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STATE OF WISCONSIN  
BEFORE THE  
DENTISTRY EXAMINING BOARD

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IN THE MATTER OF THE LICENSE OF	:	
	:	
RUSSELL T. KINDSCHI, D.D.S.	:	FINAL DECISION
636 E. Grand Avenue	:	
Beloit, Wisconsin 53511	:	AND ORDER
	:	
TO PRACTICE DENTISTRY IN THE	:	
STATE OF WISCONSIN	:	

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The State of Wisconsin, Dentistry Examining Board, having considered the above entitled matter and having reviewed the record and the proposed decision of the Examiner, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the examiner, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Dentistry Examining Board in the matter of the license of Russell T. Kindschi, D.D.S., 636 East Grand Avenue, Beloit, Wisconsin 53511, to practice dentistry in the State of Wisconsin. Let a copy of this order be served on the Respondent by certified mail.

Dated this 8th day of March, 1978.

John F. Lueck, D.D.S.

MAR 10 1978

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF THE LICENSE OF :

RUSSELL T. KINDSCHI, D.D.S. :  
636 EAST GRAND AVENUE :  
BELOIT, WISCONSIN 53511 :

PROPOSED DECISION

TO PRACTICE DENTISTRY IN :  
THE STATE OF WISCONSIN :

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A pre-hearing conference was held in the above-entitled matter in Room 291, 1400 East Washington Avenue, Madison, Wisconsin on Wednesday, December 5, 1977. Appearing at the conference were the respondent, Dr. Russell T. Kindschi, in person and by his attorney, Frank X. Kinast, 263 West Grand Avenue, Beloit, Wisconsin 53511; the complainant, John L. Kitslaar, III, in person and by his attorney, Paula J. Radcliffe, Room 166, 1400 East Washington Avenue, Madison, Wisconsin 53702 and William Dusso, examiner. A pre-hearing memorandum was prepared by the examiner, dated December 9, 1977, setting forth the agreements, admissions and stipulations made by the parties at the pre-hearing conference. Based on the agreements, admissions and stipulations of the parties and on the pleadings and briefs filed, and on official notice pursuant to s. 227.08, Stats. of a generally known and recognized fact described on paragraph 5 of the Findings of Fact, the examiner recommends that the following Findings of Fact, Conclusions of Law, Order and Opinion be made the final decision of the Dentistry Examining Board in the above-entitled matter.

FINDINGS OF FACT

1. That Russell T. Kindschi, D.D.S., (Dr. Kindschi) is licensed to practice dentistry in the State of Wisconsin (License No. 0654D); the license was first issued to Dr. Kindschi on July 12, 1935;
2. That the dental office in which Dr. Kindschi practices dentistry is located at 636 East Grand Avenue, Beloit, Wisconsin;
3. That Dr. Kindschi maintained his dental office including his examining room in an unsanitary and unclean condition for a substantial period of time prior to August 23, 1977;
4. That Dr. Kindschi has, since August 23, 1977, corrected said unclean and unsanitary conditions;
5. That an established standard of dental practice requires that a dental office be kept in a clean and sanitary condition.

CONCLUSIONS OF LAW

1. That in maintaining his dental office in an unsanitary and unclean condition, Russell T. Kindschi, D.D.S., engaged in conduct unbecoming a professional person as that term is used in s. 447.07(5), Stats., and that Russell T. Kindschi, D.D.S. has been guilty of immoral, dishonorable or unprofessional conduct in the course of the practice of dentistry;

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2. That the Dentistry Examining Board has authority and jurisdiction to take disciplinary action against Dr. Kindschi as provided in s. 447.07(3), Stats. and Wis. Adm. Code s. DE 2.19.

#### ORDER

WHEREFORE, IT IS ORDERED, that Russell T. Kindschi, D.D.S., respondent, cease and desist from maintaining his dental office in any unsanitary and unclean condition and that Russell T. Kindschi, D.D.S. shall at all times, hereafter, maintain any dental office in which he practices dentistry in a clean and sanitary condition;

#### OPINION

Arguments were made by the parties on the meaning of "Immoral, dishonorable or unprofessional conduct" as those terms are used in s. 447.07(3)(a) and defined in s. 447.07(5), Stats. Do those terms include in their meaning the maintenance by a dentist of a dental office in an unclean and unsanitary condition?

By definition, "Immoral, dishonorable or unprofessional conduct" means, among other things, "conduct unbecoming a professional person." The meaning of the phrase "conduct unbecoming a professional person" must be determined by the plain meaning of the terms and, to some extent, by the context in which the phrase appears. The word "unbecoming" means:

"Not appropriate or suited to one's appearance, status, character, etc.; unattractive, indecorous, etc." Webster's New World Dictionary of the American Language, Second College Edition, 1974, World Publishing Co., p. 1543.

"Conduct unbecoming a professional person", then, is synonymous with "conduct not appropriate or suited to a professional person" and includes at least that scope of behavior described by the Wisconsin Supreme Court as "misconduct" and "unprofessional conduct."

"\* \* \* the word misconduct has a broad scope, and a wide range of meaning according to the different connections in which it is used. As used in this statute (s. 443.01) it clearly relates to unprofessional acts, and is synonymous with unprofessional conduct, conduct that violates those standards of professional behavior which through professional experience have become established." Vivian v. Examining Board, 61 Wis. 2d 627, 213 N.W. 2d 359, 367."

Official notice may be taken of the fact that an established standard of dental practice requires a dental office be kept in a clean and sanitary condition. This standard is not explicit in the rules of the board. But the fact that the standard exists is a fact generally known, accepted and recognized in this state and not subject to reasonable dispute. It is a standard of professional behavior which through professional experience has become established. Dr. Kindschi violated that standard. His conduct was not appropriate or suited to a dentist; it was unbecoming a professional person.

Respondent argues that rules of statutory construction require that "conduct unbecoming a professional person" be interpreted to exclude the conduct charged to respondent of maintaining an unclean and unsanitary office. The position urged by respondent is that the principle of ejusdem generis applied to the phrase "immoral, dishonorable or unprofessional conduct" in association with the examples of conduct in s. 447.07(5) and certain case law from other jurisdictions requires the conclusion that the statute "\*\*\*here under interpretation, referring to unprofessional acts or conduct, contemplates conduct of an entirely different nature than allowing one's dental office and examining room to become unclean or unsanitary." Resp. Brief, p. 5.

Respondent's argument is based on distinguishing degrees of impropriety; simply put, respondent argues that the conduct here in question is not serious enough to qualify as immoral, dishonorable or unprofessional. Such a position is not supported by the statute.

The maxim of ejusdem generis is that,

"When a statute is passed which enumerates several specific items encompassed in the purview of the statute and then follows the specifics with a general phrase, it is reasonable to conclude that the general phrase was intended to cover only other items that fall within the general category of those enumerated." LaBarge v. State, 74 Wis. 2d 327, 332, 246N.W. 2d 794 (1976)

The rule does not apply to the phrase "conduct unbecoming a professional person" in s. 447.07, Stats. for at least two reasons.

First, in La Barge, the Wisconsin Supreme Court refused to apply the rule of ejusdem generis to a concluding, general phrase finding that the general phrase was not part of the original statute but was added as an amendment one year after the effective date of the statute and was intended to broaden the definition to include conduct not encompassed in the specifics of the original statute. La Barge, at 333, 334. Attorney for complainant outlined the legislative history of the phrase "conduct unbecoming a professional person." As noted in her brief, this phrase was not part of the original statute defining "immoral or unprofessional conduct", now s. 447.07(5), Stats., but was a category added by amendment. Following La Barge, the legislative history of s. 447.07(5) makes ejusdem generis inappropriate as a tool for use in interpreting "conduct unbecoming a professional person."

Second, the rule and the cases cited by respondent do not control because the enumerated categories in s. 447.07(5), Stats. include conduct similar in degree to that charged.

The definition in s. 447.05, Stats. includes categories of conduct which represent varying degrees of danger to the health and welfare of the public. Habitual intemperance, obtaining a fee by fraud or deceit and gross immorality certainly present a substantial public threat. (It is noteworthy that respondent presented no evidence or argument to support a finding that an unclean and unsanitary dental office poses less of a threat.) The definition of "immoral, dishonorable or unprofessional conduct" also includes "\*\*\*resorting to unprofessional advertising" as specifically defined in s. 447.07(6), Stats. There is clearly as much danger to the

public from a dentist who practices in an unclean and unsanitary office as from a dentist who may engage in immoral, dishonorable or unprofessional conduct by resorting to unprofessional advertising in displaying a flickering, lighted sign representing a tooth.

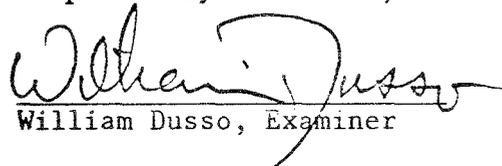
Why should the Dentistry Board order Dr. Kindschi to cease and desist from improper practices and not, in this proceeding, order a reprimand or surrender? The recommendation of a cease and desist order is made in view of the 48 years of unblemished practice as a dentist by Dr. Kindschi. In addition, Dr. Kindschi voluntarily, by August 23, 1977, corrected the conditions complained about.

The primary purposes of imposing discipline are to assure the public of fitness and competence of dentists and to effectively express the Board's and the public's disapproval of immoral, improper and unprofessional conduct. In the present matter the public will be adequately protected and served and the Dentistry Board will have properly fulfilled its responsibility if the order recommended is complied with by Dr. Kindschi. Of course, if it is proven that Dr. Kindschi does not comply with the order, then additional disciplinary action could be ordered. At this time to order a suspension, revocation or reprimand would serve no purpose but to punish Dr. Kindschi.

Madison, Wisconsin

January 30, 1978.

Respectfully Submitted,

  
William Dusso, Examiner