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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF DENTISTRY

IN THE MATTER OF:	:	Administrative Action
	:	
WILLIAM LIMONGELLI, D.D.S.	:	DECISION ON PETITION FOR
	:	REINSTATEMENT OF LICENSE
	:	
	:	

DISCUSSION

This matter was opened to the New Jersey State Board of Dentistry on June 12, 1991 by a petition for reinstatement of licensure by William Limongelli, D.D.S.

This matter first came before the board by a complaint filed on April 15, 1985 by Irwin I. Kimmelman, Attorney General of New Jersey. The complaint alleged that respondent, William Limongelli, D.D.S., submitted dental forms requesting payment for dental procedures that were not performed and accepted and retained monies paid by an insurance company for such dental procedures. The complaint further alleged that respondent submitted dental insurance claim forms requesting payment for procedures previously performed on different dates than indicated and previously claimed and considered by the patient's insurance carrier. On August 27, 1985 respondent pled guilty in the Superior Court of New Jersey to seven counts of a twelve count criminal indictment for theft by deception. The guilty plea conclusively proved nine of seventeen counts of the Board's administrative complaint. Subsequently on January 9, 1986 the parties

entered into a consent order providing that respondent's license to practice dentistry be revoked for a period of five years, and that respondent pay a civil penalty of \$10,000.

In 1989 an investigative inquiry was held by the Board based on receipt of information that respondent continued to practice dentistry during his revoked status. Dr. Limongelli appeared before the Board on March 29, 1989 and testified that as of January 9, 1986 he transferred ownership of the Orange Dental Center, P.C., located at 325 Central Avenue, Orange, New Jersey and the Dental Parkway Clinic, Inc., located at 679 South Orange Avenue, Newark, New Jersey to Dr. Anthony J. Vitale. This transfer included all equipment and patient records and was achieved by registering Dr. Vitale as the registered agent for the two corporations. Dr. Limongelli testified that other than registering Dr. Vitale as the registered agent he did not take any other steps to transfer ownership. His agreement with Dr. Vitale at that time was that Dr. Vitale would run both practices for a while and then they would institute a buyout agreement. However the actual paperwork concerning this buyout did not commence until 1987 and never culminated in an executed contract of sale or any agreement which memorialized this transaction. Nor did Dr. Limongelli transfer any of the stock of the two corporations to Dr. Vitale. At the time of revocation of his license, Dr. Limongelli estimated the value of each practice to be approximately \$250,000. However, Dr. Limongelli testified that their value had declined so drastically that he simply gave them away, including the equipment, supplies and patient records, to Dr. Vitale. At the hearing on his petition for reinstatement,

counsel for Dr. Limongelli represented to the Board that Dr. Limongelli never transferred ownership of the two practices to Dr. Vitale.

After the revocation, until an unspecified date, Dr. Limongelli continued his involvement with the two practices in an administrative capacity. He testified that he acted as a liaison between Dr. Vitale and the corporation's accountant located in Brooklyn, New York since Dr. Vitale was very rarely physically in the two practices. He also wrote checks in the name of the corporations.

Dr. Vitale testified before this Board that prior to August 1986 he was an independent contractor employed by Dr. Limongelli. From August, 1986 until sometime in 1988 he and Dr. Limongelli negotiated for the sale of the two practices. During that time, he considered himself to be a "Director with Intent to Purchase" and managed the two practices. During his tenure as Director With Intent To Purchase, he did not own the practices and believed that Dr. Limongelli continued to own them. When negotiations terminated in 1988 he resigned as Director and both practices continued in the ownership of Dr. Limongelli.

In 1989, Dr. Limongelli then entered into a lease with Dr. Joseph Prasad for the Orange Dental Center, P.C. for the period from January 1, 1989 to December 30, 1990, which provided in part that the "patient records, present in the leased premises shall be the ownership of the tenant for the term of this lease. Likewise all equipment, instruments and supplies are the tenant's property." The lease further provided: "Upon the termination of this lease (end of term Dec. 30 '90), the Tenant shall have the options listed below. \*\*\*(2) To negotiate a new lease at a reduced rate to be agreed upon with the

Landlord and enter into a purchase agreement for 1/2 interest in the practices at that time. This agreement shall be based on the avg. annual gross receipts over the yrs 1987, 1988 only and shall not be based upon the avg. gross receipts over the term of this lease unless this figure is lower than that averaged over 1987, 1988, in which case, the avg. will be taken over the four years from 1987 to 1990." This lease was renewed for two additional periods ending June 30, 1991 with the following modification: "patient records present in this leased premises shall be the ownership of the tenant for the terms of this lease. Likewise, all equipment, instruments and supplies are the tenant's property." Dr. Limongelli testified that despite the language in the first lease he did not own the equipment or patient records. He did not know how Dr. Prasad obtained the equipment and records but assumed that he purchased them from Dr. Vitale.

Sometime in February 1989 Dr. Limongelli filed a Statement of Bankruptcy under the name of William Alfonson Limongelli d/b/a Orange Dental Center. Listed under personal property in the petition was the Orange Dental Center P.C./equipment and Dental Parkway Clinic Inc./equipment. Dr. Limongelli testified that the inclusion of the dental centers in the petition was a mistake. This petition was subsequently withdrawn and a petition for individual bankruptcy was filed under the name of William Limongelli, a/k/a/ William A. Limongelli. Included in this latter petition under "personal property" was" Orange Dental Center and Dental Parkway Clinic, Inc., formerly owned and operated by Debtor, the value of Debtor's interest believed to be none." Dr. Limongelli did not know why the clinics were included

in this bankruptcy petition.

Dr. Limongelli also testified that sometime in 1985 he and Dr. Vitale were partners in a dental practice known as Personal Choice Dental Associates, P.A. He testified that he had sold his ownership in that practice at the time of the revocation of his license but was unable to provide to the board any documentation as to this sale other than a transfer of stock document signed by him which was neither witnessed nor dated and an agreement signed by both Respondent and Dr. Vitale which was neither witnessed nor dated.

The Board conducted its deliberations in Executive Session and announced its decision on August 7, 1991 in Public Session.

On consideration of the record herein, the Board makes the following Findings of Fact and Conclusions of Law.

#### FINDINGS OF FACT

1. William A. Limongelli's, D.D.S. license to practice dentistry was revoked for a period of five years effective January 9, 1986.
2. The Board finds incredible Dr. Limongelli's testimony that he gave the equipment and all assets, including patient records, of the Orange Dental Center, P.C. and the Dental Parkway Clinic, Inc. to Dr. Vitale for no consideration.
3. The Board finds credible Dr. Vitale's testimony that he never owned the Orange Dental Center, P.C. and the Dental Parkway Clinic, Inc.
4. The Board finds that Dr. Limongelli did not transfer ownership of the Orange Dental Center, P.C. and the Dental Parkway

Clinic, Inc. to Dr. Vitale

5. The Board finds that Dr. Limongelli continued to own and/or operate the Orange Dental Center, P.C. and the Dental Parkway Clinic, Inc. during the five years his license was revoked.

#### CONCLUSIONS OF LAW

1. Dr. Limongelli never transferred ownership of the Orange Dental Center P.C. and the Dental Parkway Clinic, Inc. to Dr. Anthony Vitale by naming him as a registered agent. A change of registered agent is not a change of ownership in the corporation. The principal, if not sole, function of the registered agent is to receive service of process notices or demands upon the corporation by mail or other delivery. N.J.S.A. 14A:4-2(1) and (2).

2. Dr. Limongelli never transferred shares of stock of the corporations to Dr. Vitale in violation of N.J.S.A. 14A:17-14(c). Transfer of shares by a disqualified shareholder to a licensed shareholder must be done within 90 days of his disqualification. N.J.S.A. 14A:17-14(c). See also Manna v. Pirozzi, 44 N.J.227,235-236 (1957).

3. Dr. Limongelli's failure to relinquish ownership of the two practices after his license was revoked is in violation of N.J.S.A. 14A:17-3, N.J.S.A. 14A:17-7, N.J.S.A. 14A:17-11.

4. Dr. Limongelli's gift of the practices to Dr. Vitale does not satisfy any of the elements of an inter vivos gift: (1) an unequivocal donative intent on the part of the donor; (2) an actual or symbolic delivery of the subject matter of the gift and (3) an absolute irrevocable relinquishment by the donor of ownership and dominion over

the subject matter of the gift, at least to the extent practicable or possible, considering the nature of the articles to be given. In re. Dodge, 50 N.J. 192, 216 (1967)

5. The conduct of the respondent in owning the Orange Dental Center, P.C. and the Dental Parkway Clinic, Inc. constitutes multiple acts of practicing dentistry within the meaning of N.J.S.A. 45:6-19

6. Respondent has continuously violated the provisions of the Order entered by the Board on January 9, 1986 by continuing to practice dentistry during the five year period his license was revoked in violation of N.J.S.A. 45:6-7. and N.J.S.A. 45:6-13.

7. Respondent has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense within the meaning of N.J.S.A. 45:1-21 by testifying to this Board that he did not own the Orange Dental Center, P.C. and the Dental Parkway Clinic, Inc. during his five year revocation period.

IT IS THEREFORE on this 15<sup>th</sup> day of Aug, 1991

**ORDERED THAT**

1. Respondent's petition for the reinstatement of his license to practice dentistry in the State of New Jersey shall be denied.

2. Respondent's license to practice dentistry in the State of New Jersey shall continued to be revoked for a period of ten years from the date of entry of the within order.

3. The Board of Dentistry shall not entertain any petition for reinstatement of the license to practice dentistry of respondent prior to the expiration of the ten (10) year period.

4. Respondent shall, as a condition for any readmission to

licensure, appear before the Board of Dentistry and demonstrate his ability to re-enter the practice of dentistry.

By: William Cinotti  
William Cinotti, President  
State Board of Dentistry