



Schneiderman had failed to be of good moral character as required for licensing as a dentist, N.J.S.A. 45:6- 6.

On July 14, 2009 Dr. Schneiderman filed an answer and request for a hearing. In that answer, Dr. Schneiderman admitted the essential allegations of the complaint and requested that the Board conduct a hearing in mitigation of the sanction to be imposed.

In advance of the scheduled mitigation hearing, the Attorney General, by David Puteska, Deputy Attorney General, and Dr. Schneiderman, through his counsel, Lori Grifa, stipulated to the following:

1. At all times relevant to this matter Dr. Gary Schneiderman ("Respondent") was licensed by the New Jersey State Board of Dentistry (the "Board") under license number 22DI01635300.
2. On or about October 25, 2005, through counsel, Respondent voluntarily notified the Board that he had engaged in conduct in violation of Board rules and/or regulations.
3. Respondent voluntarily relinquished his right to prescribe or dispense CDS and surrendered his DEA and CDS registration certificates, as well as all prescription blanks in his name, to his counsel pending the board's inquiry.
4. The conduct at issue involved a single individual identified as S.W.
5. Respondent met S.W. in February 2004 after which they engaged in an intimate relationship. At no time was S.W. a patient of Respondent.
6. After a short period of time, S. W. requested that Respondent provide her with Percocet, a Schedule II Controlled Dangerous substance ("CDS") used for moderate to moderately severe pain relief.

7. Although S. W. was not a patient, and had no legitimate dental need for pain medication, Respondent provided her with prescriptions for Percocet and other CDS.
8. By the summer of 2004 S.W.'s demands for CDS increased from once every two weeks to daily demands for pain medication.
9. Respondent provided CDS to S.W. by issuing prescriptions in her name for Oxycodone, Oxycontin and/or Percocet.
10. Respondent also provided S.W. with blank prescriptions from his prescription pad which he knew she would use to write additional prescriptions for CDS.
11. In order to avoid detection, Respondent also provided S.W. CDS by using the prescription pad of another dentist and either signing the other dentist's name or providing S.W. with blanks from that prescription pad which Respondent knew she would use to obtain CDS.
12. Although the exact number of CDS prescriptions issued by Respondent to S.W. is unknown, Respondent stipulates that he issued at least sixty-five (65) prescriptions for CDS totaling more than 1,880 dosage units of Percocet and 14 dosage units of Oxycontin.
13. Respondent stopped providing CDS to S.W. in October 2005.
14. In an effort to help S.W., Respondent encouraged and paid for her to enroll in several substance abuse programs. S.W. did not successfully complete any of these programs.
15. Respondent voluntarily enrolled in and successfully completed the Mini Residency in Appropriate Prescribing Program (MRAP) at the University of Medicine and Dentistry of New Jersey.

The Board<sup>1</sup> scheduled the requested hearing for December 16, 2009. At the outset of the hearing, on motion made and seconded, the Board unanimously found that Dr. Schneiderman had engaged in conduct that constituted: the use or employment of dishonesty, fraud, misrepresentation or false pretense in violation of N.J.S.A. 45:1-21(b); gross negligence in violation of N.J.S.A. 45:1-21(c); repeated acts of negligence in violation of N.J.S.A. 45:1-21(d); professional misconduct in violation of N.J.S.A. 45:1-21(e); engaging in acts constituting moral turpitude or conduct relating adversely to an activity regulated by the board in violation of N.J.S.A. 45:1-21(f); and indiscriminate prescribing of controlled dangerous substances without good cause or where the dentist knew or should have known that the substances were to be used for unauthorized consumption or distribution in violation of N.J.S.A. 45:1-21(m). The Board also determined that Dr. Schneiderman had failed to maintain good moral character as required for licensing as a dentist, N.J.S.A. 45:6-6.

Dr. Schneiderman presented five witnesses, including himself, to provide mitigating evidence.<sup>2</sup> Max Kleinman, Executive Vice President of United Jewish Communities of Metrowest, New Jersey, spoke to Dr. Schneiderman's philanthropic activities with that organization, including his work as a fund-raiser and the donated dental services he provides both in and outside of the United States. Rufino "Rudy" Fernandez, Esq., who

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<sup>1</sup> Four members of the eleven members of the Board were recused from participating in this matter: Arnold Rosenheck, D.M.D., John Ricciani, D.M.D., Peter DeSciscio, D.M.D., and Herbert Dolinsky, D.D.S.

<sup>2</sup> Dr. Schneiderman asked that David Lustbader, Esq., his previous counsel, testify regarding settlement negotiations. The State objected to his testimony as not relevant to the proceedings. The Board declined to hear Mr. Lustbader's testimony.

serves on the Livingston Town Council with Dr. Schneiderman, referred to his volunteer participation in the community as an elected representative and in the towns' sports and recreation activities. Carmine LaMonaco, D.M.D., faculty member at the University of Medicine and Dentistry Dental School, testified that he has known Dr. Schneiderman for 25 years on both a personal and professional level. Dr. LaMonaco noted that during the time Dr. Schneiderman was a faculty member, he was highly regarded and reliable. He stated that should the Board impose a lengthy suspension on Dr. Schneiderman, it would be devastating to his practice.

Jill Schneiderman testified on behalf of her husband. She stated that Dr. Schneiderman disclosed to her his relationship with S.W. and his prescribing conduct in 2005. She noted the efforts her husband took to assist S.W. in addressing her substance abuse. Mrs. Schneiderman described the impact his conduct had on herself and their two sons, as well as the potential economic impact that a lengthy, active suspension would have on their family.

Dr. Schneiderman then testified. When asked what the effect that a three year suspension, the length advocated by the Attorney General, would have on his practice, he stated that his life as a dentist would be over; further, he did not know how his brother, with whom he practices, could handle the practice without him. Dr. Schneiderman stated that he had not lost any patients as the result of the charges against him. While he had discussed the possibility of suspension with his patients, he claimed his patients had concerns only about the timing of their treatment. When asked what he would propose as an alternative to a suspension, he replied that he should be directed to provide free dental treatment. Dr. Schneiderman noted that he had apologized to the Board at his appearance

in July 2007. He stated that he had made an “enormously bad decision” that had hurt his family and his profession but that he was a good dentist and he hoped not to receive a sanction that would ruin his practice. Finally, Dr. Schneiderman acknowledged that he had been made aware of the Board’s settlement offers and the deadline to accept the Board’s final offer but believed his attorney would get additional time.

At the conclusion of testimony, the parties jointly moved the following exhibits into evidence:

- P-1 August 16, 2006 Enforcement Bureau Report and attached exhibits;
- P-2 July 11, 2007 transcript of Dr. Schneiderman’s testimony at an investigative inquiry held before the Board;
- R-1 October 26, 2005, letter from John Dizzia, Esq., reporting Dr. Schneiderman’s conduct in prescribing for S.W. and actions taken at that time;
- R-2 May 3, 2006 letter from coordinator of Mini Residency in Appropriate Prescribing DVD Program (22.5 hours of DVD viewing and 2.5 hours of reading) stating that Dr. Schneiderman received a passing score;
- R-3 January 7, 2009 correspondence from John Dizzia, Esq., to Nancy Costello Miller, Deputy Attorney General, in response to Board’s settlement offer;
- R-4 May 27, 2009 correspondence from DAG Miller to David Lustbader, Esq., discussing recusal issues and enclosing proposed consent order;
- R-5 May 27, 2009 letter (R-4 above); May 28, 2009 correspondence from Mr. Lustbader to Ms. Miller asking for extension of time for expiration of settlement offer; May 28, 2009 correspondence from Ms. Miller to Mr. Lustbader, noting no extensions would be granted.

R-6 June 5, 2009 correspondence from Mr. Lustbader to Jonathan Eisenmenger, Executive Director of the Board of Dentistry, seeking to re-open settlement negotiations.

Following closing arguments, the Board moved to executive session for deliberations.

The Board has considered the evidence and arguments of counsel. There is no question but that Dr. Schneiderman's conduct in writing prescriptions for controlled dangerous substances for S.W. in both his and his partner's name and providing prescription blanks to S.W. for her use represents a gross and repeated deviation from acceptable standards of care and practice for dentists in this State. Dr. Schneiderman provided access to controlled dangerous substances to S.W. for a non-medical or dental purpose over a period of approximately twenty months. The harm to both S.W. and to other persons who may have access to drugs placed in the stream of commerce is significant. Moreover, Dr. Schneiderman's duplicitous scheme to cover his misconduct by forging his partner's name on prescriptions and providing S.W. with blanks from his prescription pad, placed his partner in jeopardy.

In determining the appropriate sanction, the Board must weigh the mitigating factors presented. To that end, the Board places particular emphasis on Dr. Schneiderman's decision to report his conduct to the Board. Through prior counsel, Dr. Schneiderman admitted the conduct, voluntarily agreed to stop writing prescriptions for controlled dangerous substances, and has done so for more than four years. When he appeared before the Board in July 2007, he acknowledged that he had written prescriptions, used his partner's prescription pad, and candidly admitted that there were likely more prescriptions than the sixty-five uncovered by the Board's investigation. In addition to his admissions, the

Board has considered Dr. Schneiderman's attempts to assist S.W., by funding two separate drug rehabilitation efforts as well as vocational schooling. These efforts, while unsuccessful, speak to respondent's recognition of his partial responsibility for S.W.'s continued difficulties.

Finally, although settlement negotiations are inadmissible in administrative proceedings, N.J.A.C. 1:1-1.15, the Board permitted limited discussion during the hearing regarding Dr. Schneiderman's understanding of the Board's final offer of settlement. While it appears from the evidence and from Dr. Schneiderman's testimony that he was advised by his attorney that the Board's final offer was open for a very limited period, he also indicated that he believed that more time to review the offer would be given. Under those circumstances, the Board is willing to give Dr. Schneiderman the benefit of the purported confusion and has considered it a mitigating factor.

Therefore, after full consideration and having considered the positions presented, the Board has determined that the sanction imposed on Dr. Schneiderman should include a lengthy suspension, of which only a portion shall be served as an active suspension, and a substantial monetary penalty. While the seriousness of the offenses committed would support a removal from practice for a protracted period - and dentists who engage in indiscriminate prescribing should expect such a sanction - the Board has been persuaded by the mitigation presented and will limit the active portion of the suspension. Dr. Schneiderman's license shall be suspended for five years, of which four months shall be served as an active suspension and the remainder served as a period of probation. He is assessed a civil penalty of \$150,000 for the sixty-five prescriptions that were uncovered during the Board's investigation. Further, he will be required to perform 200 hours of community service not related to the practice of dentistry and pre-approved by the Board .

The Board will consider service in an urban area of this State in a drug treatment facility or other organization dedicated to recovering addicts where Dr. Schneiderman may see first hand the ravages of substance abuse. He will be assessed costs of investigation and attorney's fees and upon return to practice shall follow the protocol for use of triplicate prescription blanks for all prescriptions written. Dr. Schneiderman must also successfully complete and unconditionally pass an ethics course approved by the Board.

The sanction imposed reflects the Board's determination that the conduct, while egregious, is offset by Dr. Schneiderman's initial admissions, cooperation, and stipulations in this proceeding. His counsel has argued that he is a good dentist and is remorseful. Yet those assertions do not counter the distressing lack of judgment shown by Dr. Schneiderman throughout the twenty months when he was indiscriminately prescribing and facilitating the acquisition of controlled dangerous substances by S.W. The negative professional and financial consequences flowing from the sanctions imposed here are directly related and attributable only to Dr. Schneiderman's own choices - choices that can never be countenanced by this Board. The Board trusts that Dr. Schneiderman will not again depart from the standards of professionalism, integrity, and good moral character to which dentists licensed in the State of New Jersey are expected to adhere.

THEREFORE, IT IS ON THIS 6<sup>th</sup> DAY OF *January*, 2010,

HEREBY ORDERED:

1. The license of Gary Schneiderman, D.M.D., to practice dentistry shall be suspended effective on January 15, 2010, for a period of five years, of which four months shall be served as a period of active suspension, and the remainder stayed and served as a period of probation.

2. Dr. Schneiderman is assessed civil penalties, pursuant to N.J.S.A. 45:1-22 in the amount of \$150,000 for conduct with respect to prescribing controlled dangerous substances for a non-dental purpose and for using his partner's name and prescription blanks to further his conduct. The penalty reflects \$10,000 for the first and \$2,187.50 for each of the remaining sixty-four prescriptions uncovered during the Board's investigation. Dr. Schneiderman shall pay the penalty within thirty days of the date of this order or in 120 equal installments of \$1,250 due on the first of each month beginning on February 1, 2010 through and including January 1, 2020, by certified check or money order made payable to the State of New Jersey and sent to Jonathan Eisenmenger, Executive Director, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101. Subsequent violations will subject Dr. Schneiderman to enhanced penalties pursuant to N.J.S.A. 45:1-25.

3. Dr. Schneiderman is assessed the costs of the investigation to the State in this matter in the amount of \$7,515.89. Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey and submitted to the Board no later than 30 days from the entry of this Consent Order. Payment shall be sent to Jonathan Eisenmenger, Executive Director, at the address in paragraph #2

4. Dr. Schneiderman shall pay attorney's fees in an amount to be determined by the Board. The State shall submit an affidavit or certification of fees not later than January 15, 2010, with a copy to Dr. Schneiderman's counsel. Any response to that application for fees shall be submitted not later than February 2, 2010. The Board will notify the parties of the award after review of that application.

5. Failure to remit any payment as required by this Order will result in the filing of a certificate of debt as well as other proceedings as permitted by law.

6. Prior to reinstatement of his license, respondent shall:

(a) fully attend, successfully complete, and provide proof of completion of a Board approved course related to identification and treatment of persons with drug dependency issues.

(b) fully attend, successfully complete and unconditionally pass an ethics course, and provide proof of passing. He shall complete the ProBE (Professional Problem Based Ethics) course offered by The Ethics Group, 89 Summit Avenue, Suite 185, Summit, New Jersey 07901, or the PRIME (Professional Renewal in Medicine through Ethics) course offered by the Center for Continuing Education in the Health Professions at UMDNJ-Robert Wood Johnson Medical School, 97 Paterson Street, Room 124, New Brunswick, New Jersey 08903, or other ethics course of similar content that is approved by the Board.

7. Within one year of this order, Dr. Schneiderman shall complete at least 200 hours of community service approved by the Board, which service shall not be related to dentistry, at a facility or organization that treats or assists in the rehabilitation of persons with substance abuse issues. The Board will consider facilities or organizations that focus their efforts in urban areas of this State. Dr. Schneiderman shall submit bi-weekly reports of his community service activities to the Board at the address in Paragraph 2 above.

8. Any practice of dentistry by Dr. Schneiderman prior to the issuance of an order of reinstatement shall be deemed unlicensed practice and shall constitute a violation of this order.

9. Upon reinstatement of his license, Dr. Schneiderman shall be permitted to write prescriptions only for patients as required in connection with dental treatment or to

administer medication to patients in the course of dental treatment, in accordance with the following terms and conditions:

(a) He may prescribe or dispense controlled dangerous substances.

(b) He shall use sequentially numbered, triplicate prescription pads for all prescriptions. If he wishes to electronically or telephonically transmit prescriptions, he shall first submit a plan to the Board for approval for the tracking and logging of all such prescriptions.

(c) He shall continue to provide the original prescription to the patient, attach one copy of the prescription to the patient record, and submit the third copy to the Board, attention: Jonathan Eisenmenger, Executive Director, on a monthly basis, beginning June 1, 2010, for all prescriptions written upon his return to practice.

(d) He shall be required to account for each consecutively numbered prescription, regardless of whether the particular prescription was voided or not used for any purpose whatsoever.

(e) He shall comply with all State and federal laws and regulations governing the purchase, storage, use, prescription, and dispensing of controlled dangerous substances.

(l) If he administers or dispenses CDS to a patient in his practice, he shall maintain a log for each administration or dispensing event, which log shall include the patient name, date, name of medication, dosage, and units administered or dispensed.

(ii) He shall submit a true copy of the log to the executive director along with a copy of the patient record for each patient listed on a monthly basis.

(f) He shall relinquish all current prescription pads bearing respondent's name to Jonathan Eisenmenger, Executive Director, within ten days from the entry date of this order. Respondent shall not use or possess any prescription blanks until after his reinstatement and then he may only use triplicate prescription blanks until further order of the Board.

10. Failure to comply with any of the terms of this order, including but no limited to any inappropriate prescribing or dispensing medications, may result in further disciplinary action, including but not limited to activation of the stayed suspension.

11. Dr. Schneiderman shall comply with the directives for licensees who have been suspended or revoked attached to this order.

NEW JERSEY STATE BOARD OF DENTISTRY

By:

  
Emil G. Cappetta, D.D.S.  
President