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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)
OR REVOCATION OF THE LICENSE OF)

Administrative Action

JOHN J. CARCHMAN, D.D.S.)
License No. DI 6455)

SUPPLEMENTAL ORDER
AWARDING COSTS AND
ATTORNEY'S FEES

CERTIFIED TRUE COPY

TO PRACTICE DENTISTRY IN THE)
STATE OF NEW JERSEY)

On April 6, 2005 the Board of Dentistry entered a Final Order after Initial Decision in the above matter. The terms of that order, which modified the sanctions recommended by the administrative law judge, continued the prior suspension of the license of John Carchman, D.D.S. ("Dr. Carchman" or "respondent"), imposed an additional period of suspension, and assessed penalties of \$10,000 (\$3,500 for violations found in connection with the complaint filed by the Attorney General on February 26, 2004 and \$6,500 which remained outstanding from the Board's order of December 4, 2002). In addition, the Board directed that Dr. Carchman pay costs and attorney's fees. In the order the Board wrote:

The Board believes respondent should bear responsibility for the investigative costs incurred in connection with this matter. While the administrative law judge awarded costs totaling \$4,650.70, the Board

will ask for a further breakdown of those costs. Given the failure of K.L. to appear at the hearing despite being subpoenaed, the Board will consider excluding costs associated with obtaining information and statements regarding the allegations related to K.L. Notwithstanding the Board's determination to consider modifying costs in the instant matter, the Board will require respondent, in addition to costs assessed in this action, to pay costs of \$15,130.90 as previously assessed in its order of December 4, 2002.

Similarly, the Board accepts the recommendation of the administrative law judge that respondent pay attorney's fees in this matter. The initial decision accepted DAG Bey's certification regarding costs totaling \$7,862.50. The Board, however, will ask the Attorney General for a more detailed statement of services. To the extent those fees may include matters specific to K.L., the Board will consider a modification. As to the application for costs and attorney's fees, Dr. Carchman will be given an opportunity to respond to the submission regarding the reasonableness of the amounts sought by the applicant. In responding to the application, Dr. Carchman shall provide information in addition to that already provided to the Board, specifically, State and federal tax returns for the last three years (or proof documenting that he was not required to file such tax returns), and information on all assets, including but not limited to, the building housing the Middletown office. The Board will make a final determination on the papers at a public meeting shortly after the receipt of all information.

During the public session of its June 22, 2005 meeting, the Board considered this matter. As directed by the Board's order, the deputy attorney general assigned to prosecute the matter submitted a certification of her fees. She further submitted certifications from Division of Consumer Affairs Enforcement Bureau supervisors Richard Perry and John Vitasin regarding costs expended in the prosecution of the matter. Dr. Carchman was copied on the materials provided to the Board. Despite the Board's order

allowing Dr. Carchman to respond by May 31, 2005, the Board has not received any information from him or objection from him to the Attorney General's submissions.

Attached to the deputy attorney general's certification of attorney's fees were time sheets which detail both the time and nature of the activities for which she billed. In addition, she appended the schedule of hourly rate compensation for legal staff as established by the Division of Law as of September 1, 1999. As the deputy has been practicing law for nine years, her rate of compensation is set at \$100 per hour.

The Board has carefully reviewed the time sheets submitted and finds the time expended by the deputy to be reasonable and appropriate. Dr. Carchman's intransigence necessitated the filing of a second verified complaint in February 2004. The deputy was required to draft and file the order to show cause and verified complaint, to interview witnesses and investigators, to communicate with Dr. Carchman, and to prepare for and attend telephonic prehearing conferences as well as two days of hearings on the matter. The Board notes that a portion of the deputy's time related to allegations involving patient K.L. The Board finds that the time spent in connection with those allegations were necessary to the formulation of the complaint. The Board notes that it found that Dr. Carchman had engaged in the practice of dentistry in his interactions with K.L. based on Dr.

Carchman's admissions. Therefore, attorney's fees for the time related to these allegations will be included in the award. The fee sought by this application reflects an hourly rate of \$100. This rate is both modest and at or below the range of fees paid by the State at that time to outside counsel for services. The Board will assess attorney's fees in this matter in the amount of \$6,290.00 which reflects the hourly rate of \$100 multiplied by 62.9 hours of the deputy's time.

As to costs, despite Dr. Carchman's failure to respond to the detailed submissions and the Board's willingness to allow recovery of attorney's fees related to K.L., the Board has determined that it will exclude investigative costs related to patient K.L. When Dr. Carchman appeared before the Board to present his exceptions to the initial decision and to offer mitigation as to the penalty to be imposed, he objected to the Board's consideration of information related to K.L. as K.L. did not appear at the hearing. Neither the Board nor the administrative law judge based their findings on K.L. in light of his failure to appear. Rather, findings related to K.L. were based on admissions of Dr. Carchman. While costs were expended in developing that aspect of the case, the Board declines to assess those costs against Dr. Carchman.

The certifications submitted reflect a total of 39 hours and 19 minutes of Enforcement Bureau time in this matter. Of that

time. 33 hours and 24 minutes was attributed to the K.L. aspect of the investigation. The Board finds the remainder of the investigative time expended as detailed in the spread sheets attached to the certification is reasonable and appropriate. The Board accepts the standard hourly rate of \$100.94 as computed by the Division to be reasonable and in accord with charges for investigative costs the Board has accepted repeatedly in the past. As such, costs awarded in connection with the February 2004 complaint are \$1,707.56. When added to the \$15,130.90 in costs that remains outstanding from the Board's order of December 2002, Dr. Carchman shall pay costs to the State in the amount of \$16,838.46.

As set forth in the Board's order of April 6, 2005, costs and attorney's fees related to this action are to be paid within 30 days of the entry of this order. A certificate of debt may be filed on that date if all monies owed are not paid by that date.¹ The Board's April 6, 2005 order provided respondent with an opportunity to seek additional time to pay the monies due.² Respondent has not paid that sum nor has he sought additional time to pay that assessment. The Board will file a certificate of debt

¹ The assessed penalties of \$10,000 were due upon the filing of the April 6, 2005 order. That order further provided that a certificate of debt as to the penalties there imposed was to be filed upon the entry of that order.

² See paragraph 10, page 18 of the April 6, 2005 order.

immediately for penalties due pursuant to the April 6, 2005 order and for costs in the amount of \$15,130.90 which remain outstanding from the December 2002 order. In the event that penalties and costs due and owing under this supplemental order are not paid within 30 days of the entry of this order, a second certificate of debt will be filed for the amounts set forth here.

THEREFORE, IT IS ON THIS 20th DAY OF JULY, 2005

ORDERED:

1. John Carchman, D.D.S., shall pay the following sums to the State of New Jersey by certified check or money order immediately:

a. Penalties of \$10,000 due pursuant to the Board's orders of December 4, 2002 and April 6, 2005 (penalties of \$6,500 outstanding from the December 4, 2002 order and \$3,500 assessed in the April 6, 2005 order);

b. Costs of investigation in the amount of \$15,130.90 outstanding from the Board's order of December 2, 2002.

Transmittal of funds due shall be made to the attention of Joanne Boyer, Acting Executive Director, New Jersey State Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101.

2. The Board will file a certificate of debt upon the filing of this order for penalties and costs set forth in paragraph 1 above.

3. Respondent shall pay the following sums to the State of New Jersey no later than 30 days from the entry of this order:

a. Costs of investigation of \$1,707.56

b. Attorney's fees of \$6,290.00.

Transmittal of funds due shall be made to the attention of Joanne Boyer, Acting Executive Director, New Jersey State Board of Dentistry, at the address set forth in paragraph 1.

4. Failure to pay costs and attorney's fees as set forth in paragraph 3 of this supplemental order within 30 days of its entry will result in the filing of a certificate of debt as set forth in this order.

5. Respondent may apply to the Board for additional time to pay penalties, attorney's fees, and costs. Any application for modification of the time frame set in this order shall be supported by certified financial records demonstrating respondent's financial status at the time of the application, including the most recent three years of State and federal tax returns (or documents demonstrating that respondent was not required to file such returns), income stream(s), assets, liabilities, and any other relevant information.

6. All terms of prior Board orders in this matter not

inconsistent with or superceded by this order shall remain in effect.

NEW JERSEY BOARD OF DENTISTRY

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