 **(Unprofessional Conduct: Practicing Outside Scope of License - Patient #68)**

27 39. Respondent James Shen is subject to disciplinary action under section 1684 for
28 unprofessional conduct in that with patient #68 Respondent practiced outside the scope of

1 practice under his dental license, as more particularly alleged in paragraph 28, incorporated
2 herein by reference.

3 Eleventh Cause for Discipline

4 (Unprofessional Conduct: Repeated Failure to Provide Dental
5 Materials Fact Sheet - Violations of Code §1648.15)

6 40. Respondent James Shen is subject to disciplinary action for repeated violations
7 of section 1680(n) in conjunction with section 1648.15, as more particularly alleged in paragraph
8 19, incorporated herein by reference.

9 Twelfth Cause for Discipline

10 (Violation of the Interim Order of Suspension)

11 41. Respondent has subjected his dental license to further discipline pursuant to the
12 provision of Business & Professions Code section 494(i) for violation of the ISO, to wit,
13 purporting to diagnose poisoning from mercury amalgam fillings to a person who walked into
14 his open dental office and sought treatment from him, as more particularly alleged below:

15 A. On Monday, October 9, 2006 at approximately 2:15 p.m., an investigator for the
16 Board entered Respondent's open dental office at 18751 Beach Blvd. in Huntington Beach. She
17 entered the reception area, and a male sitting at the desk asked if he could help her. She asked
18 for a business card; said she had been having jaw, neck, shoulder and arm pain and was
19 thinking of scheduling an appointment; had seen his office many times driving by, with the sign
20 "Head Neck TMJ Pain Center," and thought maybe she could get some pain relief.

21 B. Respondent handed his business card to her and told her that right then he could
22 not treat her because the Dental Board had suspended his license. The investigator asked if
23 there was anyone else she could see, as the pain was starting to disrupt her daily activities. In
24 response to Respondent's question, the investigator said that she had seen a chiropractor in the
25 past but it had not helped enough and that it was not covered by her health insurance.

26 C. Respondent then asked if she had any amalgam fillings. When she said she had
27 many, Respondent told her that amalgam fillings were not good to have in the mouth and that
28 they were toxic. Respondent also asked if she had any root canals. When she said yes, six or

1 seven, he referred her to another dentist in Laguna Niguel.

2 D. Respondent said that he could not treat her right then, but, that based on the
3 information she had given him, her jaw pain, neck and arm pain, and the fact that she had many
4 amalgam fillings and root canals, she was being poisoned. He explained that poisons and toxins
5 from her amalgam fillings and her root canaled teeth were going into her jawbone and that these
6 poisons would spread throughout her body, including going into her head and brain.

7 E. When the investigator asked what she was supposed to do with all the teeth in her
8 mouth that had amalgam fillings and root canals, Respondent told her that she needed to get rid
9 of them, get them out of her mouth, they were poisoning her.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Dental Board of California issue a decision:

- 13 1. Revoking Dental Certificate Number 31978, issued to James Shen;
- 14 2. Ordering James Shen to pay the Dental Board of California the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: October 12, 2006.

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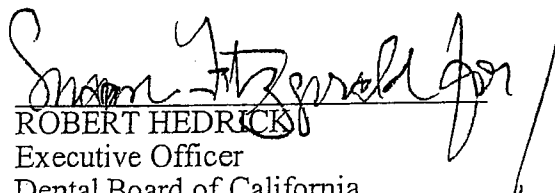
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ROBERT HEDRICKS
Executive Officer
Dental Board of California
Department of Consumer Affairs
State of California
Complainant