



he had been unable to access his office and records. He stated that at the point he became aware of the request for the charts, he "had them sent by FedEx to the appropriate parties." As to the conviction for driving under the influence, respondent maintained that he "displayed no signs of intoxication and passed all field tests [the police] administered. I then refused to take the Breathalyzer test, not knowing that would result in an automatic suspension of drivers license for six months and be considered a DUI." Respondent further remarked that due to alimony and child support obligations, any penalty or suspension of his license would be a hardship.

The deputy attorney general prosecuting the matter submitted a letter to the Board recapping the factual underpinnings of the Provisional Order and noting that respondent had not offered an explanation for his failure to appear at the September 8, 2004 investigative inquiry when he had been personally served with a subpoena to appear and to bring patient records. The deputy further noted that the Board could properly exercise its discretion in determining whether the information presented warranted a modification of the sanction provisionally imposed.

Having reviewed the record, specifically the Provisional Order and exhibits, Dr. Sabato's response, and the deputy's reply, the Board has determined that respondent has not provided a basis for the Board to modify its findings of fact or conclusions of law, nor has respondent presented information that would warrant a hearing on the issues presented.

The record establishes that Dr. Sabato pled guilty to driving under the influence (see Exhibit E attached to the Provisional Order). He may not now go behind that conviction and state that he was not intoxicated. See, State v. Gonzalez, 142 N.J. 618 (1995)(Supreme Court, in license revocation proceeding held: "[T]o permit repudiation of

the facts underlying the criminal convictions based on guilty pleas would be inimical to the policies that underlie the [regulatory agency's licensing] Act." Id. at 629-30). To the extent respondent's letter intimates that the criminal conviction was for refusing to take a Breathalyzer test, the record demonstrates that that charge was dismissed (see Exhibit F attached to the Provisional Order). Respondent offered no explanation of why certain controlled dangerous substances were in his possession at the time of his arrest. Finally, respondent's assertion that he provided records to patients (for which he offered no proof), does not address his failure to provide patient records to the Board. Nor did respondent address his failure to appear before the Board when he had been personally served with a subpoena for that appearance.

While the Board has determined that the sanctions sought to be imposed by the Provisional Order should be sustained, it accepts that respondent has experienced financial difficulties in the last two years. Therefore, the Board will permit respondent to pay the civil penalty over a period of one year. Respondent's license shall be suspended for a minimum of thirty days, which suspension will continue indefinitely until such time as respondent produces the patient records and cooperates with the Board's investigation. Should Dr. Sabato provide the subpoenaed records to the Board within ten days of the entry of this order, the Board will entertain an application from Dr. Sabato to serve the thirty day suspension in two fifteen day periods.

Based on the above, the Board now makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Respondent is licensed to practice dentistry in the State of New Jersey and has been a licensee at all time relevant to this order.

2. On or about August 14, 2003, police officers were dispatched to a residence for a report of a domestic 911 call. The call was made by respondent's estranged wife. The police dispatcher reported that respondent was overheard threatening his estranged wife. Upon arrival at the domicile, police discovered that respondent left the premises. Respondent was subsequently stopped by a patrolman shortly thereafter. The patrolman detected the odor of alcohol on respondent's breath and field sobriety tests were conducted. Respondent was subsequently arrested and taken into custody for driving while under the influence.

3. A search of respondent's person was conducted incident to the arrest. During the search, police discovered several pills. Respondent indicated some of the pills were Vicoden and some were Zanax. Respondent was subsequently issued a warrant for possessing a controlled substance or a controlled substance analog that was not obtained directly from a practitioner or under a valid prescription.

4. On or about August 14, 2003, a warrant was issued to respondent for harassment based on allegations of threats being made to respondent's estranged wife.

5. On or about August 14, 2003, a complaint-summons was issued to respondent for driving while intoxicated, refusal to submit to the Breathalyzer exam, possession of CDS in a motor vehicle and reckless driving. Respondent pled guilty to the DWI charge. In exchange, the refusal to submit to the Breathalyzer charge, as well as the possession of CDS in a motor vehicle and reckless driving charges were dismissed by the prosecutor. Additionally, the possession of CDS charge, as well as the harassment charge, were dismissed by the prosecutor. Respondent's driver's license was suspended for six months. He was ordered to attend Alcoholic's Anonymous and report to Carrier Clinic for evaluation.

6. On April 19, 2004, the Board sent a letter to respondent's address of record. The letter was sent via regular and certified mail. The letter requested that respondent appear before the Board for an investigative inquiry on May 5, 2004. The purpose of the inquiry was to obtain information from respondent regarding his arrest on August 14, 2003 and subsequent conviction for DWI from Chesterfield Township. The certified mailing was returned to the Board marked "Unclaimed, Return to Sender." The regular mailing was not returned to the Board.

7. A subpoena was personally served upon respondent demanding his appearance before the Board for an Investigative Inquiry on September 8, 2004. The purpose of the inquiry was to inquire into the aforementioned charges and subsequent conviction from Chesterfield Township. Additionally, respondent was compelled to produce patient records for four named patients at this inquiry. The four patients had filed complaints with the Board concerning dental services provided by respondent.

8. On September 8, 2004, respondent failed to appear before the Board for the Investigative Inquiry regarding the aforementioned arrests and DWI conviction. Also, to date, respondent has failed to provide any of the patient records requested by the Board pursuant to the subpoena.

#### CONCLUSIONS OF LAW

1. The above findings of fact provide grounds for disciplinary action against respondent's license based on professional or occupational misconduct pursuant to N.J.S.A. 45:1-21(e) in that respondent has failed to cooperate with the Board's investigation in contravention of N.J.A.C. 13:45C-1.3.

ACCORDINGLY, IT IS on this 5<sup>th</sup> day of September, 2007,

ORDERED THAT:

1. Respondent's license to practice dentistry is hereby suspended for a minimum of thirty days beginning October 1, 2007. Upon completion of the thirty day minimum period of suspension, the suspension shall continue indefinitely until such time as respondent provides the patient files requested in the subpoena and satisfactorily cooperates with the Board's investigation. That cooperation may include an appearance before the Board or a committee of the Board.

2. Respondent is assessed a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount of \$5,000 for engaging in professional misconduct for violating N.J.S.A. 45:1-21(e), in that respondent failed to cooperate with the Board's investigation and request for patient records contrary to the provisions of N.J.A.C. 13:45C-1.3. Payment of the \$5,000 civil penalty shall be submitted by certified check or money order made payable to the State of New Jersey and shall be sent to the Executive Director, Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101. Payment of the \$5000 penalty shall be made in one payment of \$600 due October 1, 2007 and eleven payments of \$400 due on the first of each month beginning November 1, 2007 and continuing until all payments are made. Failure to make a payment on schedule shall result in the entire sum becoming due immediately. Failure to make payments as required by this order shall be considered a violation of this order and shall subject respondent to additional sanctions.

NEW JERSEY STATE BOARD OF DENTISTRY

By:   
Maxine Feinberg, D.D.S.  
President