

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF :  
THE LICENSE OF :  
GERARD SCHMIDTKE, D.D.S., : FINAL DECISION AND ORDER  
RESPONDENT :

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The parties to this action for the purposes of Wis. Stats. Sec. 227.53 are:

Gerard Schmidtke, D.D.S.  
Box 132  
Amherst, WI 54406

Dentistry Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

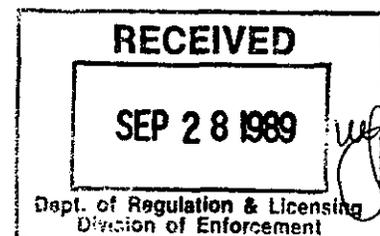
The rights of a party aggrieved by this decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

The parties in this matter have agreed to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following :

FINDINGS OF FACT

1. Gerard Schmidtke, D.D.S. (D.O.B. 7/4/50) is duly licensed as a dentist in the state of Wisconsin (license # 1505). This license was first granted on June 20, 1975.



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2. At all times relevant herein, Dr. Schmidtke was working as a dentist in his own practice in Amherst, Wisconsin.

3. On or about February 26, 1981, Dr. Schmidtke performed an initial dental examination on patient JB, including the taking of a panorex x-ray.

4. The patient record for this examination shows no recording of existing restorations, caries, periodontal problems or periapical abscesses.

5. The panorex x-ray revealed, among other things, the existence of a large periapical abscess on tooth #9 involving the apical one half of the distal root of #9 and extending to the mesial portion of tooth #10. This abscess presented a condition requiring prompt intervention and treatment.

6. Dr. Schmidtke subsequently saw patient JB on June 17, 1981, June 24, 1981 and August 11, 1981 for the provision of dental care, including extractions and routine operative procedures. Dr. Schmidtke did not provide treatment to tooth #9 until November 1, 1983, when a root canal was performed on the tooth.

7. On or about September 15, 1986, Dr. Schmidtke saw patient JB concerning tooth #9, and noted that the root tip of the tooth had fractured.

8. Dr. Schmidtke saw JB on or about September 16, 1986 for extraction of tooth #9. During this procedure, Dr. Schmidtke extracted tooth #8 without telling JB the reasons for the extraction, and then extracted tooth #9.

9. Dr. Schmidtke billed JB for extraction of both tooth #8 and tooth #9.

10. On or about September 29, 1986, Dr. Schmidtke saw patient JB and prepared teeth numbers 7 and 10 for full coverage crowns. Dr. Schmidtke then seated the bridge covering the 7 through 10 area on or about October 7, 1986. Dr. Schmidtke failed to allow adequate healing time prior to placing this bridge.

11. Dr. Schmidtke's charting for the course of treatment referred to in paragraphs 3 through 8, above, failed to accurately and completely describe the treatment provided and therefor falls below the level of minimal competence accepted in the profession of dentistry in Wisconsin.

#### CONCLUSIONS OF LAW

By the conduct described above, Dr. Schmidtke is subject to disciplinary action against his license, pursuant to Wis. Stats. sec. 447.07(3) and Wis. Adm Code sec. DE 5.02.

Therefor, it is hereby ORDERED that Gerard Schmidtke is hereby SUSPENDED for a

period of at least FIFTEEN (15) days. Such suspension shall be served within six (6) months of the date of this Order. Dr. Schmidtke shall notify the Board within thirty (30) days of the date of this order the dates that he will serve the suspension period. Dr. Schmidtke may at his discretion serve the suspension as fifteen continuous days, or serve the suspension as two periods totalling fifteen days.

IT IS FURTHER ORDERED that within sixty (60) days of the effective date of this order, Dr. Schmidtke shall submit evidence to the board of successful completion of sixteen (16) hours of pre-approved continuing education from a source acceptable to the Board in the areas of oral diagnosis and dental record keeping.

FINALLY, it is ordered that the Dr. Schmidtke shall prior to the completion of his period of suspension and as a condition of the removal of the order of suspension, submit payment of costs for these proceedings to the department in the amount of \$1,125.00.

This order shall become effective thirty (30) days following the date of its signing.

DENTISTRY EXAMINING BOARD

By: \_\_\_\_\_

A member of the Board

November 1, 1989  
Date

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF :  
THE LICENSE OF :  
GERARD SCHMIDTKE, D.D.S., : STIPULATION  
RESPONDENT :

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It is hereby stipulated between Gerard Schmidtke, personally on his own behalf, and Steven M. Gloe, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

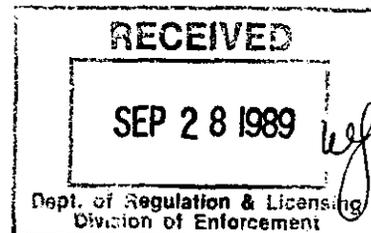
1. This Stipulation is entered into in resolution of the pending investigation of Dr. Schmidtke's licensure by the Division of Enforcement (87 DEN 015.) Dr. Schmidtke consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Dr. Schmidtke understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by clear, satisfactory and convincing evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative code.

3. Dr. Schmidtke agrees to the adoption of the attached Final Decision and Order by the Dentistry Examining Board.

4. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings.

6. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.



7. The Division of Enforcement joins Dr. Schmidtke in recommending the Dentistry Examining Board adopt this Stipulation and issue the attached Final Decision and Order. Respondent neither admits or denies the allegations of the Findings of Fact, but in resolution of this matter, consents to the entry of the Final Decision and Order.

Gerard M. Schmidtke

Gerard Schmidtke, D.D.S.

9/21/89  
Date

Steven M. Gloe

Steven M. Gloe, Attorney  
Division of Enforcement

9/28/89  
Date

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Dentistry Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Dentistry Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Dentistry Examining Board.

The date of mailing of this decision is November 2, 1989.

WLD:dms  
886-490

**227.49 Petitions for rehearing in contested cases.** (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as possible to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

**227.52 Judicial review; decisions reviewable.** Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

**227.53 Parties and proceedings for review.** (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.