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

IN THE MATTER OF	:	Administrative Action
	:	
NICHOLAS F. BREEN, D.M.D.	:	
License No. DI 1710400	:	REINSTATEMENT ORDER

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon the application of Nicholas F. Breen, D.M.D. ("respondent"), seeking to reinstate his license to practice dentistry in the State of New Jersey. Respondent's license to practice dentistry was most recently revoked by a Final Decision and Order filed with the Board on December 15, 1995. The procedural history pertaining to respondent also includes prior orders of the Board which were filed on March 28, 1994, August 4, 1994, and April 20, 1995. The background information may be summarized as follows:

The matter was initially opened to the Board upon receipt of an Investigative Report from the Enforcement Bureau, Division of Consumer Affairs, which disclosed that respondent had personally used certain controlled dangerous substances for purposes unrelated to the practice of dentistry. The Board entered into an Interim

Consent Order with respondent, filed March 28, 1994 whereby respondent was ordered, among other things, to surrender his DEA registration. The Board held a mitigation hearing on May 4, 1994, a supplemental hearing on June 22, 1994 and a hearing on a motion July 20, 1994; this last meeting was conducted pursuant to pleadings filed by the Attorney General alleging respondent's failure to comply with the terms of the Interim Order entered on March 28, 1994. The Board directed, in an Order filed August 4, 1994, that respondent's license to practice dentistry in New Jersey was suspended as of July 20, 1994 for an indefinite period of time. The suspension was based, in part, upon a finding that respondent had failed to comply with three substantive terms of the March 28, 1994 Interim Order. The Board, pursuant to respondent's request for reinstatement, issued a Reinstatement Order dated April 20, 1995 subject to specific conditions and based upon its findings that respondent had met the minimum requirements set forth in the August 4, 1994 Order and was capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare.

The Board subsequently revoked respondent's license to practice dentistry in New Jersey for a minimum period of six (6) months, pursuant to an Order filed on December 15, 1995 which was based upon a finding that respondent had failed to comply with several terms of the Reinstatement Order filed on April 20, 1995, including but not limited to failing to comply with the proper protocol for urine testing and testing positive in urine tests

performed in August and September of 1995. Pursuant to the order revoking respondent's license filed on December 15, 1995, respondent, prior to filing for reinstatement, was to submit to a psychological evaluation.

In response to respondent's December 15, 2004 request for reinstatement, the Board considered correspondence from William I. Keene, DDS, MA, Director, New Jersey Dental Association Well Being Program supporting and recommending respondent's license reinstatement. This recommendation was based upon a psychiatric evaluation of respondent conducted by Donna M. Mackuse, D.O., on August 19, 2004. The evaluation reported that respondent has not displayed any signs of active use for many years and does not show any evidence of psychiatric problems. The Board also considered the testimony of respondent who appeared before the Board on December 15, 2004, without counsel, to request reinstatement of his license to practice dentistry. Respondent stated that he had, until this time, been unable to pay for the psychological evaluation required by the Board prior to considering his reinstatement request. He stated further, that he was enrolled in NA/AA and urine monitoring until 1998. He is not involved in any treatment programs at this time.

Having considered the testimony of respondent and supporting documents, the Board has determined that respondent appears to be in recovery at this time. Thus, despite the extended period of time that has elapsed since respondent's license was revoked, the Board has determined that respondent may have his license reinstated subject to the conditions outlined in this order. The

Board, however, is keenly aware of respondent's history of relapse and will not tolerate any deviation from the terms of this order. The Board finds that the restrictions placed on respondent's practice by this order are adequate to protect the health, safety and welfare of the public and that good cause exists for entry of this order.

IT IS, THEREFORE, ON THIS 16th DAY OF March 2005,

ORDERED THAT:

1. Respondent's license to practice dentistry in the State of New Jersey shall be reinstated effective on the entry date of the within Reinstatement Order, expressly contingent upon continuing compliance with, and subject to the restrictions in, this order.

2. Respondent shall abstain from any and all 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, respondent shall advise any and all treating physicians and/or dentists of his history of substance abuse. Respondent 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.

3. Respondent may not apply for reinstatement of his CDS privileges for a period of one (1) year from the date of entry of this order.

4. Respondent must use sequentially numbered triplicate prescriptions after regaining CDS privileges.

5. Respondent must immediately enroll in the Well Being program of the Dental Association of N.J. and follow their recommendations.

6. Respondent must attend AA meetings a minimum of once weekly until further order of the Board, and maintain documentation of such attendance to be produced upon request of the Board.

7. Respondent shall submit, at a minimum, to random urine monitoring twice per month until further order of the Board.

(a) The urine screen monitoring program, as well as the laboratory facility conducting the urine testing, must be approved by the Board. The Board shall provide respondent and Doctor Keene with specific directions for the protocol of the testing procedure. All urine screens must be directly observed and respondent shall comply with all additional urine screen procedures and protocols outlined and prescribed by the Board. The urine screen requirement shall continue until further order of the Board expressly reducing or discontinuing testing. 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. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

(b) All test results shall be provided to Joanne Boyer, Acting Executive Director of the Board, or her designee in the event she is unavailable. The Board retains sole discretion to modify the manner and the extent 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 respondent to submit or provide a urine screen within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event 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 Joanne Boyer, or her designee. Personnel at the lab facility shall not be authorized to waive a urine test. In addition, respondent 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 respondent 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 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.

(d) In the event respondent 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.

(e) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.003 shall be deemed dilute and a presumption of a confirmed positive urine test shall arise requiring a confirming test by hair analysis or other appropriate means.

(f) Respondent 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.

8. Respondent's CDS privileges shall remain suspended for a minimum period of one (1) year. Respondent shall not be permitted to prescribe or dispense controlled dangerous substances for patients in connection with dental treatment and he is not permitted to administer controlled dangerous substance medication to patients in the course of dental treatment.

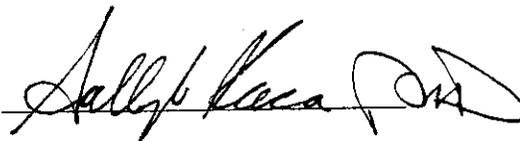
9. Respondent shall provide any and all releases to any and all parties who are participating in the monitoring, treatment or other program as outlined in this order, as may be required, in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner, via his signature on this order, respondent agrees that the Board may utilize any

information received in connection with any proceeding regarding licensure.

10. It is expressly understood and agreed that continued licensure with restrictions as ordered herein is contingent upon strict compliance with all of the aforementioned conditions. Upon the Board's receipt of any 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 or any other evidence that respondent has used an addictive substance, a hearing shall be held on short notice before the Board or before one member of the Board authorized to act on its behalf. The proofs at such a hearing shall be limited to evidence of the particular violation at issue.

11. Respondent may apply for modification of the terms and conditions of the within Order no sooner than one (1) year from the entry date herein. Prior to making application for modification, the Board may require respondent to submit to a supplemental psychological and or substance abuse evaluation to be conducted by a Board appointed psychologist.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 
Sally Jo Placa, D.M.D.
Board President