

FILED DATE: MAY 30 2013

Department of Health

By: [Signature]  
Deputy Agency Clerk

FILED  
 STATE OF FLORIDA  
 THE FLORIDA BOARD OF DENTISTRY

DEPARTMENT OF HEALTH  
 PETITIONER

DIVISION OF  
 ADMINISTRATIVE  
 HEARINGS

CASE NO.: 2007-35238  
 DOAH CASE NO.: 12-0005PL  
 LICENSE NO.: DN 14716

GUSTAVO B. BORGES, DDS,  
 RESPONDENT.

**FINAL ORDER**

This cause came before the Board of Dentistry (Board), pursuant to sections 120.569 and 120.57(1), Florida Statutes, at a duly noticed public meeting on May 17, 2013, in Jacksonville, Florida. The purpose of the cause was for consideration of the Honorable Todd P. Resavage's Recommended Order issued on March 11, 2013 (attached hereto as Exhibit "A"); Respondent's Exceptions that were timely filed in the wrong venue (attached hereto as Exhibit "B"); and Petitioner's Response to Exceptions (attached hereto as Exhibit "C"). Petitioner was represented by Gail Scott Hill, Assistant General Counsel. Neither the Respondent nor his counsel of record, Randall M. Shochet, Esq., was present at the meeting.

**APPEARANCES**

For Petitioner:

Gail Scott Hill, Esquire  
 Assistant General Counsel  
 Department of Health  
 4052 Bald Cypress Way, Bin C-65  
 Tallahassee, Florida 32399-3265

For Respondent:

Randall M. Shochet, Esquire  
 The Dental Law Firm, P.A.  
 4897 Jog Road  
 Greenacres, Florida 33467

Upon review of the Recommended Order, the Exceptions, and the complete record in this case, the Board makes the following findings and conclusions:

#### RULINGS ON EXCEPTIONS

1. Respondent's Exception Number 1: **REJECTED AS NOT LEGALLY SUFFICIENT.** The Respondent takes exception to the omission by the Administrative Law Judge of findings of fact on undisputed expert testimony. The Board rejects this exception as not legally sufficient, because the exception fails to identify any disputed portion of the recommended. Section 120.57(1)(k), Florida Statutes.
2. Respondent's Exception Number 2: **DENIED.** The Respondent takes exception to the Administrative Law Judge's finding of fact in paragraph 9, arguing that paragraph 9 is actually a conclusion of law, and if a conclusion is improperly labeled as a finding of fact, the label is disregarded and the item is treated as though it were properly labeled. The finding is not improperly labeled and is not a conclusion of law and is therefore rejected. There is competent substantial evidence to support the finding in paragraph 9.

#### FINDINGS OF FACT

1. There is competent, substantial evidence to support the Findings of Fact made in the Recommended Order;
2. Accordingly, the Findings of Fact set forth in the Recommended Order are hereby approved, adopted, and incorporated by reference as the Findings of Fact of the Board.

CONCLUSIONS OF LAW

1. The Board has personal and subject matter jurisdiction of this cause pursuant to sections 120.569; 120.57(1); and Chapter 466, Florida Statutes.
2. The Board does not find a more reasonable interpretation of the law than that which was found by the Administrative Law Judge;
3. Accordingly, the Conclusions of Law set forth in the Recommended Order are approved, adopted and incorporated herein by reference.

VIOLATION, PENALTY, AND COSTS

*VIOLATION*

Upon a complete review of the record in this case, the Findings of Fact and Conclusions of Law of the Administrative Law Judge's Recommended Order are **ACCEPTED**.

**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED** that the Respondent is found in **VIOLATION** of Section 466.028(1)(II), by violating section 456.072(1)(c), Florida Statutes, by tendering a plea of guilty and being adjudicated guilty to knowingly receiving child pornography in violation of Title 18, United States Code, § 2252A(a)(2)(A).

*PENALTY*

Upon a complete review of the record in this case, the Board determines that the penalty recommended by the Administrative Law Judge be **ACCEPTED** without modification.

**WHEREFORE**, it is hereby **ORDERED** and **ADJUDGED**:

1. Respondent's license to practice dentistry in the State of Florida is hereby **REVOKED**.

*MOTION TO ASSESS COSTS*

Upon a complete review of the Petitioner's Motion to Access Costs, with all attachments and material submissions, and in consideration of Petitioner's *ore tenus* motion to bifurcate, it is hereby **ORDERED** and **ADJUDGED**, that the Motion to Access Costs is hereby **DENIED** and **DISMISSED**, with prejudice. Accordingly, Respondent shall not be assessed any costs in the above styled cause.

**DONE AND ORDERED** this 30th day of May, 2013.

BOARD OF DENTISTRY

Cindy Kitter for  
Sue Foster  
Executive Director *on behalf of*  
Daniel Gesek, DDS, CHAIR

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail to **Gustavo Bernadelli Borges, DDS**, 14651 Elmcroft Avenue, Norwalk, California 90650; **Randall M. Shochet, Esq.**, 4897 South Jog Road, Greenacres, Florida 33467; **Honorable Todd P. Resavage**, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by inter-office mail to **Gail Scott Hill**, Assistant General Counsel, Department of Health, 4052 Bald Cypress Way, Bin # C-65, Tallahassee, Florida 32399-3265; and by electronic mail to **Lynette Norr**, Assistant Attorney General, at [Lynette.Norr@myfloridalegal.com](mailto:Lynette.Norr@myfloridalegal.com) this 30<sup>th</sup> day of May, 2013.

7012 3460 0000 4256 1234

Gustavo B. Borges, DDS

Randall M. Schochet

7012 3460 0000 4256 1241

Angel Sander

Deputy Agency Clerk