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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 THE SUSPENSION	:	Administrative Action
OR REVOCATION OF THE LICENSE OF	:	
	:	FINAL DECISION AND ORDER
NICHOLAS BREEN, D.M.D.	:	
	:	
TO PRACTICE DENTISTRY IN THE	:	
STATE OF NEW JERSEY	:	
	:	

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon receipt of an Investigative Report from the Enforcement Bureau, Division of Consumer Affairs, which disclosed that Nicholas Breen, D.M.D., had prescribed over his own name and/or over the forged signature of another dentist; purchased under his own name or under a fictitious patient name; and personally used certain controlled dangerous substances for purposes unrelated to the practice of dentistry. In resolution of above-mentioned charges, on March 28, 1994 an Interim Order was filed with the Board in which respondent stipulated to the truth and accuracy of certain factual statements and agreed to the entry of same into the record of the mitigation hearing. (A copy of the Interim Order is attached hereto as Exhibit "A.")

With regard to this matter, two hearings have been held to determine the ultimate penalty in finalization of this matter. The Board held a mitigation hearing on May 4, 1994, and a supplemental hearing on June 22, 1994 to allow for additional documentation to be addressed by the Board. Before the Board had

EXHIBIT "B"

the opportunity to finalize its written decision in this matter, the Board received a Notice of Motion for Enforcement of Board Order and Suspension of License, returnable on July 20, 1994, based upon respondent's failure to appear for a July 13, 1994 urine sampling within twenty-four (24) hours of being notified by the N.J.D.A. Chemical Dependency Program (C.D.P.), as required in the Interim Order.

#### THE MITIGATION HEARING

The mitigation hearing was held on May 4, 1994 before the Board. Deputy Attorney General Kathy Rohr appeared on behalf of the Board. Dr. Breen personally appeared before the Board with his counsel, Kevin Kelly, Esq. The Board heard the argument of Mr. Kelly and the testimony of Dr. Breen, Dr. Frederick Rotgers from the C.D.P. and Mrs. Kathlyn Breen. The Board also had the opportunity to review the letter of Bernadette J. Brewer, CAS, CADC, NCACIS, respondent's substance abuse counselor, concerning the treatment and progress of respondent; a letter from Frederick Rotgers, Psy.D., summarizing respondent's contact with and participation in the C.D.P. and setting forth his clinical recommendations for respondent; and a letter from Dr. Lyons of the Family Dental Center informing the Board of Dr. Breen's employment at Woodbridge Family Dental for the past 2 months. In addition, six (6) letters from patients of Dr. Breen were presented to the Board.

Counsel presented argument on behalf of respondent with respect to the issue of respondent's drug usage. Initially, it

was pointed out that respondent's drug addiction did not have an impact on his patients. It was argued that the most important factor the Board should consider is that respondent sought help from the C.D.P. for his drug problem in September 1993, at a time prior to any awareness of his drug problem by the Board or other law enforcement authorities. In addition, it was stated that respondent contacted a psychiatrist, Dr. Argueta, to assist in weaning him off the drugs to which he was addicted. Furthermore, counsel explained that respondent has had clean urine specimens since December 15, 1993 when he entered the in-patient detoxification program at Princeton House for a three (3) day period. Counsel further represented that in his view, respondent is a different person today in that he is sincere in getting himself back together by acknowledging that what he did was wrong in violating the Board's rules and regulations and as a result, he is sincere in staying away from using the addictive drugs.

Finally, counsel urged the Board when considering the appropriate punishment in this matter, to permit respondent to continue to practice dentistry. Counsel asserted that a suspension for respondent for even one day would not punish respondent, rather it would destroy respondent who recently opened his own practice and is financially strapped at this time.

Dr. Rotgers presented testimony regarding respondent's enrollment and participation in the C.D.P. The Board, focusing on the fact that respondent had been using drugs on and off for four (4) years, and had been in an in-patient detoxification

program for only three days, questioned Dr. Rotgers as to whether a three (3) day detoxification program is sufficient when a thirty (30) day detoxification program was more common in previous impairment cases before the Board. Dr. Rotgers testified that the thirty (30) day detoxification program is a thing of the past. He explained that the typical practice today is to place people in detoxification programs for shorter periods of time and then place them into an out-patient treatment program in an attempt to tailor treatment that will be effective with a minimal amount of interference.

Dr. Rotgers expressed an opinion that respondent, from a clinical perspective, is still in a very early recovery stage. As a consequence, Dr. Rotgers recommended closer supervision of respondent and as much contact with people who are aware of respondent's situation and can provide assistance and support if things seem to be going poorly for respondent.

Respondent testified that he was licensed to practice dentistry in September 1989 and commenced using drugs in November 1989. He also testified that he had written a prescription for his own use for percocet while in dental school, prior to 1989. He further stated that when he began to practice dentistry and was employed in various dental offices, he used the office prescription pads to prescribe and purchase drugs under fictitious names. He admitted that this practice continued over a four year period except for a 10 month period of abstinence. However, he further stated that when he opened his own dental

practice in May 1993, he began buying drugs from a dental supply house for his own personal use. Respondent cited stress as the cause for his starting and continuing to use drugs. He admitted to taking four (4) to five (5) pills daily, throughout the day while seeing patients.

Kathlyn Breen, respondent's wife, testified that she, like the Board, was nervous about the effectiveness of the detoxification program because a three (3) day detoxification period did not seem like a great deal of time. However, she stated that she has seen a change in respondent and has seen him handle difficult problems very well, very calmly. She represented to the Board that if respondent were to lose his ability to earn a salary, it would be a financial hardship as the Breens are currently struggling to pay the bills in respondent's new practice.

The Deputy Attorney General represented that the Office of the Attorney General has no specific recommendation to make to the Board with respect to the issue of penalty. She pointed out, however, that there is a dilemma with regard to respondent's work situation in that he works alone in his practice and there has been a recommendation from Dr. Rotgers that respondent needs a support system. The Deputy Attorney General however, left it to the Board's discretion to determine how to resolve those issues.

The Board conducted its deliberations of the record before it in Executive Session on May 4, 1994. The Board thoroughly considered the record before it. Even though the

evidence submitted at that point suggested respondent was making some strides in recovery and that he was struggling financially, he admitted writing prescriptions for non-dental purposes--conduct on which sanctions could be grounded.

Moreover, the Board questioned whether the three (3) day detoxification program in which respondent participated was an appropriate medical length of stay. Further, the Board had great concerns as to whether respondent should be permitted to practice in an unsupervised setting in an effort to maintain him in his private practice. As a consequence, the Board requested that counsel for respondent submit a copy of respondent's Discharge Summary from Princeton House for its review. Based on a review of the Discharge Summary, the Board had additional questions to ask Dr. Breen concerning his discharge and drug usage. Additionally, a short time after the mitigation hearing, the Drug Enforcement Administration (DEA) notified the Board to indicate that respondent's most recent DEA registration had not been surrendered as required by the Interim Order. To address those issues, the Board scheduled a supplemental hearing on June 22, 1994.

#### JUNE 22, 1994 HEARING

A supplemental hearing was held on June 22, 1994. The Princeton House Discharge Summary concerning respondent was admitted into evidence. Counsel for respondent advised the Board that when he appeared at the May 4, 1994 mitigation hearing, he was under the impression that the Board had copies of

respondent's medical records and that his failure to provide those records to the Board was not an intentional oversight. In addition, he stated that it was an oversight that respondent had not surrendered his current DEA registration and assured the Board that respondent would make it his business to locate the registration and deliver it to the Board immediately. The DAG advised the Board that she had never received a copy of the Discharge Summary prior to the May 4, 1994 mitigation hearing. With regard to the issue of the surrender of the current DEA registration, the DAG advised that the matter would be resolved assuming that respondent locates the registration and immediately surrenders same to the Board.

The discharge summary revealed a history of drug use inconsistent with respondent's prior statements to the Board. At the supplemental hearing Board members questioned respondent about the inconsistencies. Upon questioning by Board members regarding what drugs respondent had been using prior to graduating from dental school, respondent advised the Board that at the May 4, 1994 hearing he felt that the Board's reference to drugs was limited to his use of prescription medication. Respondent then admitted that he did indeed experiment with cocaine, speed, crank and other psychedelics prior to graduating from dental school.

The Board members proceeded to ask respondent to comment on the fact that he left Princeton House on the third day against medical advice in light of his prior testimony on May 4,

1994 that he was fit to leave the program after a three day hospital stay and that was all of the time that was required. Respondent testified that he knew he had a problem, it was decided that in-house treatment was the best method of treatment and he went to Princeton House on his own free will to resolve the problem. He stated that he thought he had gotten out of the program what he anticipated he would be able to get in the three (3) day period of his participation.

Counsel for respondent presented closing argument to the Board and then the Board resolved to move into executive session to deliberate on the matter. The Board had been prepared to issue its final decision and order when the Attorney General filed a Notice of Motion for Enforcement of a Board Order and Suspension of License with respect to respondent that was returnable on July 20, 1994. In light of those subsequent events, the Board delayed issuing a final decision and order until the motion was heard.

The pleadings filed by the Attorney General alleged that respondent failed to comply with the terms of the Interim Order entered on March 28, 1994 in that respondent failed to appear for a urine sampling within twenty-four (24) hours of having been notified on July 12, 1994 by the C.D.P., failed to attend any NA/AA meetings, and failed to surrender his current DEA registration as required by the terms of the Interim Order.

JULY 20, 1994 HEARING

A hearing on the matter was held on July 20, 1994.

Deputy Attorneys General Lee R. Jamieson and Kathy Rohr appeared on behalf of the Attorney General, and Kevin Kelly, Esq. appeared on behalf of respondent. D.A.G. Jamieson advised the Board that on July 12, 1994 respondent had been called by the C.D.P. to appear for a urine sampling and, despite his word that he would appear for the sampling at an agreed upon time, he did not comply with the notice or obtain a waive of that day's test from the C.D.P. designated personnel. The Board was advised further that pursuant to the Interim Order respondent was required to attend AA/NA meetings at a minimum of three times a week, and to surrender his current DEA registration to the Board. However, according to a representation of respondent's counsel, respondent had not attended any AA/NA meetings since his last appearance before the Board and he had stated in an affidavit dated July 13, 1994 that he was unable to locate his current DEA registration.

Respondent testified before the Board on his own behalf. He apologized to the Board for not appearing to provide the urine sample. He advised the Board he had been notified by the C.D.P. on July 12, 1994 to appear for a urine sampling. Thereafter, he indicated that he scheduled a specific time to meet with Dr. Hvitting, the dentist who is responsible for taking the urine samples, on July 13, 1994 to provide the urine sample. At the appointed hour, respondent testified that he was treating patients in his dental office, had a new secretary in the office

and was unable to leave his patients in order to appear at Dr. Hvitting's office and provide the required urine sampling. He testified that he called Dr. Rotgers on Thursday, July 14, 1994 and appeared to provide urine sampling on Friday, July 15, 1994. He stated that he had many personal pressures that prevented him from attending the NA/AA meetings. He then informed the Board that he was currently working three days per week in his own practice.

All of the documents submitted by the Attorney General in support of the Notice of Motion were made part of the record at the hearing. After hearing closing arguments, the Board resolved to move into executive session to deliberate on the matter.

The Board finds that respondent has failed to comply with three substantive terms of the Interim Order filed with the Board on March 28, 1994 in that he failed to submit or provide a urine sample within twenty-four (24) hours of a request, failed to attend any AA/NA meetings for at least the last three months and he failed to surrender his current D.E.A. registration. It also appeared to the Board that respondent has failed to recognize that strict compliance is required with the terms and conditions of the Board's Interim Order. The Board was not convinced that respondent's excuse--that he had to treat his patients -- in any way justified his conduct in failing to appear for urine monitoring. Furthermore, the Board felt that respondent had ample opportunity to conform his work schedule to

accommodate the requirements of the Interim Order that he attend AA/NA meetings at least three times per week. Respondent has been continuously resistant to meeting all of the requirements set forth in the Interim Order which pertain to his participation in a recovery program.

Accordingly, the Board finds there is a basis for ordering sanctions against respondent in light of his admitted failure to comply with the Board's Interim Order. Furthermore, the Board finds respondent's employment of fraudulent means to obtain controlled dangerous substances for personal consumption is a gross abuse of respondent's license to practice dentistry. Such conduct is even more egregious when it involves a licensed health care professional who has been granted one of the State's most trusted privileges -- the authority to prescribe and dispense controlled dangerous substances. Drug abuse is rampant in this country and for a health professional to abuse his prescription privileges for his own use while a dental student and continuing to do so as a licensee violates the public trust.

The authority to practice dentistry in the State of New Jersey is a privilege not to be taken lightly. In light of respondent's conduct in commencing to prescribe and dispense drugs to himself for personal consumption while a dental student and throughout the period of time he has been licensed and his failure to comply with all of the terms of the Interim Order, the Board is compelled to view this matter with grave concern and to conclude that leniency is not appropriate at this time. Since

respondent's conduct evidences a disregard for fundamental concepts of professional behavior and conduct, the Board finds it necessary to impose serious disciplinary sanction in furtherance of its duty to assure confidence in the integrity and competence of licensees to those individuals who seek dental services.

IT IS THEREFORE ON THIS 4<sup>th</sup> DAY OF August 1994,

ORDERED THAT:

1. The license of respondent, Nicholas Breen, D.D.S., to practice dentistry in the State of New Jersey shall be and is hereby immediately suspended as of July 20, 1994 for an indefinite period of time. During the period of suspension, respondent shall derive no financial remuneration directly or indirectly related to patient fees paid for dental services rendered by other licensees for patients of respondent's practice.

On the effective date of the suspension, respondent shall submit his dentistry license to the Board of Dentistry at 124 Halsey Street, Sixth Floor, Newark, New Jersey 07102 or surrender such credentials to the Board's designee. Respondent shall be permanently barred from obtaining CDS and DEA registrations in this State.

2. During the period of time in which respondent's dentistry license is suspended, 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. In the event that respondent arranges for another licensed dentist to provide dental services in his dental practice during the period of suspension, respondent shall immediately notify the Board of such arrangement and shall submit to the Board the name, address and telephone number of the designated licensee.

3. Respondent shall not apply to the Board for reinstatement of his license to practice dentistry no sooner than ninety (90) days from the entry date of this Order. In the event respondent wishes to petition the Board for reinstatement of his license to practice dentistry in the State of New Jersey, he shall be made to appear personally before the Board, and he shall have the burden to demonstrate to the satisfaction of the Board that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare. The Board, at a minimum requires evidence of attendance at AA/NA meetings at a frequency of no less than five (5) days per week, and proof of clean urine samples during this period.

4. Respondent shall submit to a psychological and/or medical evaluation by a Board appointed consultant prior to

requesting reinstatement of licensure. Respondent shall be responsible for the fee of the consultant for the evaluation and reports.

STATE BOARD OF DENTISTRY

By:  Marvin Gross, D.D.S., President