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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

CERTIFIED TRUE COPY

In the Matter of the Suspension
or Revocation of the License of

STEVEN L. RASNER, D.M.D.
License No. 12735

to Practice Dentistry in the
State of New Jersey

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: Administrative Action
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: DECISION AND FINAL ORDER
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This matter was opened to the New Jersey State Board of Dentistry (hereinafter "Board") upon the filing of an Administrative Complaint on April 9, 1985 by Irwin I. Kimmelman, Attorney General of New Jersey (Deputy Attorney General Sharon M. Joyce, appearing) alleging in one count that respondent Steven L. Rasner, D.M.D. was convicted of a crime involving moral turpitude or a crime relating adversely to the activity regulated by the Board in that he entered a guilty plea to two counts of knowingly and intentionally using a communication facility, that is, a telephone, in causing, committing and facilitating a conspiracy to possess with intent to distribute cocaine, a Schedule II narcotic drug controlled substance, in violation of 21 U.S.C. §843(b). On May 7, 1985, the administrative complaint was amended* to add two counts. The

* The deputy attorney general moved to amend the administrative complaint, over respondent's objection at the beginning of the hearing before the Board. After the Board granted the motion to amend but agreed to adjourn the hearing as to those counts of the amended complaint, respondent waived his objection and agreed to proceed with the entire matter.

second count of the complaint alleged that respondent had engaged in the use of deception, fraud or misrepresentation when he answered "NO" to the question on his licensing application form: "Have you ever personally used narcotics in any form?" The third count alleged the use of deception, fraud or misrepresentation in respondent's answering "NO" to a question on his licensing application form concerning prior arrests.

Respondent answered with a general denial of all charges.

DISCUSSION

COUNT I

The evidence presented at the hearing showed that on November 30, 1984, respondent pled guilty to Count 29 and Count 32 of Indictment No. 84-00388-09 issued by a federal grand jury of the Eastern District of Pennsylvania. Those counts charged that respondent knowingly and intentionally used a communication facility, that is, a telephone, in causing, committing and facilitating a conspiracy* to possess with intent to distribute and to distribute cocaine, a Schedule II narcotic drug controlled substance, in violation of 21 U.S.C. §843(b).

The transcript of the proceeding in which respondent entered his guilty pleas to the federal charges was proffered by

* Counts 29 and 32 charged use of a telephone "in causing, committing and facilitating the conspiracy described in Count One...." Over respondent's objection, Count One of the indictment was admitted into evidence, notwithstanding that, by terms of a plea agreement, Count One was dismissed as it related to respondent as a separate basis for prosecution. Thus, Count One was not considered by the Board as a separate charge or offense, but only for clarification as it was referred to in Counts 29 and 32.

respondent and admitted into evidence before the Board to establish that respondent had not engaged in the distribution of cocaine beyond friends and family. Nevertheless, he admitted that he began using cocaine at the "very end of dental school" and had, in fact, been addicted for two and one half years prior to January 2, 1984. Respondent further admitted that he was a customer of co-defendant, Bruce Taylor, from whom he had received cocaine "on several occasions" for distribution to others from whom he collected money. Respondent denied making a profit from such transactions, asserting that the distributions were solely to family members and friends.

Respondent appeared to be candid in his testimony before the Board. He testified that he began using cocaine in 1980 while in dental school and continued using cocaine with increasing regularity and frequency until January 2, 1984. He maintained that his cocaine use had always been confined to weekends - Friday night through Sunday - and that he never interacted with or treated a patient while under the influence of cocaine. Thus, he contended that his cocaine use did not affect his practice of dentistry.* In support of that contention, respondent presented his father, Dr. Charles Rasner, and his associate, Dr. Maury Glickman, who both testified that respondent is and has always been an excellent dentist. Charles Fisher, a Cumberland County freeholder, testified

* Respondent argued that N.J.S.A. 45:1-21(f) requires proof that the crime of which he was convicted adversely related to his practice of dentistry rather than the practice of dentistry in general. Although testimony as to respondent's quality of patient care was accepted on that proposition, the Board did not expressly rule on the legal issue at the hearing. Much of this testimony was also considered by the Board in mitigation of penalty.

that respondent has been the dentist for the Cumberland County Geriatric Home and had worked with the County Board of Health, providing dental care to indigent children. Mr. Fisher stated that the administrators at the Geriatric Home had been most complimentary about respondent. Richard H. Gauntt, the Chief of Police of Bridgeton and a patient of respondent, testified that respondent is the best dentist he had ever been to and he knew of no one who was ever displeased with respondent's care.

Dr. Harvey Musikoff, a forensic psychologist who had spent 10 hours evaluating respondent, testified that he did not believe respondent's cocaine addiction and the criminal charges related adversely to respondent's dental practice because respondent has a "pro-social attitude." Dr. Musikoff concluded that respondent had suffered from a mood disorder for which he "self-medicated himself" with cocaine. When asked if respondent's distribution of cocaine to friends and relatives was inconsistent with a "pro-social" attitude, Dr. Musikoff explained that respondent's judgment was impaired during the period of time when he was using cocaine, but that this impairment of judgment was limited to the weekend. Dr. Musikoff explained that letters from respondent's patients given to him by respondent, were important in reaching his conclusion.

Although respondent insisted that his cocaine use was limited to weekends, significantly, he admitted that there were occasions when he had to cancel weekend office hours. Moreover, he conceded that he had used cocaine during times when he was on call for emergencies. Respondent testified at the hearing that he

realized that he had been addicted and that there were times when he tried to stop using cocaine. According to respondent, he sometimes flushed his supply of cocaine down the toilet out of guilt, but that it took "a federal indictment and self-discipline and power" for him to overcome his addiction.

In describing the nature of his cocaine purchases and use, respondent testified that during the year prior to his arrest, he was purchasing approximately one pound of cocaine "every couple of months," out of which he would retain three to four ounces for personal use.* He explained that he and others would pool their money for the purchases because the price, which was anywhere between \$1,400 and \$2,000 per ounce depending upon the strength, was lower for larger quantities. Respondent denied that he profitted from these transactions, but admitted that he always owed money to his supplier and did on one occasion act as a courier to reduce his debt.

* To rebut respondent's testimony concerning the quantities of cocaine he purchased, the deputy attorney general called Special Agent Sidney Perry of the FBI. Perry, who had been involved in the investigation leading to the indictment, testified over the respondent's objection, that his investigation had revealed that the quantity of cocaine was greater than that to which respondent testified. To substantiate that testimony, Perry explained that ledger sheets seized from Bruce Taylor, respondent's supplier, detailed monthly purchases by "RAZ" between September 1983 and January 1984. Although respondent disputed the accuracy of the ledger sheet both to the FBI and at the hearing before the Board, Agent Perry testified that all other customers whose names appeared in the ledger verified its accuracy as to themselves.

In light of the substantial dispute as to the accuracy of the ledger, the Board has relied solely on the testimony of respondent concerning the quantities and frequency of cocaine purchases in reaching this decision.

According to respondent, he financed his cocaine purchases through income from his busy dental practice.

FINDINGS OF FACT

1. Respondent, Steven L. Rasner, D.M.D., is and, at all time pertinent hereto, was a dentist licensed in the State of New Jersey, holding certificate number 12735.

2. On February 13, 1985, respondent entered a guilty plea to two counts of knowingly and intentionally using a communication facility, that is, a telephone, in causing, committing and facilitating a conspiracy to possess with intent to distribute and to distribute cocaine, a Schedule II narcotic drug Controlled Dangerous Substance, in violation of 21 U.S.C. §843(b).

3. Respondent began using cocaine in 1980, prior to graduation from dental school, and continued using cocaine with increasing regularity and frequency until January 1984.

4. Although no evidence was adduced showing respondent's cocaine use extended beyond weekends or resulted in direct physical harm to any given patient, by respondent's own admissions, he used and was under the influence of cocaine when he was on call in the event of dental emergencies and there had been occasions when he had to cancel appointments due to his cocaine use.

5. The quantity of respondent's cocaine purchases and use were significant. He would purchase approximately one pound

every two months and divide it among family and friends.* The cost of the cocaine was anywhere between \$1,400 and \$2,000 per ounce.

CONCLUSIONS OF LAW

The deputy attorney general charged respondent with having been convicted of a crime involving moral turpitude or a crime adversely related to the activity regulated by the Board, that is, the practice of dentistry.

The statute under which respondent was convicted, 21 U.S.C. §843(b) provides in pertinent part:

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provisions of [The Controlled Dangerous Substance Act].

The deputy attorney general argues that the Board must consider all elements of the offense charged and the conduct underlying the conviction to determine whether it constitutes a crime involving moral turpitude. In this case, she submits, the indictment made it clear that respondent was being charged with using a telephone in furtherance of and to facilitate a conspiracy to distribute cocaine. In this regard, she contends, there is ample

* Respondent made special note that he distributed the cocaine only to friends and family and did not, therefore, distribute in the usual sense of an illicit commercial transaction to strangers or others for profit. Although the Board would have viewed the latter as an aggravating circumstance in considering an appropriate penalty, nonetheless it views respondent's actions as "distribution" and by no means a mitigating factor simply because he involved only family and friends in his activities.

support for the proposition that drug-related crimes are crimes of moral turpitude.

Respondent makes a more technical argument. He contends that for a crime to involve moral turpitude it must be malum in se, or a wrong in itself, as opposed to malum prohibitum, or a wrong which is such because it has been so designated. In this regard, respondent maintains that the operative aspect of the offense for which he was convicted was the "unlawful use of a communication facility," which is not a wrong in itself.

Respondent's argument must be rejected. For the purpose of administrative proceedings, the judgment of conviction establishes conclusively all of the facts underlying the conviction. Hyland v. Kehayes, 157 N.J. Super 258, 264 (App. Div. 1978). Indeed, in this case, respondent acknowledged the accuracy of federal prosecutor's recitation of the facts when he entered his guilty plea. Thus, to accept respondent's argument would require the Board to elevate form over substance and entirely ignore the salient aspect of the conduct with which he was charged. The Board, however, need not be bound by the technical peculiarities of pleadings used to establish federal jurisdiction. Rather, it must look to the entire substance of the charge.

A crime involving moral turpitude is defined as an "act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, to society in general, contrary to accepted and customary rule of right and duty between man and man" or "in its legal sense... everything done contrary to justice, honesty, modesty or good morals." State Board of Medi

cal Examiners v. Weiner, 68 N.J. Super 468, 483-484 (App. Div. 1961), rev'd. on other grounds 41 N.J. 56 (1963).

The Board has no difficulty concluding that the crime for which respondent was convicted involves moral turpitude. Engaging in the illicit purchase and distribution of cocaine, a controlled dangerous substance, wrenches at the fabric of our society. Such behavior is even more egregious when it involves a licensed health care practitioner who has been granted one of the State's most trusted privileges - the authority to prescribe and dispense controlled dangerous substances.

Although the Board's resolution of the issue makes it unnecessary to address the alternative basis for the administrative charge, the Board has concluded that the crime for which respondent was charged did adversely relate to the practice of dentistry. The abuse and distribution of a controlled dangerous substance can only serve to undermine the profession and the authority vested in its practitioners. N.J.S.A. 45:6-7, which grants the Board the authority to revoke the license of a dentist found to have habitually used drugs or to have been convicted of a violation of any Federal or State law relating to narcotic drugs, expressly indicates an identical legislative policy.

Respondent argues that the statute must be read to require proof that the crime for which he was convicted adversely related to his practice of dentistry. To establish that his drug use did not affect the manner in which he practiced dentistry, respondent presented testimony that his colleagues were unaware of

his drug use, that his patients were satisfied with his services, and that his addiction manifested itself only on weekends.

Even if the Board had accepted respondent's position on statutory construction, respondent himself admitted that there were occasions when he had to cancel patient appointments due to his cocaine use. Moreover, he conceded that he was under the influence of cocaine during times when he was required to be available for dental emergencies. Clearly, therefore, his capacity to render dental services under the indicated circumstances was impaired and, accordingly, even though respondent's cocaine use may not have resulted in direct physical harm to a patient, it cannot be said that it did not adversely relate to respondent's practice of dentistry.

Therefore, the Board makes the following Conclusions of Law as to Count I:

1. The crime for which respondent was convicted involves moral turpitude and is, as well, a crime relating adversely to the activity regulated by the Board within the meaning of N.J.S.A. 45:1-21(f).

2. The crime for which respondent was convicted involves moral turpitude within the meaning of N.J.S.A. 45:6-7(b).

COUNT II

DISCUSSION

The second count of the amended complaint alleged that respondent's failure to truthfully answer the question - "Have you ever personally used narcotics in any form?" - on his licensing application constituted the use of deception, fraud or misrepre-

sentation in violation of N.J.S.A. 45:1-21(b) as well as the use of deception, fraud or misrepresentation to obtain a license in violation of N.J.S.A. 45:1-21(a) and N.J.S.A. 45:6-7(a).

The proofs on this count consisted of respondent's licensing application form dated June 20, 1980, indicating that respondent graduated from the University of Pennsylvania Dental School on May 19, 1980, as well as the transcript of respondent's sworn testimony given on or about February 7, 1985 in the United States District Court for the Eastern District of Pennsylvania in United States v. Norimatsu. In his testimony, respondent indicated that he began using cocaine in January 1980 while in his final year of dental school.

Respondent presented the testimony of Dr. William Vilensky, licensed pharmacist and physician in the State of New Jersey, who stated that cocaine is not a narcotic in the "strict" meaning of the term, but rather is a central nervous system stimulant. On cross-examination, however, Dr. Vilensky explained that cocaine is deemed a narcotic both in common parlance and by the Federal Drug Enforcement Administration, the agency who establishes the schedules for controlled dangerous substances.

Respondent was quite candid in his testimony that he viewed cocaine as a narcotic when he answered "NO" because he had filled out the application form during a time when he thought he had ceased using cocaine and he honestly felt that he was "turning over a new leaf."

FINDINGS OF FACT

1. On or about June 20, 1980, respondent executed an application for licensure as a dentist in the State of New Jersey. In completing that application, respondent answered "NO" to the following question: "Have you ever personally used narcotics in any form?"

2. On or about February 7, 1985, respondent testified under oath in a proceeding in the United States District Court for the Eastern District of Pennsylvania that he began using cocaine in January 1980.

3. Cocaine is a Schedule II Controlled Dangerous Substance and is commonly considered a narcotic.

4. Respondent admitted that at the time he answered the subject question on his application form he viewed cocaine as a narcotic, but that he denied its prior use on the application because he believed that he had permanently ceased using the drug.

CONCLUSIONS OF LAW

Respondent argued during the proceedings that cocaine is technically not a narcotic and he, therefore, should not be viewed as having made a misrepresentation on his application form. He also submitted that he answered the question in good faith believing that his cocaine use was a thing of the past.

The Attorney General contends that respondent's good faith intentions in answering the subject question are of no moment, given his admission that he viewed cocaine as a narcotic. The Board is to be made aware of the foibles of its applicants

prior to the granting of licensure; it is not up to an applicant to judge whether past drug use should be disclosed to the Board.

The Board rejects respondent's argument that cocaine may more technically be viewed as a central nervous system stimulant rather than a narcotic and thus he should not be deemed to have lied on his application form. It is apparent that a reasonable applicant would have understood the question to include cocaine, as respondent candidly admitted he did. The Board, though in some respects sympathetic to respondent's good faith beliefs of rehabilitation in answering "NO" to the question of narcotic use, simply cannot accept the position that an applicant may judge his or her rehabilitative prospects or the weight of a question in the overall application review process.

Therefore, the Board makes the following Conclusion of Law:

1. Respondent engaged in the use of deception, fraud or misrepresentation in violation of N.J.S.A. 45:1-21(b) and or the use of deception, fraud or misrepresentation to obtain a license in violation of N.J.S.A. 45:1-21(a) and N.J.S.A. 45:6-7.

COUNT III

DISCUSSION

The third count of the administrative complaint alleged that respondent's failure to disclose an arrest on October 11, 1979 in response to the following question on his dental licensure application form:

Have you ever been summoned, arrested, taken into custody, indicted, convicted OR tried for, OR charged with, OR pleaded guilty to, the violation of any law or

ordinance or the commission of any felony or misdemeanor (excluding traffic violations) in this or any other State, or in a foreign country? (Include all such incidents no matter how minor the infraction or whether guilty or not.)...

constituted the use of deception, fraud or misrepresentation in violation of N.J.S.A. 45:1-21(b) and the use of deception, fraud or misrepresentation to obtain a license in violation of N.J.S.A. 45:1-21(a) and N.J.S.A. 45:6-7(a).

The proofs on this count again included respondent's dental licensure application form with the notation "NO" in answer to the aforementioned question. Also admitted into evidence was a certified copy of criminal complaint charging respondent with unlawfully issuing a check in the amount of \$15 knowing said check would not be honored, in violation of N.J.S.A. 2C:21-5. The date of the warrant issued was October 11, 1979 in Elk Township, New Jersey. Under the heading "ADJUDICATION" it appeared as if the word "DISMISSED" had been crossed out and the word "GUILTY" written in. The columns "JAIL TERM" and "FINE" both had the word "SUSP." checked adjacent to them. The notation "5-." was filled in under "COSTS."

Respondent explained the peculiar circumstances of his apparent arrest. He stated that in 1979 his car had been pulled over for a traffic violation, the details of which he could not recall. He stated that he was unable to immediately locate his insurance card and was, therefore, issued a ticket. Shortly thereafter, he left the country on an oral surgery internship and, upon his return, found a notice that he had to appear in court to show proof that he was an insured driver. He stated that he presented

his insurance card in court and was assessed a \$15 fine. As he was about to issue a check to pay the fine, the clerk checked the court records which apparently disclosed that he had previously issued a check to pay the fine, but that it had been dishonored. Respondent stated that he recalled being fingerprinted, but that he did not recall being arrested that night. He stated he believed the matter was resolved when his mother came with the money to pay the fine.

Under the circumstances described and based upon the proofs submitted, it appears that the respondent was, in fact, arrested on October 11, 1979 in Elk Township, New Jersey for knowingly issuing a bad check. It also appears to the Board, however, that it was not at all clear in respondent's own mind whether he had, in fact, been arrested. Indeed, the circumstances were so peculiar that if respondent had even recalled the incident at the time he filled out his dental licensure application form, it would not have been unreasonable for him to have concluded that his "arrest" was on a traffic violation.

FINDINGS OF FACT

1. On or about June 20, 1980, respondent executed an application for a dental license in the State of New Jersey. In completing that application, respondent answered "NO" to the following question: "Have you ever been summoned, arrested, taken into custody, indicted, convicted OR tried for, OR charged with, OR pleaded guilty to, the violation of any law or ordinance or the commission of any felony or misdemeanor (excluding traffic violations) in this or any other State, or in a foreign country? (In-

clude all such incidents no matter how minor the infraction nor whether guilty or not.)...."

2. On or about October 11, 1979, respondent was arrested in Elk Township, New Jersey for issuing a bad check in the amount of \$15 in violation of N.J.S.A. 2C:21-5, an arrest that arose out of a motor vehicle violation, his failure to have an automobile insurance card when he was pulled over in his car by a police officer.

3. Respondent did not believe himself to have been officially placed under arrest on that occasion and therefore answered "NO" in good faith on the application form.

CONCLUSIONS OF LAW

The deputy attorney general argues that proof of respondent's arrest and answer of "NO" in response to the inquiry concerning arrest on his dental licensure application form is sufficient to establish the use of fraud, deception or misrepresentation. She further submits that it should not be left to an applicant to determine that an arrest or conviction is not worthy of the Board's consideration.

Respondent argued during the proceedings that his arrest in Elk Township was a motor vehicle violation "or the equivalency." He contended that the proofs did not rise to the level of establishing that he lied on his application form.

The Board concludes that the circumstances of respondent's arrest in Elk Township could reasonably have been construed to have arisen from a traffic violation. Therefore, the Board did not find sufficient proof to establish the requisite level of

intent to conclude that respondent used deception, fraud or misrepresentation.

Therefore, the Board makes the following conclusion of law:

1. Respondent's failure to respond in the affirmative to question 14 (concerning prior arrests) on his dental licensure application form did not, under the circumstances, constitute the use of deception, fraud or misrepresentation in violation of N.J.S.A. 45:1-21(a) and N.J.S.A. 45:6-7(a).

SANCTIONS

The Board thoroughly considered the record before it, including the testimony of respondent's colleagues and patients attesting to the quality of patient care he has administered. The Board has also considered the testimony of Dr. Harvey Musikoff, explaining the factors that led to respondent's cocaine addiction, as well as his prognosis for rehabilitation. The testimony of Dr. William Vilensky also described respondent's prognosis and his current stringent treatment, including unannounced urine-monitoring and intensive psychotherapy.

Notwithstanding what may be viewed as "favorable" testimony, the Board must take into account respondent's admitted cocaine use and ultimate addiction from January 1980 through January 1984 involving, in the opinion of the Board, substantial quantities of cocaine. Moreover, the charges to which respondent pled guilty and respondent's own admissions indicate he was involved in the distribution of the drug, albeit such distribution was confined to "family and friends."

The authority to practice dentistry in the State of New Jersey is a privilege not to be taken lightly. As unfortunate as respondent's circumstances may have been, the Board cannot let sympathy for the licensee outweigh its greater duty to the public to assure the health, safety and welfare of individuals who seek dental services.

IT IS, THEREFORE, ON THIS *10* DAY OF *JULY* 1985,
ORDERED that:

1. The license of respondent, Steven L. Rasner, D.M.D., to practice dentistry in the State of New Jersey shall be and is hereby revoked and respondent shall immediately surrender his wall certificate and license to the Board.

2. The Board of Dentistry shall not entertain any petition for reinstatement of the license to practice dentistry of respondent prior to one year from the entry of this Order.

3. During the period of time in which the respondent's dentistry license remains revoked, respondent shall not own or otherwise maintain a pecuniary or beneficial interest in a dental practice, or function as a manager, proprietor, operator or conductor of a place where dental operations are performed, or otherwise practice dentistry within the meaning of N.J.S.A. 45:6-19.

4. Respondent shall immediately surrender all privileges pertaining to prescribing or dispensing of Controlled Dangerous Substances.

5. Respondent shall pay a civil penalty to the Board of Dentistry in the amount of \$5,000.

6. Respondent shall pay all costs to the Board of Dentistry for the administrative proceedings pertaining to this Order. The Attorney General shall have leave to seek such an imposition by way of separate application on notice to respondent.

Arthur Yeager DDS
Arthur Yeager, D.D.S.
President