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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
REVOCAION OF THE LICENSE OF

EWA MARCINKIEWICZ-O'BRIEN, D.D.S.
License No.: 22DI01878000

TO PRACTICE DENTISTRY IN THE STATE
OF NEW JERSEY

Administrative Action

CONSENT ORDER

This matter was opened to the New Jersey State Board of Dentistry ("Board") on May 6, 2013, on the filing of a Verified Complaint and request for an Order to Show Cause why Dr. Ewa Marcinkiewicz-O'Brien's license to practice dentistry in the State of New Jersey should not be suspended. The action was based on allegations that over the six months prior to the filing, Dr. Marcinkiewicz-O'Brien had engaged in a pattern of conduct that resulted in at least ten arrests on charges including assault on police officers and shoplifting, as well as an involuntary commitment to Bergen Regional Medical Center.

Additional evidence showed that she had inadequately secured her dental office and used controlled dangerous substances ("CDS") without medical or dental justification. The Acting Attorney General argued that Dr. Marcinkiewicz-O'Brien's conduct "evidence[d] an individual in grave need of medical and/or psychiatric treatment for - at a minimum - the abuse of alcohol and/or controlled dangerous substances...," and that her continued practice constituted a clear and imminent danger to the public health, safety, and welfare warranting the temporary suspension of her license pursuant to N.J.S.A. 45:1-22.

The Board presided over a hearing on May 15, 2013, on the Order to Show Cause and allegations of the Verified Complaint. Dr. Marcinkiewicz-O'Brien, who was being held at the time in the Essex County jail on pending criminal charges, failed to appear in person or by counsel. The Board temporarily suspended Dr. Marcinkiewicz-O'Brien's license to practice dentistry that day, and on May 30, 2013, the Board issued a written Order of Temporary Suspension memorializing the suspension.

Dr. Marcinkiewicz-O'Brien's various legal infractions resulted in her spending time in local jail as well as multiple subsequent plea agreements in Essex County criminal court. Dr. Marcinkiewicz-O'Brien also entered into the criminal court's pre-trial intervention program. Finally, to resolve the remaining

criminal charges against her, Dr. Marcinkiewicz-O'Brien paid approximately \$1,000.00 in fines and costs and was subject to a year's probation.

In November 2013, Dr. Marcinkiewicz-O'Brien enrolled in the Professional Assistance Program ("PAP"). In September 2013, she entered the Intensive Outpatient Program ("IOP") at Wellness House Family Connections. Counselors at the IOP reported to the PAP that Dr. Marcinkiewicz-O'Brien had been in substance abuse remission since March 2013 and that, in June 2014, she successfully completed all IOP requirements.

In addition to her treatment with the IOP, Dr. Marcinkiewicz-O'Brien has followed a PAP-ordered regimen that includes random twice weekly urine screens (all of which were negative for non-prescribed psychoactive substances), monthly in-person follow-up visits which were recently reduced to every two months, Alcoholics Anonymous meetings twice weekly, and individual therapy appointments. Dr. Marcinkiewicz-O'Brien's therapist, Sonja Gray, M.D., reported to the PAP that she has shown dramatic improvement and is stable.

The PAP informed the Board in August 2014 that it received a report from Dr. Marcinkiewicz-O'Brien's probation officer that she had been in full compliance since the inception of probation, had tested negative for drug use, was attending counseling, and remained

offense-free. On or about July 23, 2014, Dr. Marcinkiewicz-O'Brien completed her probationary term and paid all imposed fines.

Dr. Marcinkiewicz-O'Brien admits the allegations of the pending Verified Complaint and desires now to resolve the Complaint and seek reinstatement of her license. The Board now finds that by the above-described actions, Dr. Marcinkiewicz-O'Brien has committed professional misconduct in violation of N.J.S.A. 45:1-21(e) and that Dr. Marcinkiewicz-O'Brien was earlier engaged in drug or alcohol use that was likely to impair her ability to practice dentistry with reasonable skill and safety in violation of N.J.S.A. 45:1-21(1).

The Board being satisfied that the within disposition is adequately protective of the public health, safety, and welfare, and other good cause having been shown,

IT IS, therefore, on this 10th day of February, 2015,

ORDERED THAT:

1. The license held by Ewa Marcinkiewicz-O'Brien, D.D.S. to practice dentistry in the State of New Jersey is hereby indefinitely suspended. This suspension, which shall be retroactive to May 15, 2013, the date of the temporary suspension, shall remain in effect pending Dr. Marcinkiewicz-O'Brien's demonstration of fitness to resume the practice of dentistry and further order of the Board.

2. Dr. Marcinkiewicz-O'Brien shall continue her participation in the Physicians Assistance Program ("PAP") and

comply with all of its recommendations and requirements. By agreeing to this Consent Order, Dr. Marcinkiewicz-O'Brien waives any right to confidentiality regarding her communications, evaluation or assessments as part of her PAP participation. The Board and the Acting Attorney General will have full and complete access to any communications between Dr. Marcinkiewicz-O'Brien, the PAP, and the reports, recommendations or evaluations issued by either the PAP or any examining health care professional. In addition, the Board, its agents and its employees may communicate directly with the PAP and any examining health care provider from time to time with regard to her compliance with the PAP's requirements.

3. Dr. Marcinkiewicz-O'Brien shall authorize the PAP to make status reports of her treatment to the Board on, at least a quarterly basis.

4. Dr. Marcinkiewicz-O'Brien shall authorize the PAP to immediately notify the State Board of Dentistry if she is noncompliant with the terms of her PAP treatment plan.

5. The suspension of Dr. Marcinkiewicz-O'Brien's license shall continue until issuance of an order from the Board permitting her to return to practice.

6. At a minimum, prior to any restoration of her license, Dr. Marcinkiewicz-O'Brien shall,

a. Participate in the PAP and comply with the program's requirements;

b. Appear before the Board on any application for reinstatement of her license to discuss her recovery, her readiness to reenter the practice of dentistry, and plans for practicing dentistry in New Jersey;

c. Provide the Board with evidence that she is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare, and that she is not suffering from any impairment or limitation that could affect her practice;

d. Provide the Board with discharge summaries from any in-patient programs and reports from each and every health care professional involved in her care and/or treatment during the period of time from the date this Consent Order is filed until her appearance before the Board;

e. Provide the Board with a report from the PAP detailing the nature and extent of her PAP involvement, and whether she has abided by the PAP's recommendations;

f. Affirmatively establish her fitness, competence and capacity to reenter the active practice of dentistry in this State; and

g. Provide the Board with a full account of her conduct during the period of time from her entry into this Consent Order to her appearance.

7. Such an appearance before the Board shall be scheduled within thirty days of the date of Dr. Marcinkiewicz-O'Brien's request.

8. At the appearance, the Board may consider any information presented including but not limited to reports from treating physicians and therapists. The Board reserves the right to deny reinstatement and to restrict or place other conditions on Dr. Marcinkiewicz-O'Brien's practice of dentistry.

9. Dr. Marcinkiewicz-O'Brien 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 are incorporated herein by reference.

10. This Consent Order and its terms shall take effect upon filing.

11. Dr. Marcinkiewicz-O'Brien understands that this Consent Order is independent of, and not in lieu of, criminal proceedings and further agrees that resolution of any pending criminal charges does not resolve any matter which has been or could be brought before the Board. The parties hereby stipulate that entry of this Consent Order is without prejudice to the filing of an Administrative

Complaint and/or further investigation and/or action by this Board, the Acting Attorney General, the Director of the Division of Consumer Affairs or other law enforcement entities resulting from Respondent's conduct not addressed by this Consent Order.

NEW JERSEY STATE BOARD OF DENTISTRY

By: Shirley Birenz, R.D.H., M.S.
Shirley Birenz, R.D.H., M.S.
President

I have read the within Order, understand its terms and agree to be bound by them. I consent to entry of the Order by the Board of Dentistry.

Ewa M. O'Brien
Ewa Marcinkiewicz-O'Brien, D.D.S.

Dated: 01/28/15

I am Dr. Marcinkiewicz-O'Brien's attorney. I have reviewed this Consent Order with her and I consent to the form and entry of this Consent Order.

Kevin G. Roe
Kevin G. Roe, Esq.

Dated: 1/28/15

**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.