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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
JOSEPH L. HVIDDING, D.M.D. :
: ORDER
Licensed to Practice Dentistry: :
In the State of New Jersey :

This matter was opened before the New Jersey State Board of Dentistry (hereinafter, the "Board") on December 3, 1997 when Joseph L. Hvidding, D.M.D. (hereinafter, "respondent") appeared before the Board with his attorney, Pamela Mandel, Esq. pursuant to the November 20, 1997 Interim Consent Order/Stipulation of Facts. Jerry Warhaftig, Esq. appeared on behalf of the Attorney General. Said Interim Consent Order afforded the respondent the opportunity to present evidence and testimony in mitigation of the penalty to be imposed by the Board for the violations described in said Interim Consent Order regarding his taking, prescribing and ordering of prescription drugs for his own use and for a non-dental purpose.

Based upon respondent's stipulations in said Interim Consent Order, the Attorney General agreed to refrain from the filing of an Administrative Complaint and to allow a mitigation hearing. The agreed upon stipulations of fact in the said Interim Consent Order were as follows:

1. Respondents admits that since approximately February 1996, he has over medicated himself for non-dental purposes with certain prescription medications.

2. From in or about February 1996 through in or about September 1997, respondent over medicated himself for non-dental purposes with the drug carisoprodol (Soma).

3. From in or about May 1996 through in or about October 1996, respondent also over medicated himself for non-dental purposes with the drug meprobamate (Milltown).

4. Respondent obtained meprobamate in bulk quantities on three occasions. In May, July and October 1996, respondent purchased a total of 300 tablets of meprobamate for his own consumption.

5. Respondent obtained carisoprodol (Soma) by ordering bulk quantities on multiple occasions and by writing and filling prescriptions in his own name at numerous (approximately nine) different pharmacies.

6. Respondent purchased bulk quantities of carisoprodol (Soma) on twelve occasions between February 1996 and October 1997 and obtained a total of approximately 5,000 units. (500 units were returned to the seller by respondent.)

7. Between February 1996 and October 1997, respondent wrote fifty-four prescriptions for carisoprodol (Soma) in his own name and obtained approximately two-thousand-twenty-four units of carisoprodol by filling those prescriptions.

8. Between February 1996 and October 1997, respondent occasionally wrote and filled prescriptions in his own name for non-dental purposes for the drugs hydrocodone (21 tablets), Cyclobenzaprine (24 tablets), and Methocarbamol (10 tablets).

9. During the period of time that respondent over medicated himself as described herein, he was under the care of a physician for certain medical conditions and also received bona fide prescriptions for carisoprodol (Soma) and other medications including Zoloft, Zocor and Augmentin.

10. At no time between February 1996 and the entry date of this order did respondent self-medicate himself for non-dental purposes with any medication or drug other than those set forth herein nor did he obtain drugs by any method other than those described herein.

11. Respondent has ordered Dexamthasone in tablet and injectable form. He stipulates that this was ordered solely for dental purposes and was used in treatment of patients undergoing root canal therapy. The unused balance of the ordered drugs remains on the premises of respondent's dental office.

At the hearing held to consider the mitigative circumstances for a determination of penalty, the Board heard opening statements by Ms. Mandel and Ms. Warhaftig. Ms. Mandel asserted that Soma was not physically addictive and respondent stopped taking the drug without any ill effects. She further stated that respondent was addressing the concerns raised by this matter by admitting that he has a drug problem, seeing a therapist, attending group meetings, and having his urine monitored. Therefore, Ms. Mandel stated, there are adequate safeguards and the public would benefit from his continued practice of dentistry.

Ms. Warhaftig contended that respondent has a long history of drug addiction during which he has self-administered all types of drugs, sometimes in extraordinary amounts. She stated that he needs time out of practice because he is a "clear and imminent danger", and he has admitted to acts which violate the law. Ms. Warhaftig put the following documents into evidence:

- J-1 Interim Consent Order/Stipulation of Facts filed on November 20, 1997.
- J-2 November 12, 1997 report of Edward C. Allegra, M.D.
- J-3 November 2, 1997 report of Raymond F. Hanbury, Jr., Ph.D.
- J-4 November 2, 1997 report of Angelo T. Scotti, M.D.
- J-5 October 29, 1997 letter to Jeri Warhaftig, Deputy Attorney General from Frederick Rotgers, Psy.D, Director of the Program for Addictions Consultation and Treatment.

Thereafter, Ms. Mandel put the following documents into evidence:

- R-1A Certification of Dale Whilden.

- R-1B Certification of Harold Mintle.
- R-1C Certification of Robert Cannis.
- R-2 November 6, 1997 letter from Pamela Mandel, Esq. to Jeri Warhaftig, Deputy Attorney General.
- R-3 December 2, 1997 letter from Raymond F. Hanbury, Jr., Ph.D. to members of the Board.
- R-4 Curriculum Vitae of Raymond F. Hanbury, Jr., Ph.D.
- R-5 Pages 217 and 218 regarding "Treatment settings" from Practice Guidelines of the American Psychiatric Association.

On behalf of the State, Dr. Frank Dyer (psychologist) testified that on November 19, 1997 he had conducted a clinical interview with and ran a battery of psychological tests on the respondent. The interview elicited, among other facts, that respondent had a deprived childhood; he and his wife suffer from a rare genetic disease; his two eldest children have this disease and are significantly handicapped; a substantial financial loss was incurred in the early 1980s; his mother-in-law is ill and dependent upon him and his wife; his sister is schizophrenic; he has had two separate occurrences of Lyme's disease, one of them continuing to the present time; he fractured his kneecap a few years ago; the many medical problems have created a great stress on his life; and he has self medicated since 1981, which has included the use of fraudulent prescriptions.

Dr. Dyer further testified that the battery of tests indicated, among other things, that respondent does not suffer from any serious character problems, and he is a conscientious, religiously committed individual with an intact ego. Dr. Dyer's

opinion is that respondent has severe stresses which he copes with by escaping through the use of drugs.

Dr. Dyer recommended inpatient drug treatment of a month's duration, random urine monitoring, continued therapy with Dr. Hanbury, involvement with AA or NA, and suspension of prescription writing privileges. He based these recommendations on the long history of the drug problem, the versatility of the drugs used, the amount of medication consumed over the years, and the ineffectiveness of past treatments. Ms. Mandel established on cross-examination that Dr. Dyer does not have special training regarding addictive diseases, although he has an enormous amount of clinical experience with addicts.

Respondent testified next, covering the same facts as Dr. Dyer, including respondent's 1990 inpatient alcohol rehabilitation program in Arkansas and his subsequent involvement with Dr. Rotger's program in New Jersey. He indicated that he does not have a continuing problem with alcohol, although he admits that his drug addiction is a continuing problem. He further admitted that he has self-medicated for non-dental purposes and that he has obtained drugs by fraudulent means, such as writing a prescription in another person's name for his own use.

He stated that he has alerted his office staff to his drug problem, and an office system is in place to limit his access to drugs. He stated that his staff's observation of his tremors at certain times of the day is due to low blood sugar which he

corrects with a candy bar. He asserts that the tremors are not due to drugs.

Respondent testified as to the impact on his life if he were suspended from the practice of dentistry and/or required to participate in a month long, inpatient treatment. In summary, he stated that it would be a financial burden in general, and in particular because he has just started building a new house which will accommodate his children's disabilities. Further, his absence from his family would be a hardship on them, particularly his wife who counts on his help with the children when he is not at work. Ms. Warhaftig cross-examed respondent as to his admitted drug addiction, his medical condition, and the results of previous drug treatments.

Dr. Frederick Rotgers then testified on behalf of respondent. Dr. Rotgers is a clinical psychologist with a specialty in assessment and treatment of drug abuse. Dr. Rotgers testified that he first met respondent a number of years ago when respondent entered Dr. Rotgers treatment program after his inpatient treatment for alcohol in Arkansas. Dr. Rotgers testified that in his opinion the practice guidelines of the American Psychiatric Association should be the ones used to determine the necessity of inpatient treatment. He then read into the record relevant portions of those guidelines. Using this criteria, Dr. Rotgers stated that respondent does not require inpatient treatment; and if he continues his current treatment, he is not a threat to his patients. Dr. Rotgers observed that in the past when respondent

has been actively participating in outpatient treatment, he has been successful; and his lapses have occurred when he has not been fully engaged in treatment. Dr. Rotgers directly disputed Dr. Dyer's bases for recommending inpatient therapy, most importantly because not one of Dr. Dyer's criteria is in the American Psychiatric Association's guidelines for inpatient treatment. On cross-examination by Ms. Warhaftig, it was disclosed that Dr. Rotgers has not performed a recent evaluation of respondent.

At the end of all the testimony, Ms. Mandel and Ms. Warhaftig were both given the opportunity to make closing arguments. Along with summarizing the testimony, Ms. Mandel argued that respondent was not a threat to his patients and the public, and he was getting adequate treatment for his drug problem; therefore, he should be allowed to continue practicing dentistry without interpretation. Ms. Warhaftig argued, on the other hand, that even if respondent appeared to be involved in successful treatment, his past efforts at outpatient treatment have ultimately failed; and he, therefore, needs to be in inpatient treatment.

Thereafter, the Board moved into executive session to conduct its deliberations. The Board thoroughly considered the record before it and the testimony it had heard. The Board finds respondent's history of abusing drugs and self medicating for non-dental purposes to be a serious matter impacting respondent and his practice of dentistry. While it is clear that respondent must be in meaningful treatment and should not practice dentistry without significant restrictions and monitoring, there is no credible

evidence that respondent would benefit from or is appropriate for inpatient treatment as recommended by Dr. Dyer. Dr. Dyer does not have a specialty in addiction assessment and treatment, and his recommendation for inpatient treatment has been directly disputed by Dr. Rotgers in his testimony and by Dr. Hanbury (respondent's therapist) in his December 2, 1997 letter to the Board. Both Dr. Rotgers and Dr. Hanbury specialize in addiction treatment, and both agree that outpatient treatment is more appropriate for respondent.

The Board further considered respondent's acts of obtaining drugs for his own use, which acts constitute acts of professional misconduct in violation of N.J.S.A. 45:1-21(e), the use or employment of dishonesty or misrepresentation in violation of N.J.S.A. 45:1-21(b) and violation of a Board regulation in violation of N.J.S.A. 45:1-21(h).

After a full discussion, the Board moved back into public session, and the decision of the Board was read to respondent and the public.

IT IS ON THIS ^{11th} DAY OF DECEMBER 1997, EFFECTIVE AS OF DECEMBER 3, 1997, BEING THE DATE OF THE ORAL ANNOUNCEMENT OF THIS ORDER ON THE RECORD, ORDERED THAT:

1. The license of respondent Joseph L. Hvidding, D.M.D. to practice dentistry in the State of New Jersey shall be suspended for a period of three years effective December 11, 1997. The first sixty days shall be an active suspension, and the remaining three years shall be a probationary period. At the time of active suspension, respondent shall submit any and all wall certificates,

including but not limited to, his dentistry license and C.D.S. and D.E.A. registrations to Agnes Clarke, Executive Director, the New Jersey State Board of Dentistry at 124 Halsey Street, 6th Floor, Newark, New Jersey 07101.

2. The November 20, 1997 Interim Consent Order/Stipulation of Facts remains in full force and effect until December 11, 1997 when the within Order becomes effective.

3. During the sixty days of active suspension, 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. Respondent shall observe the provisions of the Directives for dentists whose licenses have been suspended or revoked, a copy of which is attached hereto and is incorporated into the within Order.

4. During the active suspension and probationary period, respondent shall have his urine monitored under the supervision of Dr. Raymond Hanbury with direct viewing and on a random, unannounced basis a minimum of ten times a month. One of the random urine screenings during each month shall include testing for carisoprodol in addition to the usual substances. The initial drug test shall utilize appropriate screening techniques, and all confirming tests and/or secondary tests shall be performed by gas chromatography/mass spectrometry. The testing procedures shall include a forensic chain of custody protocol to ensure sample

integrity and to provide documentation in the event of a legal challenge.

All test results shall be provided to Agnes Clarke, or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

Agnes Clarke shall notify respondent when to appear for urine monitoring. Any failure by the respondent to submit or provide a urine sample within twenty-four hours of a request shall be deemed to be equivalent to a confirmed positive urine test. In the event the respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Agnes Clark or her designee. Neither Dr. Hanbury nor personnel at the drug testing facility shall be authorized to consent to waive a urine test. In addition, respondent shall provide the Board with written substantiation of his inability to appear for a test within two days after permission has been granted to waive a test, e.g., a physician's report attesting that he was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of the respondent that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would

not withhold consent to waive the test on that day. The Board may in its sole discretion modify the frequency of testing or method of reporting during the monitoring period.

5. All costs associated with the monitoring and other programs as outlined herein shall be paid directly by respondent.

6. During the sixty days of active suspension, respondent shall attend a therapy session twice a week at a minimum with Dr. Raymond Hanbury. After the sixty days of active suspension, respondent shall attend therapy with Dr. Hanbury as often as recommended by Dr. Hanbury, but not less than once a week. Respondent shall cause Dr. Hanbury to provide quarterly reports directly to the Board with respect to his attendance and progress in therapy; however, the first report must be sent to the Board by February 3, 1998.

7. During the sixty days of active suspension, respondent shall attend AA/NA meetings a minimum of six days a week. After the sixty days of active suspension, respondent shall attend AA/NA meetings a minimum of four days a week. Respondent shall cause to be sent to the Board on a monthly basis, beginning in January 1998, a verification of his attendance at these meetings.

8. Respondent shall provide appropriate releases to any and all parties who have information concerning respondent's drug dependency, and/or who are participating in the monitoring program as outlined herein as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner. This shall include advising the Board of

any and all programs in which respondent engages, including urine monitoring, and keeping the Board advised as to respondent's progress and successful completion on an on-going basis.

9. Every prescription which respondent writes shall be in triplicate for the duration of the suspension, both active and probationary. There shall be a original for the patient, a copy for the file, and a photocopy of the original for the Board. All prescriptions shall be sequentially numbered. If a prescription is for a Controlled Dangerous Substance ("CDS"), the respondent shall send to the Board the patient treatment record reflecting the necessity of the CDS. Respondent shall send the copies of the prescriptions to the Board on a monthly basis beginning in January 1998.

10. Respondent is prohibited from the wholesale ordering of any drug. He is further prohibited from maintaining prescription medications in his office and/or directly dispensing drugs to patients.

11. Respondent shall be responsible for all costs in this matter. When the costs are determined, Agnes Clarke shall send a letter to respondent indicating the amount of the costs and the time and manner in which they shall be paid.

12. It is expressly understood that continued licensure of respondent as ordered herein is contingent upon strict compliance with all of the aforementioned conditions. Upon the Board's receipt of any reliable information indicating that any term of the within Order has been violated in any manner whatsoever, including,

but not limited to, a verbal report of a confirmed positive urine, a hearing, regarding an activation of the stayed period of suspension and/or any other penalties deemed appropriate, shall be held on short notice before the Board or before its representative authorized to act on its behalf. The proofs at such a hearing shall be limited to evidence of the particular violation at issue. Any confirmed positive urine test shall be presumed valid, and respondent shall bear the burden of demonstrating its invalidity.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 
Valentine Bloch, D.D.S.
President

DIRECTIVE REGARDING FUTURE ACTIVITIES
OF BOARD LICENSEE WHO HAS BEEN SUSPENDED/
REVOKED AND USE OF THE PROFESSIONAL PREMISES

A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board shall conduct him/herself as follows.

- 1) Promptly deliver to the Board the original license and current biennial registration and, if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances registrations.
- 2) Desist and refrain from the practice of dentistry in any form either as principal or employee of another licensee.
- 3) Inform each patient at the time of any inquiry of the suspended or revoked or retired status of the licensee. When a new licensee is selected by a patient, the disciplined practitioner shall promptly make available the original or a complete copy of the existing patient record to the new licensee, or to the patient if no new licensee is selected. Such delivery of record does not waive any right of the disciplined practitioner to claim compensation earned for prior services lawfully rendered.
- 4) Not occupy, share or use office space in which another licensee practices dentistry.
- 5) Desist and refrain from furnishing professional dental services, giving an opinion as to the practice of dentistry or its application, or any advice with relation thereto; and from holding him/herself out to the public as being entitled to practice dentistry or in any way assuming to be a practicing professional or assuming, using or advertising in relation thereto in any other language or in such a manner as to convey to the public the impression that such person is a legal practitioner or authorized to practice dentistry. This prohibition includes refraining during the period of suspension or revocation from placement of any advertisement or professional listing in any advertising medium suggesting eligibility for practice or good standing.
- 6) Cease to use any stationery whereon such person's name appears as a dentist in practice. If the practitioner was formerly authorized to issue written prescriptions for medication or treatment, such prescription pads shall be destroyed if the license was revoked. If the license was suspended, the prescriptions shall be destroyed or shall be stored in a secure location to prevent theft or any use whatsoever until issuance of a Board Order authorizing use by the practitioner. Similarly, medications possessed for office use shall be lawfully disposed

of, transferred or safeguarded.

7) Not share in any fee for dental services performed by any other licensee following the suspension, revocation or surrender of license, but the practitioner may be compensated for the reasonable value of the services lawfully rendered and disbursements incurred on the patient's behalf prior to the effective date of the suspension, revocation or surrender.

8) Use of the professional premises. The disciplined licensee may allow another licensee to use the office premises formerly occupied by the disciplined licensee on the following conditions only:

(a) The new licensee shall conduct the practice in every respect as his/her own practice including billings, claim forms, insurance provider numbers, telephone numbers, etc.

(b) The disciplined licensee may accept no portion of the fees for professional services rendered by the new licensee, whether by percentage of revenue, per capita patient, or by any other device or design, however denominated. The disciplined licensee may, however, contract for or accept payment from the new licensee for rent (not exceeding fair market value) of the premises and either dispose of or store the dental material and equipment, but in no event shall the disciplined licensee, on the basis of a lease or any other agreement for compensation place in the possession of any operator, assistant or other agent such dental material and equipment, except by a chattel mortgage.

(c) No use of name of disciplined licensee or personally owned office name or tax- or provider identification number.

1. Where the disciplined licensee was using an individual IRS number or where the licensee was the sole member of an incorporated professional association or a corporation, the disciplined licensee may contract to rent the office premises to a new practitioner. The new practitioner must use his/her own name and own provider number on all bills and insurance claim forms. Neither the name nor the number of the disciplined licensee may be used. When the license of a sole practitioner has been revoked, a trade name must be cancelled and a professional service corporation must be dissolved.

2. Where the disciplined licensee is a

member of a professional group which uses a group-type name such as the ABC Dental Group, the disciplined licensee must arrange to have his/her name deleted, covered up or otherwise obliterated on all office signs, advertisements published by the group after the effective date of the Board disciplinary Order and on all printed billings and stationery. The other group members may continue to function under the incorporated or trade name, minus the name of the disciplined licensee, and may continue to use its corporate or professional identification number.

(9) Report promptly to the Board compliance with each directive requiring moneys to be reimbursed to patients or to other persons or third party payors or to any court, and regarding supervisory reports or other special conditions of the Order.

(10) A practitioner whose license is surrendered, revoked or actively suspended for one year or more shall conduct him/herself as follows:

1) Promptly require the publishers of any professional directory and any other professional list in which such licensee's name is known by the disciplined licensee to appear, to remove any listing indicating that the practitioner is a licensee of the Board in good standing.

2) Promptly require any and all telephone companies to remove the practitioner's listing in any telephone directory indicating that such practitioner is a practicing professional.

(11) A practitioner whose practice privileges are affected by a Board disciplinary Order shall, within 90 days after the effective date of the Board Order, file with the Executive Director of the Board a detailed affidavit specifying by correlatively lettered and numbered paragraphs how such person has fully complied with this directive. The affidavit shall also set forth the residence or other address and telephone number to which communications may be directed to such person. Any change in the residence, address or telephone number shall be promptly reported to the Executive Director.