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N.J. BOARD OF DENTISTRY  
ON 5-23-11 DA

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

IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSE OF : FINAL CONSENT ORDER  
: :  
Daniel A. Smilowitz, D.D.S. :  
License No. DI 01425400 :  
: :  
TO PRACTICE DENTISTRY IN :  
THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Dentistry (hereinafter the "Board") upon receipt of information that Respondent Daniel A. Smilowitz, D.D.S. (hereinafter "Respondent" or "Dr. Smilowitz") had prescribed Controlled Dangerous Substances ("CDS") to patient W.S. on a frequent and continuing basis beginning on or about January of 2007.

On October 20, 2010, Dr. Smilowitz appeared before the Board, regarding his care, treatment and prescribing to the above referenced patient. Dr. Smilowitz chose to invoke his 5<sup>th</sup> Amendment Right in regard to all questions regarding his care and treatment of W.S. Dr. Smilowitz subsequently entered an Interim Consent Order on November 23, 2010 voluntarily surrendering his

license to practice dentistry pending further Order of the Board. He then appeared before the Board on December 1, 2010 wherein he acknowledged that he failed to take notice of the excessive CDS he prescribed to W.S.

The Board reviewed materials indicating that patient W.S. was dispensed over 10,000 tablets of Endocet and Oxycodone, Schedule II CDS, between January 2007 and July of 2009. The Board also considered Dr. Smilowitz's dental care of W.S. as demonstrated by the patient record and described by Dr. Smilowitz.

The Board finds that Respondent indiscriminately prescribed CDS and performed inadequate dental care on patient W.S. Respondent's conduct constitutes violations of N.J.S.A. 45:1-21(c) (providing that disciplinary action may be taken against a licensee who engages in gross negligence, gross malpractice or gross incompetence), 45:1-21(d) (providing that disciplinary action may be taken against a licensee who engages in repeated acts of negligence, malpractice or incompetence), 45:1-21(e) (providing that disciplinary action may be taken against a licensee who engages in professional or occupational misconduct), 45:1-21(h) (providing that disciplinary action may be taken against a licensee that has violated or failed to comply with the provisions of any act or regulation administered by the Board) and/or 45:1-21(m) (providing that disciplinary action may be taken

against a licensee that has prescribed or dispensed CDS indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution).

Respondent Dr. Smilowitz, through his Counsel, Michael Keating, Esq., being desirous of resolving this matter without the necessity of further formal proceedings, and agreeing to waive any right to same, and the Board finding the within disposition to be adequately protective of the public health, safety and welfare and for other good cause shown, and all parties agreeing to the terms of this Order;

IT IS ON THIS 23<sup>rd</sup> DAY OF May, 2011,  
ORDERED THAT:

1. Respondent Daniel A. Smilowitz's, D.D.S., license to practice dentistry is hereby suspended for a period of five (5) years. The first year three hundred and sixty-four (364) days of said suspension shall be served as an active suspension, with the remaining four (4) years and one (1) day stayed and served as a period of probation conditioned upon Respondent's compliance with the provisions enumerated in this Order. Respondent's active suspension shall begin immediately upon entry of this Order. Time spent in active practice in another jurisdiction during the active period of the suspension shall toll the effective term of the suspension. [Respondent's

suspension commenced on November 23, 2010, the date Respondent voluntarily surrendered his license to practice dentistry.]

2. Respondent is hereby assessed a civil penalty, pursuant to N.J.S.A. 45:1-22, in the amount of \$50,000.00.

3. Respondent shall be assessed the investigative and attorney costs to the State in this matter in the amount of \$11,242.93 plus attorney costs (to be determined).

4. The civil penalty and costs shall be due and owing no later than sixty (60) days following the conclusion of Respondent's active suspension. Respondent may arrange a six-month installment payment plan with the Board to commence no later than sixty (60) days following the conclusion of Respondent's active suspension. Payment shall be submitted by certified check or money order made payable to the State of New Jersey and shall be forwarded to Jonathan Eisenmenger, Executive Director, State Board of Dentistry at 124 Halsey Street, Post Office Box 45005, Newark, New Jersey 07101. Failure to make timely payments shall be considered a violation of this Order, shall result in acceleration of the balance of debt, and shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e), thereby subjecting Respondent to any and all remedies available to the Board pursuant to N.J.S.A. 45:1-21 and 22.

5. Respondent shall attend and complete Board approved courses in CDS pharmacology (including, specifically

analgesics), record-keeping, oral diagnosis and treatment planning (with a focus on pathology), and ethics. All courses must be live, in-person courses. These courses are to be completed within six (6) months of the date of entry of this Order. Respondent shall ensure that the course providers submit written confirmation to the Board, following the course, attesting that Respondent successfully completed said requirements. "Successful completion" means that Respondent has attended all sessions, fully participated, and received a final evaluation of an unconditional pass. These courses are required in addition to Respondent's obligation to complete continuing dental education pursuant to N.J.S.A. 45:6-10.1. Respondent shall be entirely responsible for any and all costs or expenses relating to the courses.

6. Respondent shall attend and complete the Diagnostic and Skills Examination ("DSE"). The DSE is to be completed within six (6) months of the date of entry of this Order. Respondent shall ensure that the results from the DSE are submitted to the Board, attesting that Respondent successfully passed. The DSE is required in addition to Respondent's obligation to complete continuing dental education pursuant to N.J.S.A. 45:6-10.1. Respondent shall be entirely responsible for any and all costs or expenses relating to the DSE.

7. Respondent shall attend and complete a Board approved bench test within six (6) months of the date of entry of this Order. The bench test must evaluate Respondent's proficiency in endodontics, prosthodontics emphasizing the crown and bridge, and restorative dentistry to include amalgams. Respondent shall ensure that the results from the bench test are submitted to the Board, attesting that Respondent demonstrated proficiency in all of the referenced areas. The bench test is required in addition to Respondent's obligation to complete continuing dental education pursuant to N.J.S.A. 45:6-10.1. Respondent shall be entirely responsible for any and all costs or expenses relating to the bench test.

8. Respondent is barred indefinitely from treating W.S. for any dental condition upon entry of this Order and shall ensure orderly transition of his care to another provider.

9. Respondent may not issue a prescription for any CDS to any patient pending further order of the Board. Patients necessitating such medication must be referred elsewhere. The Board will not consider an application from Respondent to resume the prescribing of CDS for a period of one year from the date of the commencement of Respondent's active suspension.

10. Respondent shall comply with the attached "Directives Applicable to Any Dentistry Board Licensee Who Is

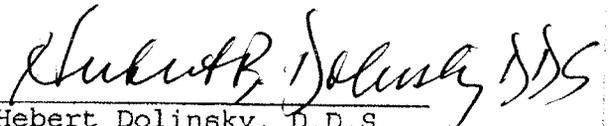
Suspended, Revoked or Whose Surrender of Licensure Has Been Accepted," which Directives are incorporated herein by reference.

11. Respondent may recommence the practice of dentistry at the conclusion of his active suspension upon the successful completion of the terms set forth in this Order. The Board retains the right to impose restrictions on Respondent's practice.

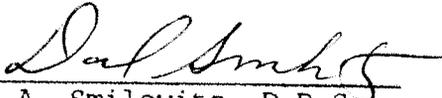
12. Failure to comply with any provision of this Order or remit any and all payments required by this Order will result in the filing of a Certificate of Debt and may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board.

13. The entry of this Order is without prejudice to further action by other law enforcement entities resulting from Respondent's conduct. The Board reserves the right to impose additional restrictions on Respondent's practice in the event Respondent's conduct in his treatment of W.S. results in a criminal conviction.

NEW JERSEY STATE BOARD  
OF DENTISTRY

By:   
Hebert Dolinsky, D.D.S.  
Acting Board President

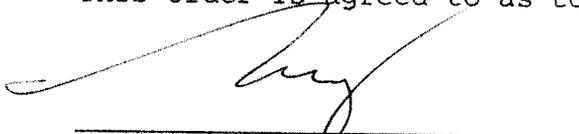
I hereby agree to be bound by all terms and conditions of this Order. I consent to the entry of this Order by the State Board of Dentistry.



Daniel A. Smilowitz, D.D.S.

Dated:

This Order is agreed to as to form.



Michael Keating, Esq.

Dated: 5/17/11

**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.