

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN

BEFORE THE DENTISTRY EXAMINING BOARD

:
IN THE MATTER OF :DISCIPLINARY
PROCEEDINGS AGAINST

MARY WIELGUS, D.D.S. :

PROPOSED DECISION

RESPONDENT.

Case No. LS-9811059-DEN

:
:
:
:

SUMMARY

This is a disciplinary action by the Dentistry Examining Board against Mary Wielgus, D.D.S. Dr. Wielgus was alleged to have practiced while impaired by a mental or emotional disorder, to have departed from the ordinary standard of care, to have endangered the health, welfare or safety of a patient or the public, and to have violated a law substantially related to the practice of dentistry. Dr. Wielgus neither responded to the allegations nor appeared for the hearing, and the allegations were proven by a preponderance of the evidence upon her default. Dr. Wielgus's license is suspended indefinitely.

PARTIES

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

*Division of Enforcement
Department of Regulation and Licensing
Madison, WI 53708-8935*

Respondent:

*Mary Wielgus, D.D.S. last-known address:
address unknown 2711 North Mason Street
Appleton, WI 54914*

*Disciplinary Authority:
Dentistry Examining Board
1400 East Washington Ave.
Madison, WI 53703*

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint (DOE case # 97 DEN 002) with the Dentistry Examining Board on November 5, 1998. A disciplinary proceeding (hearing) was scheduled for December 17, 1998. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on November 10, 1998 to Dr. Wielgus at her last-known address on file with the department. The certified mailing was received on November 13th by Jean Wielgus, Dr. Wielgus's mother.

B. Starting on November 14th, Jean Wielgus wrote a total of nine letters providing information about her daughter and her daughter's mental condition. She also requested the opportunity for herself and her son (Dr. Wielgus's brother Dannel Wielgus, D.D.S.) to present testimony at the hearing.

C. No answer was filed by or on behalf of Dr. Wielgus.

D. On December 4, 1998, attorney James Harris of the Department's Division of Enforcement filed an affidavit of default.

E. The disciplinary proceeding was held as scheduled on December 17, 1998. Dr. Wielgus did not appear. The Dentistry Examining Board was represented by Mr. Harris, who moved that Dr. Wielgus be found in default under sec. RL 2.14, Wis. Admin. Code. Service requirements having been met under sec. RL 2.08 (1), Wis. Admin. Code, the motion was granted. Testimony was taken from Dr. Wielgus's mother and brother at their request. The hearing was recorded, and a transcript of the hearing was prepared and delivered on January 14, 1999. The testimony and exhibits entered into evidence at the hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. The respondent, Mary Wielgus, D.D.S., is licensed to practice dentistry in the state of Wisconsin, under license number 15 4019. Dr. Wielgus's last-known address on file with the department is 2711 N. Mason St., Appleton, WI 54914.

2. Dr. Wielgus was the subject of a previous disciplinary complaint in case 92 DEN 106. She cooperated with the board in resolving that complaint, which was related to her practices in prescribing controlled substances. She complied with a limitation on her license and completed a course of training.

3. At all times relevant to this action, Dr. Wielgus was operating a dental office in the city of Appleton, Wisconsin.

4. On March 26, 1997, Gerald Van Patten attempted to serve legal process upon Dr. Wielgus at her dental office. Dr. Wielgus yelled at and struck Mr. Van Patten, breaking his glasses and causing him physical injury.

5. On February 13, 1998, Dr. Wielgus made threats to burn down or explode the office of Mr. Van Patten's attorney.

6. Dr. Wielgus engaged in violent and abusive conduct in her dental office in the presence of patients and employees.

CONCLUSIONS OF LAW

I. The Dentistry Examining Board has personal jurisdiction over Mary Wielgus, D.D.S., based on her holding a credential issued by the board, and based on notice under sec. 801.04 (2), Stats. Under sec. RL 2.08 (1), Wis. Admin. Code, a respondent may be served by mailing to her last-known address.

II. The Dentistry Examining Board is the legal authority responsible for issuing and controlling credentials for dentists, under ch. 447, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c), Stats., sec. 447.07, Stats., and ch. DE 5, Wis. Admin. Code.

III. Mary Wielgus, D.D.S., is in default, under sec. RL 2.14, Wis. Admin. Code, and the Dentistry Examining Board may enter an order on the basis of the complaint and other evidence.

IV. The violations in findings of fact 4, 5, and 6 above constitute unprofessional conduct, under secs. DE 5.02(1), DE 5.02(4), DE 5.02(5) and DE 5.02(15), Wis. Admin. Code, and sec. 447.07(3)(a), Stats., and discipline is appropriate, under sec. 447.07(3), Stats.

ORDER

THEREFORE, IT IS ORDERED that the license to practice dentistry issued to Dr. Mary Wielgus be suspended indefinitely.

IT IS FURTHER ORDERED that Dr. Mary Wielgus may petition the Dentistry Examining Board at any time within five years for a stay of suspension. The terms and conditions of any stay may be determined by the board upon receipt of information regarding Dr. Wielgus's situation and condition at that time

IT IS FURTHER ORDERED, if Dr. Mary Wielgus does not contact the board within five years of the date of this order to arrange for reinstatement of her license, that the license to practice dentistry issued to Dr. Mary Wielgus be revoked.

ANALYSIS

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the Dentistry Examining Board alleging that the respondent, Mary Wielgus, D.D.S., violated rules regulating the practice of dentistry. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Dr. Wielgus did not respond to the complaint, either by filing a written answer or by appearing at the hearing. Under the rules of procedure for disciplinary proceedings, the division is permitted to present a case based on the complaint and any other evidence. I conclude that the division has met its burden of proving that Dr. Wielgus engaged in unprofessional conduct and that discipline is appropriate. Due to Dr. Wielgus's disappearance and failure to respond, the only practical discipline to be imposed is either revocation or indefinite suspension of Dr. Wielgus's license. The indefinite suspension allows the board to modify its order if Dr. Wielgus appears later and presents evidence that she can safely be permitted to practice.

The disciplinary complaint in this matter basically alleges that the respondent, Mary Wielgus, D.D.S., is mentally unstable -- or at least that she was at a certain time -- and that this condition caused her to act in the following ways:

- she engaged in violent and abusive conduct toward patients in her dental office in Appleton, Wisconsin.
- on March 26, 1997, she physically attacked a process server in her dental office causing him physical injury and breaking his glasses.
- on February 13, 1998, she left a phone message threatening to blow up or burn down the office of an attorney who was suing her over the incident with the process server.

The complaint further alleged that these actions constituted unprofessional conduct, specifically, that Dr. Wielgus

- engaged in a practice which constituted a substantial danger to the health, welfare or safety of a patient or the public;
- practiced or attempted to practice while her ability to perform services was impaired by physical, mental or emotional disorder;
- practiced in a manner which substantially departed from the standard of care ordinarily exercised by a dentist which harmed or could have harmed a patient; and
- violated a law or was convicted of a crime the circumstances of which substantially relate to the practice of a dentist.

Dr. Wielgus's mental condition was not diagnosed by any experts in this case, nor was it established as such by the evidence, and the disciplinary action was based only on the incidents above. Dr. Wielgus's mother testified

that Dr. Wielgus is a bi-polar manic depressive, and the evidence which she and Dr. Wielgus's brother presented was consistent with the premise that Dr. Wielgus's actions were a consequence of some such mental condition.

In an evidentiary deposition admitted into evidence, the process server, Gerald Van Patten, testified that he had served legal process (summons) on Dr. Wielgus on prior occasions, and he attempted to do so again on March 26, 1997, but that Dr. Wielgus saw him and locked her office door. He then sat and waited, and when she later opened the door for an employee, he entered the office and tried to serve her. He testified that Dr. Wielgus screamed and struck him, knocking his glasses off his face, and when he bent to pick them up, she struck and kicked him. As a result, he received injuries on his left cheek and right temple. A statement taken from the employee who was entering the office suggests that Mr. Van Patten was quite aggressive in his entry, but it also confirms Dr. Wielgus's actions following the entry.

Investigator Steven Rohland testified that he interviewed Dr. Wielgus on December 18, 1997, after the incident with the process server. In that interview, Dr. Wielgus told him that she was being sued for \$50,000 for that incident. She also told him that her mother and her brother were dealing drugs from her brother's office, that they were involved with the Mafia, and that they were harassing her. He formed the opinion that she was in some way "unstable".

On the following day, December 19, 1997, Mr. Rohland was contacted by an employee of Dr. Wielgus who had been in the office the day before. This employee told Mr. Rohland that she was afraid of losing her job, but that the situation in Dr. Wielgus's office was "making her sick". The employee volunteered the following observations (which are technically hearsay, but are admissible):

- Dr. Wielgus arrived for work "drunk" on at least one occasion.
- On at least one occasion, she overheard Dr. Wielgus "talking to herself".
- On various occasions, Dr. Wielgus yelled at her and at patients.
- When the employee confronted Dr. Wielgus about her yelling, calling it unprofessional, Dr. Wielgus said "You need to scream at people."
- Dr. Wielgus worked on patients whom the employee thought had received inadequate anesthesia.
- Dr. Wielgus described herself on one occasion as manic-depressive.

Gerald Van Patten retained attorney Alan Hoff, who filed a suit against Dr. Wielgus seeking damages in the amount of \$50,000. Dr. Wielgus filed a counter-suit, which was dismissed as frivolous on February 13, 1998. In an evidentiary deposition which was admitted into evidence, Mr. Hoff testified that he received two messages from Dr. Wielgus on his phone answering machine late in the evening on that date. A cassette tape containing a recording of the messages was admitted into evidence. In the messages, Dr. Wielgus stated that Mr. Hoff had gotten too close to her mother's cocaine cartel and that her brothers, who were hit men, might explode or burn down his office if the Van Patten case continued. Mr. Hoff further stated that Dr. Wielgus did not appear for a deposition in June of 1998, that she did not appear for a pretrial hearing in July, that a default judgment for Mr. Van Patten was then entered, and that he has had no contact with Dr. Wielgus since that time.

Officer Patrick Dewall of the City of Appleton Police Department testified that a criminal complaint containing one felony charge of conveying a false threat to destroy property by explosives and two misdemeanor charges of making threatening phone calls was issued on July 31, 1998, and that a warrant exists for Dr. Wielgus's arrest.

The evidence presented by Mr. Harris was not challenged by the testimony of Dr. Wielgus's mother and brother, who were permitted to testify at their own request after Dr. Wielgus's mother received the hearing notice. They both expressed concerns over Dr. Wielgus's health and safety, and they urged the board to permit Dr. Wielgus to practice her profession, but they both acknowledged that she suffers from a mental condition which would have to be controlled before that can happen. Dr. Wielgus's mother stated that she believes Dr. Wielgus has left the state of Wisconsin, and she does not know where she is. Dr. Wielgus's brother stated that Dr. Wielgus has not communicated with the family since 1996.

The uncontroverted evidence establishes the violations as alleged. It is not entirely clear that Dr. Wielgus's violations of law (the telephone threats) would be found to be "substantially related" to the practice of dentistry as required by sec. DE 5.02(15), Wis. Admin. Code, but this point was not argued, and the division was not put to a strict proof of the point. The evidence is sufficient to find all of the violations.

Dr. Wielgus's mother raised a question of whether the American with Disabilities Act (ADA) restricts the board from imposing discipline on a licensee who suffers from a mental condition. As stated above, Dr. Wielgus's condition has not been proven in this case, though the evidence is sufficient to assume that she does suffer from

a mental disability. The ADA prohibits discrimination on the basis of disability, but it also permits employers or licensing authorities to require individuals to be able to perform the essential requirements of a job or profession. If Dr. Wielgus approaches the board seeking an accommodation for her disability, the board may investigate the limitations which would be necessary to permit her to practice safely.

Discipline.

The purposes of professional discipline have been set forth by the Wisconsin Supreme Court in various cases involving attorneys, such as State v. Kelly, 39 Wis.2d 171, 158 N.W.2d 554 (1968), State v. MacIntyre, 41 Wis.2d 481, 164 N.W.2d 235 (1969), State v. Cory, 51 Wis.2d 124, 186 N.W.2d 325 (1970), and State v. Aldrich, 71 Wis.2d 206, 237 N.W.2d 689 (1976). Those purposes are (1) to rehabilitate the offender, (2) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, and (3) to deter others in the profession from similar unprofessional conduct. That reasoning has been extended by regulatory agencies, including the Department of Regulation and Licensing, to disciplinary proceedings for other professions.

There is no need to impose discipline to deter other professionals from similar misconduct. Given Dr. Wielgus's disappearance and the clear evidence of a mental instability, the only way for the board to protect the public is to remove her right to practice under her license, unless and until she provides adequate evidence that in some setting and under some conditions she can practice safely. This can be accomplished either by revocation of her license or an indefinite suspension. An indefinite suspension is recommended at this time, with the hope that Dr. Wielgus will return to this state and to her senses, and contact the board to fashion an order which will allow her eventually to return to practice. Such an outcome is also designed to foster Dr. Wielgus's rehabilitation. In the event that she does not avail herself of the opportunity to work with the board in this fashion within five years, however, her license should be revoked, simply to bring finality to this case.

Costs.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code, but neither the statute nor the rule clearly indicates the circumstances in which costs are to be imposed. One approach is routinely to impose the costs of investigating and prosecuting unprofessional conduct on the disciplined individual rather than on the profession as a whole. Another approach is to use costs as an incentive to encourage respondents to cooperate with the process, and thus to impose costs only if the respondent is uncooperative or dilatory. Dr. Wielgus has disappeared, and consequently she failed to cooperate in any way with the Department in this action, but her disappearance appears to be more a result of her mental illness than of any disregard for the board's authority. Given her uncertain mental and emotional condition, an order for costs would seem punitive, and none is recommended.

Dated and signed: January 25, 1999

John N. Schweitzer

Administrative Law Judge

Department of Regulation and Licensing

