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

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :
:
ROBERT S. POSNER, D.D.S. :
License No. DI 16280 :
:
TO PRACTICE DENTISTRY :
IN THE STATE OF NEW JERSEY :
:
:

Administrative Action

FINAL ORDER

CERTIFIED TRUE COPY

On May 27, 1998, the Attorney General filed an Order to Show Cause and Verified Complaint seeking the entry of an Order temporarily suspending the license of Robert S. Posner, D.D.S. ("respondent"), to practice dentistry in the State of New Jersey. The general allegations of the Verified Complaint included an allegation that on or about May 13, 1998, the Grand Jury of Union County returned an indictment charging respondent with two (2) counts of Criminal Sexual Contact upon D.S. and G.D., contrary to N.J.S.A. 2C:14-3(b). In each count of the indictment, respondent was accused of committing acts of sexual contact by using physical force or coercion for the purpose of sexually arousing or sexually gratifying himself or to humiliate the named victims.

The Verified Complaint alleged in Count One that between September 1996 and February 1997, respondent engaged in inappropriate sexual contact with D.S., a dental assistant at

respondent's office, which contact included grabbing her breast and buttocks. He also attempted to kiss her on the neck and put his arms around her. Count Two of the Verified Complaint alleged that between in or about March 1997 and July 29, 1997, respondent committed numerous acts of inappropriate behavior towards his dental assistant G.D., including, but not limited to, touching G.D.'s breasts and her buttocks.

On the return date of the Order to Show Cause seeking the temporary suspension of respondent's license, respondent entered into an Interim Consent Order, voluntarily surrendering his license pending a plenary hearing. The June 3, 1998 Interim Consent Order directed that respondent cease practice not later than June 19, 1998. To the extent that respondent were to engage in any practice between June 3 until June 19, 1998, the Board ordered that he practice only while a monitor who was licensed and approved by the Board was present in the office.

On June 30, 1998, the Attorney General filed an Amended Verified Complaint. That Complaint alleged that on or about May 17, 1998, the Grand Jury of Union County returned a Superseding Indictment charging the respondent with six counts of Criminal Sexual Contact upon D.S., G.D., L.K., M.L., J.W., and L.M. contrary to N.J.S.A. 2C:14-3(b). Respondent was accused of committing acts of sexual contact by using physical force or coercion for the

purpose of sexually arousing or sexually gratifying himself or to humiliate or degrade the victims.

Counts One and Two of the Amended Verified Complaint are substantially similar to the allegations contained in the initial Verified Complaint. Count Three of the Amended Verified Complaint alleged similar acts of sexual misconduct as to L.K., another dental assistant in respondent's office. Count Four cited to allegations that respondent behaved in an inappropriate fashion with L.M., at least one occasion of which occurred while L.M. was a patient. Count Five alleged inappropriate behavior and harassment of M.L., a dental assistant he employed. Count Six alleged similar conduct toward respondent's office manager, J.W.

In Counts Seven through Twenty-three of the Verified Amended Complaint, the Attorney General alleged that respondent rendered dental treatment to patients without a monitor present in violation of the Interim Consent Order filed on June 3, 1998. Respondent, having advised the Board that a licensed dentist would perform the monitoring function, treated 17 patients on June 12, 15, and 18, 1998, without the monitor present.¹

¹ Edwin Garino, D.D.S., the dentist respondent said would be monitoring his practice, testified under oath that he was not present at any time during the two week period respondent was permitted to practice.

On July 9, 1998, respondent filed an Answer to the Amended Verified Complaint in which he denied the allegations contained in Counts One through Twenty-three.

On March 8, 1999, respondent pled guilty to committing acts of sexual contact with D.S., G.D., L.K., M.L., and L.M., by using physical force or coercion for the purpose of sexually arousing or sexually gratifying himself or to humiliate or degrade the women, contrary to the provisions of N.J.S.A. 2C-14-3b.

In entering his guilty plea, the respondent admitted that on diverse dates during the period of July 1993 through July 1997, he had physical contact with D.S., G.D., L.K., M.L., and L.M., by touching their breasts and/or buttocks for the purpose of sexual gratification. The acts to which respondent pled guilty correlate to the allegations of the Amended Verified Complaint regarding respondent's behavior toward the five victims. On July 23, 1999, the court sentenced respondent to three years probation and ordered him to pay a \$5,000.00 fine.

In January 2002, the Attorney General sought leave to file a Second Amended Verified Complaint to a count related to respondent's conviction (Count 24) and for summary decision on Counts One, Two, Three, Four, Five, and Seven through Twenty-four of the Second Amended Verified Complaint. By letter dated February 14, 2002, Neil G. Duffy III, Esq., counsel for respondent, sought additional time to respond to the motion. On June 4, 2002, Mr.

Duffy advised the Board that no opposition to the motion to amend and for summary decision would be filed.

On June 5, 2002, the Board granted the Attorney General's motion to amend the complaint and for summary decision. The Board scheduled a hearing in mitigation of penalty to be imposed for June 19, 2002.

Respondent appeared before the Board at the mitigation hearing and testified about the treatment he received since the surrender of his license and his current activities. Immediately following surrender of his license in June 1998, respondent went for a consultation with the Sexual Aggression Treatment and Training Institute (SATTI) in Manhattan. He began treatment for sexual addiction and in September 1998, at the recommendation of the SATTI Group, he entered the Keystone Center, an in patient treatment facility for his addiction.

Following his discharge in late October 1998, he resumed treatment with the SATTI Group through April 1999, when respondent relocated to Florida to join his family. Once in Florida, respondent resumed treatment with Rabbi Nachum Simon, a psychologist, where between April 1999 and February 2002, he participated in group therapy and a twelve step program for recovering sex addicts. In February 2002, when Dr. Simon determined that respondent had gained the maximum benefit from the program, respondent chose to begin individual psychotherapy with

Steven N. Gold, Ph.D., who specializes in sex addiction. He continues to be in treatment with Dr. Gold in Florida.

Dr. Posner testified that he now understands his addiction, his behavior, and the pain that his behavior had caused, not just for him and his family but for his victims as well. He plans to continue in individual therapy at least once a week and to attend meetings in the twelve step program. He has developed a support network of other recovering addicts. He has been employed as a salesman over the last several months.

Dr. Posner's testimony was supplemented with letters from his treating psychotherapists which attest to his progress in recovery. Dr. Gold stated that he believed Dr. Posner's prognosis "is very good." He recommends continued psychological treatment and supported his return to practice. John A. Jamieson, a licensed clinical social worker who provided clinical services and treatment to respondent and his family in Florida, also supported respondent's application for reinstatement. In addition, Linda Posner, respondent's former wife, submitted a moving letter supporting Dr. Posner's application for reinstatement.

After consideration of respondent's testimony and the letters submitted in evidence, as well as arguments of counsel, the Board finds that Dr. Posner, over the last four years, has made significant strides in addressing his addiction. Dr. Posner appeared genuinely remorseful and demonstrated insight into his

sexual addiction and candidly acknowledged the need for continued therapy. The letters submitted into evidence support the Board's conclusion.

The Board here is faced with the need to resolve finally what has been one of the most troubling cases of sexual harassment and abuse in a dentist's practice. Dr. Posner's behavior toward women in his office was nothing short of reprehensible. He avoided an order of temporary suspension only by consenting to a voluntary surrender of license in June 1998. During the two week period prior to the initiation of the surrender, during which the Board had authorized his continued practice with a monitor present, respondent flagrantly violated that order.

The Board must now balance respondent's egregious conduct between 1993 and 1998 with his demonstrated efforts over the last four years at rehabilitation. The Board notes that respondent is currently living in Florida and hopes to return to New Jersey. The Board believes that respondent's conduct warranted a substantial period of time during which he was removed from practice and that, if permitted to return to practice, his practice must be closely monitored by the Board.

Therefore, the Board will suspend respondent's license for a period of eight years, four years of which shall be active, the remainder of which shall be stayed and served as a period of probation. The Board will cause the active suspension to be served

nunc pro tunc beginning June 19, 1998. Because respondent is not currently in this State, the four year stayed suspension shall commence when respondent returns to New Jersey to practice.

Prior to reinstatement of his license, respondent shall comply with the terms of this order. The Board has structured the order to ensure respondent's clinical competency and to review his continued recovery. During the four year period of probation and until he has established that his return to practice is consistent with the public health, safety, and welfare, respondent shall not engage in the practice of dentistry as a solo-practitioner and must have a Board approved and licensed monitor present in the operatory at all times when he is practicing. The monitor must agree to abide by the terms of this order. Prior to the termination of the probationary period, respondent shall appear before the Board to determine whether any future restrictions should be placed on his license.

Finally, the Board reprimands respondent for his flagrant violation of the interim consent order entered in June 1998. While violation of a Board order could include a substantial monetary penalty, the Board has chosen not to assess one for that conduct, believing that respondent has gained insight into his conduct over the last four years and that such conduct would not be repeated.

THEREFORE, IT IS ON THIS 16th DAY OF October , 2002
ORDERED:

1. The license of Robert S. Posner, D.D.S., to practice dentistry in this State shall be suspended for a period of eight (8) years, four years of which shall be served as an active suspension commencing *nunc pro tunc* on June 19, 1998, the date on which his license was voluntarily surrendered, with the remaining four years to be served as a period of probation. The four year period of probation will commence upon respondent's compliance with the terms of this order for his return to practice.

2. Prior to his return to active practice in this State, respondent shall:

(a) submit to the Board, proof of completion of continuing education for renewal periods 1999-2001 and 2001-2003;

(b) submit at his sole expense, to an evaluation by the Physician's Health Program (P.H.P.) of the Medical Society of New Jersey and provide appropriate releases so the results of the examination are made available to the Board;

(c) sit for and obtain a passing score in the North East Regional Boards or the Florida State Board examination.

3. Respondent, upon his return to practice in this State, shall not engage in the practice of dentistry as a solo practitioner until further order of the Board.

4. Respondent at his sole expense shall provide for the presence of a monitor in the operatory at all times when he is treating patients.

(a) The monitor, who may be a dentist, registered dental hygienist or registered dental assistant, shall hold a license issued by the Board and be approved by the Board in advance of accepting the position as monitor.

(b) Respondent shall provide a copy of this order and any future Board orders to the monitor.

(c) Respondent shall cause the monitor to submit a letter to the Board in which the monitor acknowledges receipt of a copy of this order and agrees to abide by the directives contained in this order as they relate to the monitor.

(d) The monitor shall notify the Board within 48 hours of any incident relating to any impropriety in respondent's deportment. Notification shall be made to Kevin B. Earle, Executive Director, or his designee, by telephone (973)504-6429 or by letter, New Jersey Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101.

5. Respondent is hereby reprimanded for practicing without a monitor between June 3 and June 19, 1998 in violation of the Board's order of June 3, 1998.

6. Respondent shall continue at his sole expense in counseling as directed by his psychotherapist and shall cause the

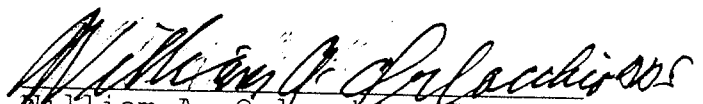
psychotherapist and other persons involved in his treatment to submit quarterly reports to the Board. Respondent shall provide releases to appropriate persons as necessary. For purposes of this order, the first quarter shall commence on October 1, 2002.

7. Respondent shall be responsible for costs in this matter in the amount of \$4,396.44. Payment shall be made by certified check or money order, payable to the State to New Jersey and forwarded to Kevin B. Earle, Executive Director, New Jersey Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Sixth Floor, Newark, New Jersey 07101, and shall be made within 60 days of the entry of this Order.

8. Respondent shall appear before the Board three months before the end of his period of probation to determine what restrictions, if any, should be continued or imposed by the Board, in its sole discretion, so as to protect the public health, safety, and welfare.

9. Violation of any provision of this Order shall be cause for discipline by this Board, including but not limited to suspension or revocation of respondent's license.

NEW JERSEY BOARD OF DENTISTRY


William A. Orlacchio, D.D.S.
President