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WITH THE
N.J. BOARD OF DENTISTRY
ON 1-12-93 icm :

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

In the Matter of the Suspension)
or Revocation of the License of)
FRANK A. PETTISANI, D.D.S.)
To Practice Dentistry in the)
State of New Jersey)

Administrative Action
FINAL DECISION AND ORDER

This matter was opened to the New Jersey State Board of Dentistry ("Board") by Uniform Penalty Letters issued on September 10, 1992 in regard to AdLog #92-529 and on October 13, 1992 in regard to AdLog #92-642 alleging in both instances that Frank A. Pettisani, D.D.S. violated N.J.A.C. 13:30-8.4(g) and that he failed to include the specialty permit number of Board licensees rendering dental services in special areas of dentistry in an advertisement for OraCare Dental Associates, the dental practice which he owned. On or about October 6, 1992, Dr. Pettisani filed a letter response to the Uniform Penalty Letters through his counsel and requested a hearing on the allegations.

A hearing was held on December 2, 1992. Deputy Attorney General Anne Marie Kelly appeared on behalf of the complainant, and A. Fred Ruttenger, Esq. appeared on behalf of Dr. Pettisani.

The following exhibits were admitted into evidence by D.A.G. Kelly:

S-1 Copy of advertisement identified as
AdLog #92-529.

S-2 Copy of advertisement identified as AdLog #92-642.

S-3 Uniform Penalty Letter dated September 10, 1992 re: AdLog #92-529.

S-4 Uniform Penalty Letter dated October 13, 1992 re: AdLog #92-642.

S-5 Letter dated October 30, 1992 from D.A.G. Kelly to Mr. Ruttenberg.

S-6 Copy of Board of Dentistry Newsletter for summer 1990.

S-7 Copy of Board of Dentistry Newsletter for fall 1991.

Dr. Pettisani did not appear at the hearing, but his affidavit was entered into evidence by Mr. Ruttenberg and identified as R-1. In addition, Mr. Ruttenberg provided the following exhibits to the Board which were not admitted into evidence:

R-2 Copy of "Dentists" section of yellow pages for New Jersey Bell Telephone Book for Trenton area.

R-3 Copy of "Dentists" section of New Jersey Bell yellow pages for Bergen County area.

R-4 Copy of "Dentists" section of New Jersey Bell yellow pages for North Hudson area.

R-5 Copy of "Dentists" section of New Jersey Bell yellow pages for Camden County area.

DISCUSSION OF THE CASE

The Uniform Penalty Letter dated September 10, 1992 alleged a violation of N.J.A.C. 13:30-8.4(g) in regard to AdLog #92-529 in that the advertisement failed to include the specialty permit numbers of specialists practicing at OraCare Dental Associates.

The advertisement in question listed the names of dentists associated with OraCare Dental Associates, a number of whom were identified as specialists; e.g. orthodontist, periodontist, and endodontist. However, the specialty permit numbers of these specialists does not appear in the advertisement.

The Uniform Penalty Letter dated October 13, 1992 alleged a violation of N.J.A.C. 13:30-8.4(g) in regard to AdLog #92-642 in that an advertisement for OraCare Dental Associates failed to include the name as well as the specialty permit number of specialists identified as practicing at OraCare Dental Associates in the areas of oral surgery, orthodontics, periodontics, endodontics, and pediatrics. The advertisement in question merely stated that OraCare Dental Associates is fully staffed with qualified specialists in these various specialty areas, but the advertisement does not identify them by name nor does it include their specialty permit numbers.

Both Uniform Penalty Letters offered Dr. Pettisani the opportunity to settle the matters by paying a civil penalty in the amount of \$500.00 in regard to AdLog #92-529 and a civil penalty in the amount of \$1,000.00 in regard to AdLog #92-642.

Although Dr. Pettisani did not testify before the Board in his own behalf at the hearing, his affidavit was offered into evidence as R-1. Therein he avers that he was not aware of the requirement in the Board's regulation requiring the insertion in an advertisement of a specialty permit number. He also indicates that he discussed this regulation with various specialty dentists

and found that the regulation was not well known. He further states that his daughter, Lisa Mazzone, is responsible for the actual placement of advertising for OraCare.

Mr. Ruttenberg argued that the regulation in question is confusing and that in view of the poor compliance with the regulation by other specialist dentists, it was clear that most were not aware of the requirement of a specialty permit number in advertisements. He offered to the Board exhibits identified as R-2 through R-5 as examples of non-compliance. These exhibits were copies of the "Dentists" section of various area New Jersey Bell Telephone yellow pages directories demonstrating that numerous specialists failed to comply with the regulation.

Mr. Ruttenberg also argued that both advertisements were published prior to April 1992, the date when the latest amendments to the regulation were adopted by the Board including amendments to N.J.A.C. 13:30-8.4. Finally, Mr. Ruttenberg asserted on behalf of his client that Dr. Pettisani should not be responsible for failing to provide the specialty permit numbers of licensees who were his employees.

D.A.G. Kelly argued in rebuttal that all professional licensees are charged with knowledge of the regulations governing the practice of their profession, in this case the practice of dentistry. She further stated that Dr. Pettisani had constructive, if not actual, notice through the publication of notices of proposals and adoptions in the New Jersey Register concerning the regulation governing the announcement of practice

in a special area of dentistry. In addition, D.A.G. Kelly introduced into evidence a copy of the Board of Dentistry Newsletter for summer 1990 which prominently included on the first page under the "Did You Know That ... " announcements as follows:

All advertisements of a licensee granted a permit of announcement of limited practice or specialization must contain the licensee's name and permit number. (N.J.A.C. 13:30-8.4). Any advertisement contracted for after January 1, 1991 will be subject to Board disciplinary action if it does not contain the permit number.

The Newsletter for fall 1991 introduced into evidence also stated on the first page under the same column as follows:

Only a dentist possessing a specialty permit may use phrases such as "specialist", "practice limited to" and/or "specializing in ... " when professionally advertising their services. (N.J.A.C. 13:30-8.4).

The Board noted that the amendments to N.J.A.C. 13:30-8.4, "Announcement of practice in a special area of dentistry", which were adopted in April 1992 changed the order of the rule's sub-sections so that what had previously been sub-section (j) became sub-section (g). However, the provision that all advertisements must contain a specialist's name and permit number has been in effect since its adoption in May 1985.

Subsequent to closing arguments made by D.A.G. Kelly and Mr. Ruttenberg, the Board conducted its deliberations in Executive Session on December 2, 1992. On consideration of the record herein, the Board makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Frank A. Pettisani, D.D.S. is a licensed dentist in the State of New Jersey and has been a licensee during all times pertinent hereto.

2. The advertisement identified as AdLog #92-529 published by Dr. Pettisani's dental practice known as OraCare Dental Associates listed by name a number of licensees who are specialists in Dr. Pettisani's dental practice. The advertisement did not provide the specialty permit number for these specialists.

3. The advertisement identified as #92-642 published by Dr. Pettisani's dental practice known as OraCare Dental Associates stated that each OraCare dental office is fully staffed with qualified specialists in various special areas of dentistry. The advertisement did not provide the name or specialty permit number for these qualified specialists.

CONCLUSIONS OF LAW

As a preliminary matter, the Board rejects in its entirety the suggestion that Dr. Pettisani cannot be charged with responsibility for the advertisements in question by reason either that his daughter, Lisa Mazzone, makes the actual placement of advertisement for OraCare or by reason that he should not be held responsible for providing the permit numbers of his dental employees. N.J.A.C. 13:30-8.6(i), the Board's general regulation governing professional advertising provides as follows:

A licensee shall be presumed to have approved and shall be personally responsible for the form and contents of an advertisement which contains the licensee's name, office address, or telephone number. A licensee who employs or allows another to employ for his benefit an intermediary source or other agent in the course of advertising shall be personally responsible for the form and contents of said advertisement.

The Board further finds that the incorrect reference to the sub-section of N.J.A.C. 13:30-8.4 in the Uniform Penalty Letters was inadvertent and without legal effect because the Uniform Penalty Letters also stated in words the substance of the allegation. In addition, the amendments to the rule which were adopted in April 1992 changed the alphabetical order of the sub-sections but did not change the requirement for provision of specialty permit number. That requirement has been in effect since 1985.

The Board further is not persuaded by Dr. Pettisani's argument that he was not aware of the requirement and that other dentists are not aware of the requirement as demonstrated by the poor compliance with the regulation in various telephone directories. All licensees have been provided with copies of the Board's statutes and regulations and this particular requirement that all advertisements of licensees granted a permit of announcement of limited practice or specialization must contain the licensee's name and permit number was specifically and prominently placed in the Board's Newsletter which is mailed to

all licensees as well. The Board further charges all licensees with personal responsibility for awareness of and compliance with all regulations governing the conduct of its professional licensees.

Accordingly, the Board makes the following Conclusions of Law:

1. Dr. Pettisani violated N.J.A.C. 13:30-8.4(j), now codified as N.J.A.C. 13:30-8.4(g), in that he caused two advertisements identified as AdLog #92-529 and AdLog #92-642 to be published without providing the specialty permit number and/or licensee's name and permit number as required.

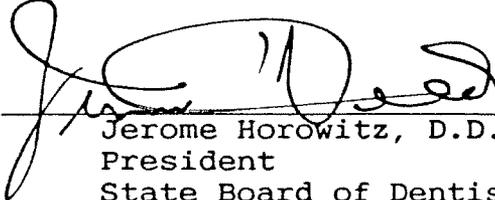
IT IS, THEREFORE, ON THIS 12th DAY OF JANUARY, 1993,

ORDERED THAT:

1. Dr. Pettisani is hereby assessed a civil penalty in the amount of \$500.00 for AdLog #92-529 and a civil penalty in the amount of \$1,000.00 for AdLog #92-642. These civil penalties shall be made payable to the State of New Jersey and submitted by certified check or money order to the Board of Dentistry at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07102 no later than the first day of the month following the entry date of this Order.

2. Dr. Pettisani shall cease and desist from the publication of advertisements containing announcements of the availability of dental services of specialists at OraCare Dental Associates without providing both the licensee's name and specialty permit number in accordance with N.J.A.C. 13:30-8.4.

3. Dr. Pettisani is hereby assessed the costs to the State for these proceedings in the amount of \$ 265.45 . Said costs shall be made payable to the State of New Jersey and submitted by certified check or money order to the Board of Dentistry no later than the first day of the month following the entry date of this Order.



Jerome Horowitz, D.D.S.
President
State Board of Dentistry

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ON 5-7-93 cm

State of New Jersey

ROBERT J. DEL TUFO
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF DENTISTRY

EMMA N. BYRNE
DIRECTOR

LOCATION:

124 HALSEY STREET, 6TH FLOOR
NEWARK, NJ 07102
(201) 504-6405

MAILING ADDRESS:

P. O. BOX 45005
NEWARK, NJ 07101

May 3, 1993

Frank A. Pettisani, D.D.S.
8001-A
Greentree Commons
Marlton, New Jersey 08053

Re: IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF
FRANK A. PETTISANI, D.D.S. TO
PRACTICE DENTISTRY IN THE
STATE OF NEW JERSEY

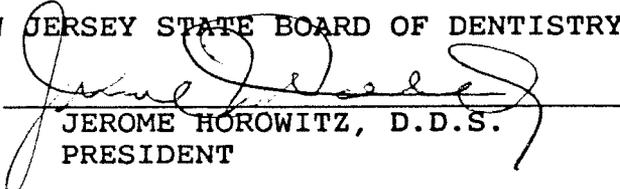
Dear Dr. Pettisani:

On April 21, 1993, the Board of Dentistry approved acceptance of your offer to consent to the entry of an Order of Dismissal with Prejudice of the pending appeal in the Appellate Division of the Board's decision in the above-captioned matter in consideration of a letter of assurance from the Board concerning subsequent use of that decision. Accordingly, you are hereby assured that the Final Decision and Order filed with the Board on January 12, 1993 which is the subject of this appeal will not be used against you in any subsequent proceedings before the Board of Dentistry. A copy of this letter will be attached to the original filed Order in the Board's file.

Thank you for your cooperation in achieving a resolution of this matter.

Very truly yours,

NEW JERSEY STATE BOARD OF DENTISTRY

By: 

JEROME HOROWITZ, D.D.S.
PRESIDENT

JH:fk

cc: A. Fred Ruttenberg, Esq.
Kathy Rohr, D.A.G.

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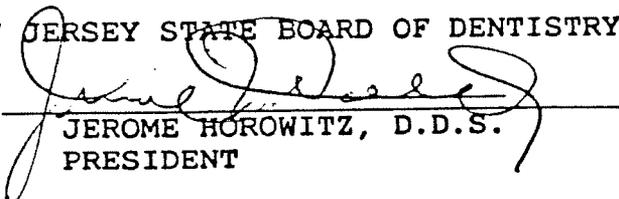
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FINDINGS OF FACT

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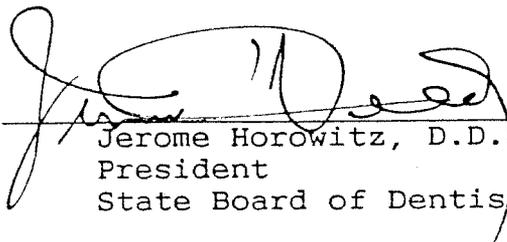
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Jerome Horowitz, D.D.S.
President
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