

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101
Attorney for State Board of Dentistry

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

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| IN THE MATTER OF | : | Administrative Action |
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| | : | |
| GERALD J. WHITEMAN, D.D.S. | : | FINAL ORDER |
| License No. 22 DI00767800 | : | OF DISCIPLINE |
| | : | |
| LICENSED TO PRACTICE DENTISTRY | : | |
| IN THE STATE OF NEW JERSEY | : | |

The New Jersey State Board of Dentistry ("Board") entered a Provisional Order of Discipline on July 2, 2008, based on its review of information that Gerald J. Whiteman, D.D.S. ("Dr. Whiteman" or "respondent"), who had been indicted on one count of Health Care Claims Fraud in the second degree (N.J.S.A. 2C: 21-4.3(a)), and one count of Medicaid Fraud in the third degree (N.J.S.A. 30:4D-17(b)), had, on December 5, 2007, entered into a plea agreement and consent order with the State of New Jersey, Division of Criminal Justice, Medicaid Fraud Section. Respondent pled guilty to one count of Health Care Claims Fraud in the second degree and agreed to pay restitution and penalties totaling \$13,500, and to be disqualified from participating in any program administered in whole or in part by the New Jersey Medical Assistance

and Health Services Program (Medicaid) and any other federally or state funded health insurance or prescription assistance program for a term of five(5) years. The charges were based on submission of claims for providing general anesthesia to patients when, in fact, either local or no anesthesia was administered. The Judgment of Conviction was entered on April 17, 2008.

Based on those actions, the Provisional Order made preliminary findings of fact and conclusions of law and set forth a proposed sanction, including a five year suspension, two years of which were to be served as an active suspension, and a reprimand.

On August 2, 2008, in response to the Provisional Order, Dr. Whiteman, through counsel, submitted a letter asking the Board to reconsider the sanctions provisionally imposed. While acknowledging that "a legitimate basis for the suspension exists," counsel asked the Board to modify the active portion of the suspension to one year. In support of that request, counsel asserted that Dr. Whiteman, at age 69, has a limited period of time left to practice dentistry and that he has not been previously subject to discipline in his decades long career. Counsel further stated that respondent had participated with the Medicaid Assistance program out of a sense of community service, and finally asked that the Board consider that the sentencing judge had imposed a one year suspension of license. The deputy attorney general prosecuting the matter responded by letter dated September 5, 2008. The deputy, while noting the Board had discretion to modify its sanctions in light of the mitigation offered, stated that the conviction provided a basis for discipline against Dr. Whiteman.

The Board has fully considered the information submitted and is not persuaded

by the mitigation offered. Dr. Whiteman, as he acknowledges, has been in practice for more than four decades and has enjoyed the support of a close and loving family, which includes his three children, who are a dentist, a schoolteacher, and a lawyer. Noting that the restitution he was required to pay totaled \$6,750, his counsel states that he was not motivated by financial gain and that “he by no means got ‘rich’ from treating” the patients.

Nothing submitted in response has provided the Board with an explanation for the conduct, nor is there anything suggesting that Dr. Whiteman feels remorse for his actions. The Board is at a loss to understand why a successful oral surgeon would choose to bill Medicaid for services that he did not render for more than 30 patients. Respondent’s actions diverted the limited funds available for treatment of patients to his own use with no apparent explanation. The Board is aware that respondent’s counsel has stated that to counsel’s knowledge, full restitution has been made. But that does not alter the fundamental conduct; Dr. Whiteman engaged in, and has been convicted of, health care claims fraud.

The judge in the criminal matter noted the aggravating factors in his statement of reasons for the sentence:

. . .The need for deterring the defendant and others from violating the law. The offense involved fraudulent or deceptive practices committed against any department or division of State Government. The imposition of a fine, penalty or order for restitution without also imposing a term of imprisonment would be perceived by the defendant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort

to unlawful practices.¹

The Board agrees with the sentencing judge that the need to deter other practitioners and to ensure that any sanction is not perceived as a cost of doing business warrants the discipline imposed here. The Board considered Dr. Whiteman's lack of disciplinary history as well as the likelihood that the conduct would not recur, when in its Provisional Order it called for a five year suspension, two years of which would be an active suspension. The Board finds that the penalty is appropriate given the breach of the public trust.

The Board notes that the criminal court suspended Dr. Whiteman's license for a period of one year, and the Board has been advised that Dr. Whiteman surrendered his license on April 17, 2008, the date of sentencing. The two year suspension imposed by this order shall be deemed to have commenced on the same date as the suspension of Dr. Whiteman's license pursuant to his conviction. Respondent shall follow the directives applicable to dentists whose licenses have been suspended or revoked, which are attached to this Final Order.

Therefore, the Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent, Gerald J. Whiteman, D.D.S. ("respondent"), is licensed to practice dentistry in the State of New Jersey and has been a licensee at all times relevant hereto.

¹ The Court found the aggravating factors and mitigating factors in equipoise, but noted that for the reasons expressed on the record at sentencing and in the judgement of conviction, he sentenced Dr. Whiteman in accordance with the plea agreement.

2. On January 8, 2007, respondent was indicted in the Superior Court of New Jersey, Criminal Law Division, on one count of Health Care Claims Fraud in the Second Degree, pursuant to N.J.S.A. 2C:21-4.3(a), and one count of Medicaid Fraud in the Third Degree, pursuant to N.J.S.A. 30:4D-17(b). Specifically, respondent was accused of submitting insurance claims forms to Medicaid and other insurance carriers for providing general anesthesia services to certain Medicaid recipients when in fact he provided no such service.

3. On December 5, 2007, respondent entered into a plea agreement and consent order with the State of New Jersey, Division of Criminal Justice, Medicaid Fraud Section. Respondent agreed to be disqualified from participation in any program administered by the New Jersey Medical Assistance Health Services Program (Medicaid), and any other federally or state funded health insurance or prescription assistance program for a term of five years. Respondent also agreed not to control, supervise, direct, furnish services to, or own an interest in any corporation, partnership, or other entity that provides services pursuant to any program administered by Medicaid or other federally or state funded health insurance program or prescription program for five years. Respondent agreed to plead guilty to one count of Health Care Claims Fraud in the Second Degree and agreed to pay restitution and false claims penalties totaling \$13,500. The State did not waive the right of Medicaid to seek civil remedies for claims submitted for the period January 1, 2003 to April 25, 2005 for those patients not covered in the plea agreement and consent order. The State released respondent from criminal and civil liability pertaining to allegations of Health Care Claims Fraud relating to claims submitted to Delta Dental and to Aetna for the time period January 1, 2003 to April 25, 2005. Respondent agreed to pay

restitution of \$806.50 to Delta Dental, and \$3,435.07 to Aetna. In lieu of the maximum sentence of ten years in prison and a \$150,000 fine, respondent agreed to a prison sentence not to exceed three years. The State dismissed the remaining counts, agreed not to oppose the Intensive Supervision Program, and agreed not to prosecute for Medicaid Fraud for respondent's actions between January 1, 2003 and April 25, 2005.

4. At respondent's plea hearing, respondent admitted to submitting fraudulent claims to the Medicaid program for 38 patients totaling approximately \$6,750 as if he administered the more expensive general anesthesia, when in fact he administered only a local anesthetic or none at all.

5. On April 17, 2008 the Honorable Frederick P. De Vesa issued a judgment of conviction in accordance with the above mentioned plea agreement and consent order.

CONCLUSIONS OF LAW

1. The above findings of fact establish a basis for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(b), in that the facts surrounding respondent's guilty plea to Health Care Claims Fraud in the Second Degree is the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

2. The above findings of fact also provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(f), in that respondent has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the Board.

3. The above findings of fact also provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(e), in that respondent

committed professional misconduct by violating N.J.A.C. 13:30-8.10(a) when he submitted claims to third-party payors containing dishonesty, fraud, deception, or misrepresentation and by violating N.J.A.C. 13:13:30-8.10(b)2 by submitting claims to third party payors containing a description of a dental service or procedure which does not accurately reflect the actual work completed.

4. The above findings of fact also provide grounds for disciplinary action against respondent's license, pursuant to N.J.S.A. 45:1-21(k), in that respondent's conviction for Health Care Fraud in the Second Degree constitutes a violation of an insurance fraud prevention law.

ACCORDINGLY, IT IS ON THIS 12 DAY OF DECEMBER, 2008,

ORDERED that:

1. Gerald J. Whiteman's license to practice dentistry in the State of New Jersey is hereby suspended for a period of five (5) years. The first two (2) years are to be served as an active period of suspension, the remaining three years are to be stayed and served as a probationary period. The date of the suspension shall be deemed to have commenced on April 17, 2008, the date respondent surrendered his license to practice dentistry pursuant to the sentence in the criminal matter.

2. Prior to any restoration of his license, respondent shall:

a. Appear before the Board, or a committee of the Board, to discuss his readiness to re-enter the practice of dentistry. At that time, respondent shall be prepared to propose his plans for future practice in New Jersey.

b. Demonstrate to the satisfaction of the Board that he is physically and psychologically fit and that he is capable of discharging the functions of a licensee in a

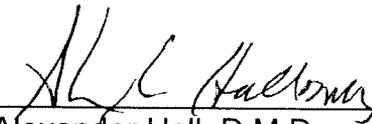
manner consistent with the public's health, safety and welfare and that he is not then suffering from any impairment or limitation which could affect his practice.

c. Affirmatively establish his fitness, competence and capacity to re-enter the active practice of dentistry within New Jersey, including an accounting of all continuing education courses completed while his license was suspended.

d. Provide the Board with a full account of his conduct during the intervening period. The Board, in its sole discretion, will determine whether and under what conditions respondent may return to practice. Any reinstatement of respondent's license can be conditioned on such limitations, monitoring or restrictions as the Board finds necessary to protect the public health, safety and welfare.

3. The Board reprimands respondent for his acts described above, including, but not limited to, his violation of N.J.S.A. 2C:21-4.3(a).

NEW JERSEY STATE BOARD OF DENTISTRY

By: 
Alexander Hall, D.M.D.
Board President

**DIRECTIVES APPLICABLE TO ANY DENTISTRY BOARD LICENSEE
WHO IS SUSPENDED, REVOKED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

A practitioner whose license is suspended or revoked or whose surrender of license has been accepted by the Board, shall conduct him/herself as follows:

1. Document Return and Agency Notification

The licensee shall promptly deliver to the Board office at 124 Halsey Street, 6th floor, Newark, New Jersey 07102, the original license and current biennial registration certificate, and if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances Registration. With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board.

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of dentistry in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry. The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee of this Board provides health care services. Unless otherwise ordered by the Board, the disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by the practice or any other licensee or health care provider. In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from all prescription blanks and pads, professional listings, telephone directories, professional stationery, or billings. If the licensee's name

is utilized in a group practice title, it shall be deleted.

Prescription pads bearing the licensee's name shall be destroyed. A destruction report form shall be obtained from the Office of Drug Control (973-504-6558) and filed with that office. If no other licensee is providing services at the practice location, all medications must be removed and returned to the manufacturer (if possible), or destroyed or safeguarded. In situations where the licensee has been suspended for a period of less than one year, prescription pads and medications must be secured in a locked place for safekeeping.

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice, and shall be required to comply with the requirements to divest him/herself of all financial interest in the professional practice pursuant to Board regulations contained in N.J.A.C. 13:30-8.21. Such divestiture shall occur within 90 days following the entry of the Board Order. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the New Jersey Department of Treasury, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Patient Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to patient records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her patient record or asks that the record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

A disciplined practitioner whose active suspension of license has been stayed in full or in part, conditioned upon compliance with a probation or monitoring program, shall fully cooperate with the Board or its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a.) Monitoring of practice conditions may include, but is not limited to, inspection of professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with Board Order and accepted standards of practice.

(b.) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual or facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by the rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and by providing the designated sample.

6. Reports of Reimbursement

A disciplined practitioner shall promptly report to the Board his/her compliance with each directive requiring monies to be reimbursed to patients to other parties or third party payors or to any Court.

7. Report of Changes of Address

A disciplined practitioner shall notify the Board office in writing within ten (10) days of change of address.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Dentistry are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record thereof, including the transcript and documents marked in evidence, are available for public inspection upon request.

Pursuant to Public Law 101-191, the Health Insurance Portability and Accountability Act, the Board is obligated to report to the Healthcare Integrity and Protection Data Bank any adverse action relating to a dentist:

- (1) Which revokes or suspends (or otherwise restricts) a license; or
- (2) Which censures, reprimands or places on probation, or restricts the right to apply or renew a license; or
- (3) Under which a license is surrendered.

In accordance with an agreement with the American Association of Dental Examiners, a report of all disciplinary orders is provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order may appear on the public agenda for the monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board. In addition, the same description may appear on the Internet Website of the Division of Consumer Affairs.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.