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By: Nancy Costello Miller
Deputy Attorney General

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

IN THE MATTER OF

Administrative Action

DAVID J. GARBOLINO, D.M.D.
License # **DI 14053**

**CONSENT ORDER WITH
RESTRICTIONS ON
LICENSE**

LICENSED TO PRACTICE DENTISTRY
IN THE STATE OF NEW JERSEY

This matter was opened to the State Board of Dentistry upon receipt of information that David J. Garbolino, D.M.D. ("respondent"), was arrested for inhaling fumes of a toxic chemical (nitrous oxide gas) for the purpose of causing intoxication. The incident occurred at his dental office in Wall Township at a time when the office was not open for patient care. During the course of the police investigation, respondent acknowledged that he had inhaled nitrous oxide on previous occasions in the absence of a valid medical or dental purpose.

Following his arrest, respondent removed all nitrous oxide equipment from his office and agreed to submit to an independent psychiatric examination, monitoring, and treatment related to his

use of nitrous oxide. He has now been admitted into the Pre-Trial Intervention Program. Based on all materials reviewed, including the report of Ricardo J. Fernandez, M.D., the Board finds that Dr. Garbolino may continue to practice dentistry with the restrictions and monitoring requirements in this order, as those restrictions and requirements are adequately protective of the public health, safety and welfare.

IT IS, therefore, on this 28th day of May, 2003,

ORDERED THAT:

1. Respondent, David J. Garbolino, D.M.D., shall abstain from using nitrous oxide and shall not possess nitrous oxide or equipment used to deliver the inhalation agent.
2. (a.) Dr. Garbolino shall submit to random urine sampling a minimum of twice a month at a laboratory facility approved by the Board. The urine testing requirement shall continue until further order of the Board expressly reducing or discontinuing testing. Dr. Garbolino shall be provided with specific directions for the protocol of the testing procedure and the location of the laboratory facility by the Executive Director of the Board. The urine monitoring shall be conducted with direct witnessing of the taking of the samples as designed by the laboratory facility. The initial drug screen shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge.

(b.) All test results shall be provided to Kevin B. Earle, Executive Director of the Board, or his designee in the event he 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.

(c.) Any failure by Dr. Garbolino to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event Dr. Garbolino 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 Kevin B. Earle, or his designee. Personnel at the lab facility shall not be authorized to waive a urine test. In addition, Dr. Garbolino must provide the Board with written substantiation of his inability to appear for a test within two (2) days, 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 Dr. Garbolino 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.

(d.) In the event Dr. Garbolino will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the Board's discretion for alternate testing. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

(e.) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.009 shall be deemed a confirmed positive urine test.

(f.) Dr. Garbolino shall familiarize himself with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Ingestion of such

substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

3. Dr. Garbolino shall continue his participation with the Chemical Dependency Program of the New Jersey Dental Association ("C.D.P.") and shall have monthly face to face contact with representatives from that program. Dr. Garbolino shall comply with after care as directed by the C.D.P. and shall comply with any recommended therapeutic regime for treatment or counseling. Dr. Garbolino shall be responsible for ensuring that any treating psychologist and any other person(s) providing therapy for his addiction provide the Board with quarterly reports regarding his progress in counseling.

4. Dr. Garbolino shall attend support groups, including NA or AA not less than two times per week. Dr. Garbolino shall provide evidence of attendance at such groups directly to the Board. If Dr. Garbolino has discontinued attendance at any of the support groups without obtaining approval of the Board, he shall be deemed in violation of this Order.

5. Dr. Garbolino shall abstain from the use of alcohol and controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, Dr. Garbolino shall advise any and all treating physicians and/or dentists of his history of substance abuse. Dr. Garbolino shall cause any physician or dentist who prescribes medication which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

6. Dr. Garbolino shall continue in psychotherapy not less than once a week with Dr. J. O'Neill until further order of the Board. In the event Dr. Garbolino wishes to seek treatment with a different mental health professional, he shall advise the Board in writing of the name and address of the subsequent psychotherapist prior to discontinuing therapy with Dr. O'Neill.

7. Dr. Garbolino shall provide any and all releases to any and all parties who are participating in the monitoring, treating or other program as outlined in this order, as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner. With regard to any requirement for submission of the quarterly reports to the Board, the beginning of the first quarter is deemed to have commenced June 1, 2003.

8. Prior to any removal of restrictions set forth in this order, respondent shall:

a. Appear before the Board or a committee of the Board to discuss his recovery and to demonstrate to the satisfaction of the Board that he is not then suffering from any impairment or limitation resulting from the use of any substance, whether legal or illegal, which could affect his practice;

b. Prior to his appearance, respondent shall provide the Board with reports from each and every mental health professional (including but not limited to: psychologists, counselors, therapists, psychiatrists) who have participated in respondent's care and/or treatment for the disability in this matter during the period of time from his entry into treatment to his appearance;

c. Prior to his appearance, provide the Board with a report from the New Jersey Dental Association Chemical Dependency Program detailing the nature and extent of his involvement with that entity and its recommendations concerning the removal of restrictions; and

d. Prior to his appearance, provide documentation concerning status of criminal charges.

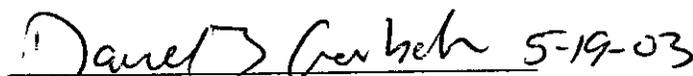
8. The parties hereby stipulate that entry of this Order is without prejudice to further action by this Board or other law enforcement entities resulting from respondent's conduct.

9. Dr. Garbolino shall be subject to an order of suspension of his license on short notice upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the conditions set forth in this consent order, including but not limited to report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of alcohol or drug abuse. A hearing on that application may be before the full Board or before a committee of the Board. In the event a committee hears the application, its action shall be subject to ratification of the full Board at its next scheduled meeting.

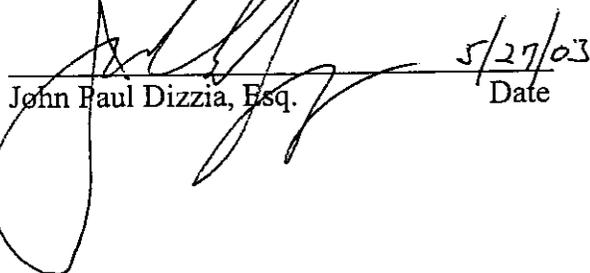
New Jersey Board of Dentistry

By: 
John F. Ricciani, D.M.D.
President

I have read and I understand the terms of this order and agree to be bound by it. I consent to the entry of this Order.


David J. Garbolino, D.M.D. Date

~~I consent to the entry of this order as to form.~~


John Paul Dizzia, Esq. 5/27/03
Date