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WITH THE
N.J. BOARD OF DENTISTRY
ON NOVEMBER 1, 2019

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

IN THE MATTER OF THE SUSPENSION OR REVOCATION OF THE LICENSE OF:

ANDREW MARON, D.D.S.
License No #22DI 01836900

TO PRACTICE DENTISTRY IN THE STATE OF NEW JERSEY

Administrative Action

FINAL DECISION AND ORDER

The State Board of Dentistry enters this Final Decision and Order after reviewing the May 6, 2019 Initial Decision issued by the Honorable Susan M. Scarola, A.L.J., finding that Andrew Maron, D.D.S., had committed multiple acts of negligence and gross negligence and professional misconduct and had violated Board regulations governing the practice of dentistry. That decision, and the record on which it is based, brings into focus the disturbing picture of an oral and maxillofacial surgeon who, both as an owner of multiple practices in this State and as an itinerant surgeon, practiced dentistry in a way inimical to patient health and safety, and in violation of the most basic tenets of professionalism. His conduct evinces a gross departure from basic standards adhered to by those who are privileged to hold a license to practice dentistry, and warrants the revocation of his license to practice and the assessment of substantial penalties, costs, and attorney's fees incurred in the prosecution of this matter. At its meeting on July 24, 2019, the Board, after reviewing the Initial Decision, the record, exceptions, and

arguments of counsel, adopted, with limited modifications, the Findings and Conclusions in Judge Scarola's thorough and detailed Initial Decision. The Board immediately after conducted a hearing in mitigation of the sanction to be imposed and, after deliberations, announced its decision to revoke Dr. Maron's license, to assess civil penalties, costs, and attorney's fees.

Procedural History and Summary of Findings

The Attorney General filed a verified complaint and an order to show cause seeking the temporary suspension of the license of Andrew Maron, D.D.S. (Dr. Maron or respondent), on September 2, 2015. While that application was pending, respondent through a September 21, 2015 interim consent order, agreed to cease practice pending the adjourned return date. On October 23, 2015, Dr. Maron, again seeking an adjournment of the hearing, agreed to the temporary suspension of his license pending the return date. That temporary suspension was continued by consent order dated December 2, 2105, until further order of the Board. Thus, Dr. Maron has not practiced in New Jersey since September 21, 2015. Respondent answered the complaint on October 5, 2015.

The Attorney General filed a supplemental complaint on December 19, 2016. Respondent answered that complaint on February 1, 2017. The Board deemed the matter contested and transferred it to the Office of Administrative Law for hearing. The complaints were consolidated for hearing, which was held over several days between November 27, 2017 and January 2018. The record closed June 23, 2018. The Initial Decision was sent to the Board on May 6, 2019.

The complaint alleged that respondent, an oral and maxillofacial surgeon who, prior to his agreement to cease practice in New Jersey, at various times owned up to ten practices in New Jersey and provided services at both his own offices and at several other dental offices as an itinerant oral surgeon. The complaint alleged he had engaged in acts and practices that demonstrated his unfitness to practice, and sought revocation of license and other relief.

Following the hearing, Judge Scarola found that Dr. Maron had violated the standard of care multiple times in his treatment of patients. Having reviewed the judge's specific findings, exhibits, and transcripts of testimony from both patients and the expert witnesses, the Board is satisfied that the record amply supports the conclusion that respondent's conduct warrants revocation and other sanctions. The offenses include: failing to obtain informed consent for dental procedures; failing to develop appropriate treatment plans and/or failing to coordinate treatment with restorative dentists; failing to obtain adequate diagnostic aids prior to initiating treatment; executing treatment in a negligent fashion; failing to follow-up with patients after treatment; failing to create and maintain patient records, including taking and recording medical histories; administering sedative agents capable of causing and in some instances causing deep sedation without proper credentials; failing to adequately monitor patients under sedation and through discharge; failing to create and maintain anesthesia records; failing to supervise or have in place adequate controls to ensure quality patient care in practices he owned; and failing to submit requested records to the Board.

In his May 17, 2019 exceptions to the Initial Decision, respondent through counsel Susan Berger, Esq., argued the record did not support all the administrative law judge's

findings and conclusions. The Attorney General, by Joan Gelber, Deputy Attorney General, did not file exceptions.[1]

The Board heard arguments of counsel on the exceptions at its meeting on July 24, 2019.[2] Based on its review of the record and consideration of those arguments the Board was, for the most part, unpersuaded that Judge Scarola's decision should be modified or rejected.

As such, before addressing respondent's exceptions, the Board provides an overview of the patients treated by respondent or by dentists in practices owned by him.

Patients

J.B., a 59 year old woman had two implants placed during her lunch hour. Though Dr. Maron testified that he placed a bone graft, the patient testified that during the treatment, the bone graft material was not available and Dr. Maron said J.B. did not need it. Subsequent examination of the patient revealed no evidence of bone graft material and that the implants had inverted and were in the sinus. (Count 2)

M.K., a 29 year old woman, had an implant placed while under sedation. She testified that she awoke from the procedure sitting alone in the office waiting room (her fiancé corroborated that fact). In the days following the procedure, her face and throat swelled. When she spoke to Dr. Maron, he called her a hypochondriac, but prescribed an

[1] DAG Gelber, by letter dated May 24, 2019, offered clarifications and typographical corrections to the Initial Decision.

[2] Prior to the July 24, 2019 appearance, Ms. Berger, with Dr. Maron's consent, sought to be relieved as counsel as she had been unable to communicate effectively with her client and had not been paid for services. DAG Gelber objected to that request. On July 12, 2019, Dr. Maron sent an email to the Board's executive director seeking an adjournment of the July 24, 2019 Board hearing on whether to accept, reject or modify the Initial Decision. The Board denied both the request for an adjournment and Ms. Berger's application to be relieved as counsel.

antibiotic, steroids, and a pain killer. Three weeks later, when still in pain, she returned to Dr. Maron who "numbed" her and used "pliers." When she was seen by another oral surgeon, she learned that the implants had been removed. (Count 3)

M.T., a 93 year old woman on Medicaid assistance and residing in an assisted living facility, took out $31,000 in third party financing to cover the cost of treatment that included four implants to support a denture that was fabricated by another dentist in respondent's office. The funds were returned to M.T., now deceased, through civil litigation. (Count 4)

F.D., an 84 year old woman also receiving Medicaid assistance, was treated on different occasions for extractions and implants totaling $13,000. The patient, who was taking Coumadin, experienced post-operative bleeding. Respondent was not aware the patient was taking the blood thinner; the patient's medical history had been taken more than a year prior to treatment, with no indication in the patient record that it had been updated or that respondent had consulted with the patient's physician. (Count 5)

N.C., a 26 year old woman, alleged that respondent's eight year old son was in the operatory during her treatment. (Respondent admitted the child was in the office but had only momentarily entered the operatory to pick up an item that fell.) N.C.'s patient record did not contain adequate consent forms. (Count 6)

J.K., a 64 year old man with an extensive medical history, had ten teeth extracted and six implants placed (four in the maxilla (upper jaw) and two in the mandible (lower jaw)). His treatment was financed through a third party contract. The patient record does not contain any evidence of a CT scan or surgical guide needed for such an extensive

case. The patient was not advised that one of the implants had displaced and was floating in the sinus. (Count 7)

M.H., a 74 year old, long-standing patient, had extractions and implants, two of which were placed in the sinus. (Count 8)

R.P., a 59 year old woman, was pressed to get two implants by Dr. Maron, then a per diem oral surgeon at another dental practice. The patient record does not contain radiographs, consents, treatment plan, consultations, or surgical guide. One of the implants was lost and the second required removal. Dr. Maron provided no follow up care (he had a falling out with the owner of the practice). (Count 9)

A.P., a 68 year old woman, was given 15 mgs of Versed (7.5 mg x 2), capable of causing deep sedation by Dr. Maron when he placed eight implants despite her reported issues with her temporomandibular joint. The patient record reflects no current medical history (medical history was more than a year old), no pre-operative x-rays, no discussion of risks, no treatment plan, no panorex, no consent form, no surgical stent. The records also appear not to have been contemporaneously made. (Count 10)

T.B. was treated by another dentist in a practice owned by Dr. Maron. When submitted to the Board, the patient's records contained an altered consent form. (Count 11)

A.A., a 53 year old disabled woman on Medicaid assistance, applied for third party financing. Dr. Maron extracted tooth #14 and placed an implant. Dentures were fabricated by another dentist in the practice. Imaging studies were inadequate and there was no treatment plan in the patient record. (Count 12)

E.D., a 60 year old woman was treated by Dr. Maron in November 2011 for extraction of remaining upper teeth and in May of 2012 for implants. She was seen in the practice multiple times over the next two years, during which she complained about the fit of the dentures and of a tongue laceration. Two years after she was last seen by Dr. Maron, and months after she had been seen in the office, she was diagnosed with tongue cancer. (Count 13)

C.S., an 80 year old woman, was treated under IV sedation. The patient's record does not contain a current medical history, The consent for treatment had no date, no witness, and no procedure noted. There is no anesthesia record and an inadequate surgical record. (Count 14)

Y.Z. was treated by Dr. Maron and a dentist in respondent's practice, The patient record was not originally produced and does not contain consents. The description of the crown submitted to a third party payer was not accurate. (Count 15)

S.A., Jr., a 17 year old male, was given 15 mg of Versed in two doses when Dr. Maron extracted four third molars (wisdom teeth). The patient was billed for general anesthesia. The patient reported that he was not fully awake when discharged from the practice and required assistance to walk. (Dr. Maron is not authorized to provide general anesthesia.) (Count 16)

S.B., a 25 year old pregnant woman, advised Dr. Maron of her obstetrician's directions regarding permissible medications. Although the physician had directed that no epinephrine be used and to prescribe Tylenol if needed, respondent used local

anesthesia with epinephrine and prescribed Vicodin. There is no indication that Dr. Maron consulted with the patient's obstetrician. (Count 17)

G.P., a 62 year old woman met respondent on the day of surgery. He performed extractions and placed a bone graft and an implant. The implant was placed in the sinus, too high up for it to be restored. The patient's record contains no pre-operative imaging. (Count 20)

Mi.K. is a sixty year old man who advised Dr. Maron that another dentist had advised against placing implants in the lower jaw given the location of the mental nerve.

Dr. Maron convinced the patient that he would be able to perform the treatment. He placed one implant on November 4 and a second implant on November 12. Patient was told numbness would resolve. In December, patient still complained of numbness. Finally, in April Dr. Maron "backed out" the implants. The delay in removal contributed to the ongoing numbness the patient experienced. The patient's record does not contain consent, diagnostic records, or x-rays. (Count 21).

Exceptions

The Board turns to respondent's exceptions in the order presented.

Exception 1. Dr. Maron objects to a finding that he administered general anesthesia without a permit. He maintains that his testimony at the hearing demonstrated that he understands the difference between parenteral conscious sedation and deep sedation (general anesthesia), and chose to use the former as it achieved the desired sedative effect with patients able to maintain an independent airway and able to respond to physical and verbal commands.

The Board rejects Dr. Maron's proffered explanation and defense. Judge Scarola, in finding that respondent failed to safely administer anesthesia, cited to the experience of patients M.K., S.A., Jr., and A.P. who were deeply sedated. (ID at 107). Respondent testified that he administered/pushed Versed 7mg and 7.5 mg to A.P. to "keep her under." Michael Kleiman, D.M.D., the State's expert, testified that this dose would result in deep sedation. M.K. testified that she woke up unattended in the office's waiting room (her then fiancé testified to his observation of M.K.'s status as well). Another patient, S.A., Jr., testified that on discharge he was unable to walk to the car unaided. That S.A., Jr. may have retained some ability to move his hands at a point in his treatment does not eliminate the possibility or likelihood that the doses administered would and did result in a deeper level of sedation than intended.

Moreover, respondent's anesthesia records, wholly inadequate or non-existent, give no credence to his claim that he monitored and titrated anesthetic agents during procedures. The patient records often lack up-to-date medical histories and contain no indication that he evaluated the patient's ASA (American Society of Anesthesiologists) status prior to treatment (needed to assess and understand the risks associated with delivery of sedation). The records lack treatment plans, adequate informed consent, and any indicia of post-operative monitoring. These gross deficiencies in administration of anesthesia evince an unspeakably cavalier attitude toward the risks of anesthesia and patient care.

<u>Exception 2</u>. Respondent objects to Judge Scarola's determination that respondent's expert, Hamlet Garabedian, D.M.D., was less credible than the State's expert Michael Kleiman, D.M.D. Both experts reviewed patient records, but Dr. Garabedian's opinions

were also based in part on his discussions of the cases with Dr. Maron. From those discussions, Dr. Garabedian, while criticizing respondent's poor record keeping, opined that Dr. Maron's explanations for the treatment supported the dental work performed. Dr. Garabedian described respondent as a skilled oral surgeon whose fees were substantially lower than other oral surgeons and he served a patient population that could not otherwise afford oral surgery.[3] As advanced in his exception to the administrative law judge's finding, Dr. Maron states that in the expert's opinion, some of the treatment was fine; "some complications just happen."

The judge found both experts to be credible, noting that they agreed on several deficiencies in Dr. Maron's practice. Ultimately, she found more persuasive Dr. Kleiman's opinions regarding the care provided to Dr. Maron's patients, including his conclusions that respondent is not fit to practice. (Dr. Garabedian testified that respondent could practice with restrictions.) The Board accepts those findings and similarly finds Dr. Kleiman's detailed, expert report (P-2 in evidence) and testimony to be more persuasive than Dr. Garabedian's. Dr. Kleiman's report thoroughly articulates the standards for evaluation of a patient's presenting condition, the development of an appropriate treatment plan and execution of that treatment, the appropriate steps for evaluation of patients to whom anesthetic agents will be administered, the dosages and administration of medications to induce sedative effects, including general anesthesia, and care related to the discharge of patients who have been sedated and appropriate follow –up, as well as the integral role that record keeping plays in proper patient care. The report and Dr.

[3] Judge Scarola rejected the assertion that Dr. Maron provided dental services to an underserved population, noting that no evidence was presented to support the claim, nor any proof that patients received reduced rates for services. ID at 115. The Board agrees and notes that underserved populations are entitled to receive dental treatment within the standard of care.

Kleiman's testimony at the hearing detail the deviations from those standards for each of the patient cases.

The Board's acceptance of Dr. Kleiman's expert testimony as more persuasive is also grounded in its own expertise. The majority of members of the Board are practicing dentists who are fully versed in the standards of practice and are keenly aware of the risk of harm to patients where practitioners fail to have a current medical history or adequate diagnostic information before starting treatment and fail to have accurate patient records. The Board agrees with Dr. Kleiman's analysis of treatment outcomes of several patients. While the Board accepts that complications may arise from dental procedures, the record is replete with examples of patient outcomes that are directly related to failure to have employed proper treatment planning and execution.

Exception 3. Respondent asserts that patients' complaints should be discounted because the patients continued to be treated by him or in his practice and were satisfied with the completed work. He argues: "Several patients only complained because they wanted money or were refusing to pay the remainder of the charges."

Respondent cites specifically to patient A.A. who received dental care from Dr. Maron (extraction and placement of implant) and other dentists (veneers) at his practice "The Perfect Smile" over a series of visits. He claims that she wanted the treatment but did not want to pay for it, and questions the assertion that A.A. was not capable of making decisions. But as Judge Scarola found, based on A.A.'s complaint, the patient who at time of treatment was a 59 year-old, disabled adult receiving Medicaid assistance, was pressured to sign a third-party financing contract for $11,000 for treatment she did not want. (ID at 92). That A.A. signed an acknowledgment that she was informed that

veneers and an implant were not covered benefits under Medicaid, does not excuse respondent's failure to consider the patient's ability to pay for the treatment through a financing contract. But again, respondent's focus in his exception on payment issues related to A.A. cannot obscure the poor treatment he rendered to her. At the time Dr. Maron extracted tooth #14 and immediately placed an implant at the extraction site, A.A. was was taking several medications, including OxyContin, an anti-depressant, and steroids. Dr. Maron's records reflect no diagnosis, inadequate imaging studies, no clarification of the patient's medication status, and no documentation as to why the extraction was billed as a surgical extraction rather than a simple extraction.

The Board notes that A.A. was not the only patient induced to finance treatment, but charged for treatment that fell well below the standard of care. Patient M.T., a 93 year old woman then residing in an assisted living facility and on Medicaid assistance, signed two contracts to finance $31,000 for treatment. Dr. Maron extracted several teeth and placed four implants in the mandible (lower jaw), while another dentist in his practice fabricated dentures, which ultimately were unusable. (M.T. died prior to the hearing. The fees were ultimately refunded through litigation.)

Similarly, F.D., an 84 year old woman also receiving Medicaid assistance, received treatment, including four implants, totaling $13,000. F.D., who was taking Coumadin, a blood thinner, experienced bleeding problems following treatment. Dr, Maron was unaware the patient was taking the medication. The medical history in the record was taken several years before treatment.

As to patients who testified, Judge Scarola also found the patient witnesses to be credible, noting their testimony was consistent with the complaints or statements

previously made to the Board and that none evinced bias on cross-examination. Findings of witness credibility are within the province of the trier of fact. The Board's review of the record discloses no reason to disturb those findings. The record is replete with patient statements regarding dissatisfaction with treatment rendered by Dr. Maron, and by dentists employed in his practice. To suggest that their complaints were based on nothing more than "they wanted money" or were refusing to pay the balance of charges is shockingly tone deaf and demonstrates a stunning lack of awareness.

Exception 4. Respondent challenges the evidence in the record to support the finding that he submitted a provider application to United Healthcare with false information (specifically not disclosing Board investigations and misrepresenting that he spoke Spanish), and that he did not correct the false statements. Dr. Maron testified that he did not sign or submit the application, nor had he authorized anyone to submit the application on his behalf. He asserts that he cannot be found to have failed to correct an application that he did not know existed.

The Board's review of the record did not reveal any documents or testimony that contradict Dr. Maron's testimony that he did not authorize or submit the application. The Board will not speculate as to the circumstances under which the application was submitted. In the absence of evidence on that issue, the Board will modify the Initial Decision and not accept the finding that respondent engaged in fraud and dishonesty in connection with the submission of the United Health Care application. (ID 109-110). The Board has reduced the penalty to reflect that modification.

Exception 5. Respondent next argues that the deficient treatment "could have easily been corrected if the patients had timely returned for follow up treatment." The Board notes

that this exception does not comply with N.J.A.C. 1:1-18.4(b), which requires that exceptions shall 1) specify the findings of fact and conclusions of law to which the exception is taken; 2) set out specific findings of fact or conclusions of law proposed in lieu of or in addition to those reached by the judge; and 3) set forth supporting reasons through citation to testimony or documentary evidence. Though the exception fails to meet the regulatory requirements, the Board nonetheless addresses and rejects the argument that if deficient or improper treatment can be corrected, the complaint is somehow less valid or not appropriately the subject of Board review and action. The treatment of patients in this matter deviated substantially from the standard of care.

Exception 6. Respondent asks the Board to look globally at the number of procedures he has performed as a licensed dentist, stating that he extracts 7,500-10,000 teeth and places 800-2000 implants a year. Respondent argues 18 patients treated over a five-year period reflect "a very small portion of his caseload." The Board rejects this argument. The cases under review provide a clear window into the nature of respondent's practice. As Judge Scarola summarized (ID 102-112), Dr. Maron failed to take medical histories; failed to record patient examinations, treatments, accurate dates, and complaints; failed to perform preoperative consultations and examinations; failed to maintain diagnostic films; failed to properly prescribe medications; failed to maintain legible patient records, failed to provide patient records; failed to obtain informed consent; failed to provide safe anesthesia; engaged in deceptive billing and loan applications; engaged in gross negligence and malpractice; failed to supervise employees; and failed to cooperate in the Board's investigation. It strains credulity to think that the only patients who suffered at Dr. Maron's hands all managed to complain to the Board. Or that the only deficient records

happened to be the 18 patient records under review. Dr. Maron's repeated failure to create and maintain records reflecting patients' medical histories, treatment plans, adequate diagnostics, consultation with restorative dentists, and patients' physicians (as needed), and failure to execute treatment in a manner that will increase the likelihood of a successful outcome are indicative of a systemic breakdown and an abdication of professional's responsibility to his patients. Even were the Board to accept respondent's premise that it is a small percentage of total cases, 18 cases present a compelling predicate for the Board's conclusions and sanctions.

Exception 7. Respondent notes that some patient complaints relate to treatment by other dentists in his practice and not him. The Board in its review has not attributed what may be the negligence of another practitioner to Dr. Maron. Rather, the Board notes that as owner of the practice, Dr. Maron did not create or demand a culture of professionalism or provide the supervision and control to assure patient safety and accurate recordkeeping and billing practices. As owner, he is jointly and severally liable for restitution to patients as directed by the Board.

Exception 8. Dr, Maron asks the Board to consider his testimony that he did not write a prescription for J.K., on another prescriber's prescription pad and that the other treating dentist had done so. If Dr. Maron had done so, it would be of concern, but that concern pales when compared to the treatment rendered to J.K., a 64 year old smoker with diabetes. In 2012, Dr. Maron extracted teeth and placed six implants, four in the maxilla (upper jaw) and two in the mandible (lower jaw). As noted by both the State's and respondent's experts, the patient record did not contain a consent form. Neither a CT scan nor a surgical stent was done prior to extensive treatment. Dr. Maron did not see

the patient for follow-up, even when J.K. complained of pain. Nor did respondent advise J.K. that the implant had displaced into the sinus. The patient, who had financed the treatment through a third party finance company, learned that the implant was floating in the sinus from his physician. The Board expects practitioners to write prescriptions on their own prescription blanks. Licensees are to record prescriptions in the patient's chart. And licensees are expected to deliver treatment within the standard of care. Regardless of whether he wrote the prescription, Dr. Maron did not treat J.K. within the standard of care.

Exception 9. Respondent, again not citing to specific patients or portions of the record, objects to the characterization that he preyed upon elderly patients and forced them to sign credit applications while in the dental chair. Judge Scarola found that "Dr. Maron or his office pressured patients into taking out large loans for dental work regardless of their age, limited income, or Medicaid status" citing to patients M.T. (92 years old, receiving Medicaid assistance- $31,000) and A.A. (53 years old, disabled, receiving Medicaid) (ID at 110). The failure to explore potentially less expensive treatment options and failure to take into consideration whether a patient of limited means can pay the charges support a finding that respondent was guided by avarice over patient welfare.

Exception 10. Respondent refers to an allegation that he had not complied with a law firm's request for a copy of J.K.'s dental record. In the Initial Decision, Judge Scarola found that respondent failed to provide patient records to patients Y.Z. and E.D., in violation of the Board's regulation. Because no finding was made regarding a request for J.K.'s record, the Board need not address this exception.

Exception 11. Respondent challenges the adoption by Judge Scarola of the restitution table as provided by the Attorney General. He specifically questions the amount listed for patient Y.Z., asserting that the patient paid $2000, and other insurance payments on his behalf totaled $1350. (There was also a billing error for the type of crown that was to be placed.) The chart adopted by the administrative law judge recommends restitution to Y.Z. of $8,100. The Board has reviewed exhibits P-62 and P-63. From that review, it appears that the only funds received from Y.Z. related to the implants at #3 and #5 totaled $2000. Other treatment appears to have been rendered. As such, the Board will modify the restitution amount to $2000. Moreover, though not specifically cited in his exceptions, the Board notes that M.T. (now deceased) had received a civil settlement related to funds charged by and paid to respondent. The Board will modify the Initial Decision to remove restitution to M.T.'s estate.

Exception 12 and Other Considerations challenge the sufficiency of the application for attorney fees and argue that prior Board actions support a more lenient sanction that that recommended by Judge Scarola. The Board considered these exceptions during the mitigation hearing.

Mitigation/Penalty Hearing

On July 24, 2019, having determined that there was a basis for discipline, the Board entertained argument on the sanction to be imposed. At that time, respondent, through his counsel, sought to introduce information related to respondent's current mental health status, asserting that he was undergoing treatment and offering a July 18, 2019 letter from a psychiatrist stating that he initially evaluated Dr. Maron in May 2019 and a letter form a psychologist also dated July 18, 2019, stating that he is assessing Dr.

Maron. Both mental health professionals practice in Florida where Dr. Maron currently resides. The letters provide no other details regarding respondent's medical or mental status. Ms. Berger also introduced an email from Dr. Maron to the Board's executive director dated July 12, 2019, in which he had asked that the matter be adjourned because he was unable to appear based on his medical and mental health status. Ms. Berger also presented tax returns from 2016 and 2017, and a copy of the request for extension to file the 2018 return. Ms. Berger also asked that the tax and personal medical information be sealed or redacted to protect respondent's privacy.

In objecting to the materials sought to be introduced, DAG Gelber noted the extremely limited value of uncertified letters from the mental health professionals. She further noted that respondent had not produced all the information that the Board had requested to assess his financial status. The Board admitted the exhibits, noting that the materials were not certified, and agreed to seal and/or redact personal identifiers or personal medical information as necessary.

DAG Gelber sought to introduce material downloaded from the internet that she asserted related to respondent and his family members as well as a print out from the Florida Secretary of State's office that shows a business entity in which respondent's wife holds an interest. Ms. Berger objected to the admission of the documents as they had not been previously provided to her and there was no verification as to their authenticity. The Board admitted the information printed from the State of Florida government website and did not admit the other documents offered by the State.

Ms. Berger represented that Dr. Maron was in a precarious financial state and currently unable to work. She nonetheless stated that respondent did not object to paying

costs of investigation or restitution (as modified), but objected strongly to the attorney's fees that had been incurred in the prosecution of the matter. DAG Gelber provided her May 29, 2018 certification of fees and supporting documents for the Board's consideration. The Board moved to executive session for deliberation.

Decision

While the Board is charged with addressing respondent's exceptions, to review the record solely in light of those exceptions would fail to give a clear picture of the swath of harmful consequences left in Dr. Maron's wake. The findings of fact and conclusions of law in the Initial Decision, fully supported by expert and patient testimony and documentary evidence, demonstrate that far from being a healing practitioner, Dr. Andrew Maron practiced hit and run dentistry - there was little if any pre-operative consultation with patients or their physicians (as necessary) or with restorative dentists; consent for procedures were not obtained; anesthesia was administered without adequate monitoring or follow up and without the proper credentials and equipment; implants were placed with little or no regard to restorability, and at times, with the implant being placed in the patient's sinus; treatment was planned and undertaken without regard to a patient's ability to pay for the treatment; proper patient records were not created or maintained; submission to third party payers were inaccurate; and treatment was executed in negligent or grossly negligent fashion. Those failures carried over into practices he owned as well. Respondent failed to ensure that the dentists in his employ practiced with the patients' health safety, and welfare in mind.

The Board is fully familiar with its prior actions and has carefully weighed the findings of fact and conclusions of law made here in light of the mitigation offered. The

sanction imposed reflects the Board's assessment that respondent's conduct reflects a pattern of substantial deviations from the standard of care that existed unabated for years. Dr. Maron's cavalier indifference to his patients' well-being compels the Board to revoke his license. The Board is not moved by Dr. Maron's July 12, 2019 email in which he offered some apology regarding his past practices, asserting that he was unaware of underlying health issues that impacted his life. If indeed he suffers from a medical or mental health issue, he is free to pursue treatment. Nor is the Board satisfied by the limited financial information presented that it has a clear understanding of respondent's financial and other resources.

Restitution

The Board adopts the restitution recommendation in the Initial Decision with two modifications. The Board's review of the records for patient Y.Z. reveals that the patient paid $2,000 for treatment that should be restored to the patient, not $8,100. The Board also modifies the recommendation to remove payment of $8,794 to patient M.T. as funds were retuned through civil litigation.

Penalties

The Board has determined that the penalties of $138,500[4] are assessed as follows:

- Pursuant to N.J.S.A. 45:1-21 (c) and (d) for engaging in acts constituting gross and repeated acts of negligence or malpractice: $50,000;
- Pursuant to N.J.S.A. 45:1-21(c) for providing sedation that resulted or could have resulted general anesthesia and failing to appropriately monitor patients under sedation and create an anesthesia record: $25,000;
- Pursuant to N.J.S.A. 45:1-21(h) for failing to create and maintain proper patient records: $15,000;

[4] At the hearing, the Board announced penalties of $141,000. Upon review of the Board's determination when writing the Final Order, the correct total for penalties was found to be $138,500.

- Pursuant to N.J.S.A. 45:1-21(c) for failing to obtain appropriate medical history and/or clearance for F.D. (patient on Coumadin) and not following advice of physician regarding medications for S.B.(pregnant patient): $10,000;
- Pursuant to N.J.S.A. 45:1-21(c) and (d) for failing to obtain consent for procedures and failing to provide appropriate consultations prior to treatment: $10,000;
- Pursuant to N.J.S.A. 45:1-21(h) for failing to cooperate with the Board: $10,000;
- Pursuant to N.J.S.A. 45:1-21(h) for failing to have a permit to administer general anesthesia: $5,000;
- Pursuant to N.J.S.A. 45:1-21(e) for failing to consider the ability of patients to pay for treatment and inducing them to enter into third party financing agreements: $5,000;
- Pursuant to N.J.S.A. 45:1-21(d) for failing to supervise employees in his practices: $5,000;
- Pursuant to N.J.S.A. 45:1-21(h) for submitting inaccurate bills to third party payers: $2,500;
- Pursuant to N.J.S.A. 45:1-21(h) for failing to provide patients copies of records when requested: $1,000.

<u>Costs</u>

Respondent does not challenge the award of other costs to the Attorney General in this matter – to include the State's expert costs, transcripts, and fees expended on behalf of the investigators from the Enforcement Bureau Division of Consumer Affairs. Therefore, the Board will adopt the Initial Decision's recommendation as to those costs totaling $30,921.22 (investigative costs: $1,113.75; Enforcement Bureau costs: $5,475.47; expert witness fees and costs: $18,750; travel costs: $54; transcript costs: $5,528).

<u>Attorney Fees</u>

Respondent has, however, challenged the award of attorney's fees. The Board has considered whether the Attorney General should be awarded all attorney fees sought in connection with this complex matter.

In reviewing the application for attorney's fees, the Board is guided by the general principals established in Rendine v. Pantzer, 141 N.J. 292 (1995) and reaffirmed in Walker v. Giuffre, 209 N.J. 124, 130 (2012). The "lodestar" fee is established by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate.

The Attorney General seeks compensation for attorney services at hourly rates of up to $300 per hour for services provided by SDAG Gelber. In reviewing the certification submitted by Ms. Gelber, who has been admitted to practice law for more than four decades, the Board finds that the hourly rates charged by deputy attorneys general (uniform rate of compensation $175 per hour prior to September 1, 2015 and $300 per hour subsequent to that date for an attorney with more than 20 years of experience) appears reasonable and at, or below, the community standard.

The Attorney General seeks compensation of $272,935, for the total time expended by the Division of Law, reflecting 406.7 hours at $175 per hour and 607.8 hours at $300 per hour. (Attorney fees sought also include 9.5 hours of paralegal time at $55 per hour.) Ms. Gelber's certification of fees details that time expended prior to her assuming responsibility for the case was not included in the fees sought. The Board notes that the certification was prepared on May 29, 2019, and does not include any request for fees incurred in preparation for or appearance at the July 24, 2019 hearing.

To help aid in establishing the reasonableness of the time expended, an attorney must prepare and provide a certification of services that is sufficiently detailed to all for an accurate calculation. The Board has reviewed Ms. Gelber's certification detailing the time she billed for her work on this matter and finds the certification and supporting time

keeping records sufficiently detailed to support the hours billed in this matter. The Board is also satisfied that all billed hours were in fact reasonable, particularly given the length of time since the inception of the matter, participation in ongoing investigation, preparing pleadings, motions, witness preparation, and the complexity of the prosecution of this matter. The matter involved multiple patients that were treated by respondent over the course of years and review of records related to the practices that respondent owned. The investigation resulted in serious allegations, virtually all of which were proven by the State as detailed earlier in this decision, against respondent's practice of dentistry. The gravity of this action more than warranted the expenditure of resources outlined in the application. Thus, The Board will adopt the administrative law judge's recommendation that the attorney fees of $272,935.00 be awarded to the Attorney General.

THEREFORE, IT IS ON THIS 1ST DAY OF NOVEMBER, 2019, ORDERED:

1. The license of Andrew Maron, D.D.S., to practice dentistry in this State is revoked effective immediately.
2. Respondent shall pay restitution totaling $75,041.22 to the patients or their representative listed on the attached Restitution Schedule in the amounts noted there. Restitution shall be made by bank check, attorney trust check, or money order payable to the patients and delivered to Jonathan Eisenmenger, Executive Director, State Board of Dentistry, P.O. Box 45005, 124 Halsey Street, Newark, New Jersey 07102, not later than January 1, 2020.
3. Respondent is assessed civil penalties of $138,500 pursuant to N.J.S.A. 45:1-25 for conduct set forth in this decision and order. Payment of civil penalties shall be made not later than March 1, 2020, and shall be made by bank check,

attorney trust check, or money order and delivered to Jonathan Eisenmenger at the address in paragraph 2 above.

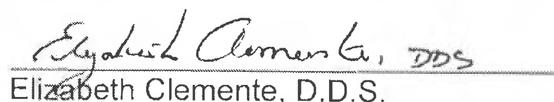
4. Respondent shall pay aggregate costs and attorney's fees of $303,856.22, which costs and fees shall be payable no later than March 1, 2020. Payment of fees and costs shall be made by bank check, attorney trust check, or money order and delivered to Jonathan Eisenmenger at the address in paragraph 2 above.

5. Respondent may apply to the Board for an extension of time to pay the penalties and costs and fees set forth in paragraphs 3 and 4 above. Any application must be made at not later than January 31, 2020 and must be supported by certified financial statements detailing all assets and liabilities of respondent and other relevant information. If respondent wishes to rely on medical or other health information, that information must be certified by licensed practitioners. The application shall be on notice to the Attorney General who may submit a written response within 15 days of receipt of respondent's request. The Board shall review the submissions and notify the respondent and the Attorney General of the disposition of the request.

6. Failure to make any payment by the due date shall result in the filing of a Certificate of Debt pursuant to N.J.S.A. 45:1-24.

7. 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."

NEW JERSEY STATE BOARD OF DENTISTRY



Elizabeth Clemente, D.D.S.

RESTITUTION SCHEDULE

Patient	Payment
S.A.	$ 846.00
A.A.	570.00
J.B.	1,732.22
N.C.	68.00
E.D.	4,000.00
F.D.	8,000.00 (patient deceased; payable to M.C.)
M.H.	12,450.00
M.K.	1,500.00
Mi.K.	11,250.00
J.K.	13,600.00
G.P.	2,300.00
A.P.	12,300.00
R.P.	3,000.00
C.S.	1,425.00
Y.Z.	2,000.00
Total	$75,041.22

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 patientl 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.