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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE
APPLICATION FOR A DENTAL
LICENSE OF:

GILBERT RAY CALLAHAN, D.D.S.,
APPLICANT

FINAL DECISION AND ORDER
LS0001262DEN

The State of Wisconsin, Dentistry Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Dentistry Examining Board.

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

Dated this 6th day of September, 2000.

Mark Curran

A Member of the Board

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE APPLICATION

FOR A DENTAL LICENSE OF

GILBERT RAY CALLAHAN, DDS,
APPLICANT

PROPOSED DECISION
LS0001262DEN

The parties to this proceeding for the purposes of Wisconsin Statutes, sec. 227.53 are:

Gilbert Ray Callahan
2113 Washington Avenue
Marshfield, Wisconsin 54449

Dentistry Examining Board
P.O. Box 8935
Madison, Wisconsin 53708

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This proceeding was commenced by the filing of a Notice of Hearing on January 25, 2000. A hearing was held in this matter on April 12, 2000. Atty. Steven M. Gloe appeared on behalf of the Division of Enforcement. Atty. Hal Harlowe appeared on behalf of Dr. Callahan.

The parties filed final closing arguments and legal briefs on May 19, 2000.

Based upon the record herein, the Administrative Law Judge recommends that the

Dentistry Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. The applicant, Gilbert Ray Callahan, resides at 2113 Washington Avenue, Marshfield, Wisconsin 54449.
2. On or about July 15, 1999, Dr. Callahan filed an application for licensure by endorsement to practice as a dentist in Wisconsin.
3. Dr. Callahan graduated from the University of Illinois School of Dentistry in 1957 and received his Master of Science degree in Orthodontics from Northwestern University in 1962.
4. Dr. Callahan was granted a license to practice dentistry in Illinois in 1957 and a license to practice dentistry in Colorado in 1960. Dr. Callahan holds a current license in Illinois. His license in Colorado has been placed on "retired" status.

5. In 1972, the American Board of Orthodontics awarded Dr. Callahan board certification.
6. Between 1962 and August 1996, Dr. Callahan practiced dentistry continuously in Champaign, Illinois, as an orthodontist on a full-time basis. He has provided direct treatment to patients in excess of 50,000 hours.
7. Between July 16, 1994 and July 15, 1999, Dr. Callahan engaged in the active practice of dentistry in Illinois at least 24 of the 60 months preceding the Board's receipt of his application for licensure by endorsement.
8. Between 1955 and 1957, Dr. Callahan took and passed the national board dental examination given by the Joint Commission on National Dental Examinations. At that time, the national board examination did not include a portion on periodontics.
9. Dr. Callahan passed an examination in 1957 in conjunction with his application for a license to practice dentistry in Illinois and he passed an examination in 1960 in conjunction with his application for a license to practice dentistry in Colorado. Dr. Callahan also passed an examination in 1972 in conjunction with his application for certification by the American Board of Orthodontics. None of these examinations included a portion on periodontics.
10. In September 1999, Dr. Callahan successfully completed the jurisprudence examination on the provisions of Wisconsin statutes and administrative rules relating to dentistry and dental hygiene.
11. Dr. Callahan has not successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the opinion of the Dentistry Examining Board, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or, alternatively, a board specialty certification examination of an American dental association accredited specialty, as required under s. DE 2.04 (1) (e), Code.
12. The Dentistry Examining Board notified Dr. Callahan by letter, dated November 5, 1999, that his application for licensure was denied. The notice of denial reads, in part:

Your application for licensure as a dentist in Wisconsin has been reviewed. The board's determination is that you do not meet the active practice requirement of 48 months out of the last 60 months, and it appears there was no periodontics portion of the exam you originally took, therefore you do not qualify for licensure in Wisconsin

You may obtain licensure by taking and passing the C.R.D.T.S. examination. ...
13. In 1996, Dr. Callahan developed severe osteoarthritis in his left knee. As a result of this disability, Dr. Callahan was physically unable to practice dentistry after July 16, 1996, at which time he underwent a total left knee replacement operation.
14. The practice of orthodontic dentistry involves frequent knee bending and movement from chair to chair.
15. Between July 16, 1996 and August 2, 1998, Dr. Callahan was unable to practice dentistry because of his physical disability. During that time period, Dr. Callahan suffered from a "disability" as that term is defined in the Americans with Disabilities Act of 1990, 42 USC 12102 (2). As of August 3, 1998, Dr. Callahan was again physically able to practice dentistry.
16. Between August 3, 1998 and August 3, 1999, Dr. Callahan attempted to find employment to replace the employment that had been lost as a result of his disability.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to s. 447.04 (1), Wis. Stats., and s. DE 2.04 Wis. Adm. Code.
2. Dr. Callahan has not engaged in the active practice of dentistry, in one or more jurisdictions in which he has a current license in good standing, for at least 48 of the 60 months preceding his application for licensure in Wisconsin, as required under s. DE 2.04 (1) (d), Code.
3. Dr. Callahan has not successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or alternatively, a board specialty certification examination of an American dental association accredited specialty within the previous ten years, as required under s. DE 2.04 (1) (e), Code.
4. Between July 16, 1996 and August 2, 1998, Dr. Callahan suffered from a "disability" as that term is defined in

the Americans with Disabilities Act of 1990, 42 USC 12102 (2).

ORDER

NOW, THEREFORE, IT IS ORDERED that the application for licensure filed by Dr. Gilbert Ray Callahan for a license to practice dentistry, and hereby is, denied.

IT IS FURTHER ORDERED that if, within one year of the effective date of this Order, Dr. Callahan takes and successfully completes a clinical and laboratory demonstration licensing examination on a human subject which, in the opinion of the Dentistry Examining Board, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or, alternatively, a board specialty certification examination of an American dental association accredited specialty, as required under s. DE 2.04 (1) (e), Code, the Board shall grant him a license to practice dentistry, which shall be limited for an indefinite period of time, subject to the following conditions and limitations:

- 1) Dr. Callahan shall satisfy the "active practice" requirement under s. DE 2.04 (1) (d), Code by engaging in the active practice of dentistry at least 24 of the 30 months following the date he successfully completes the examination requirement under s. DE 2.04 (1) (e), Code.
- 2) Dr. Callahan's practice of dentistry under paragraph (1) above shall be done under the supervision of a licensed dentist approved by the Board.
- 3) Dr. Callahan shall hold and maintain a current license in good standing either in the state of Illinois, the state of Colorado or some other jurisdiction of the United States, as required under s. DE 2.04 (1), Code.
- 4) Upon a showing by Dr. Callahan of complete, successful and continuous compliance for a period of thirty (30) months, following the date he successfully completes the examination requirement under s. DE 2.04 (1) (e), Code, with the limitations and conditions set forth in paragraphs (1), (2) and (3) above, the Board shall grant a petition by him for full licensure if it determines that he can safely and competently engage in the practice of dentistry.

This Order is effective on the date on which a representative of the Dentistry Examining Board signs it.

OPINION

I. Applicable Law

447.04 Licensure. (1) Dentists.

(b) The examining board may grant a license to practice dentistry to an individual who is licensed in good standing to practice dentistry in another state or territory of the United States or in another country if the applicant meets the requirements for licensure established by the examining board by rule and upon presentation of the license and payment of the fee specified in s. 440.05 (2).

DE 1.02 Definitions. As used in rules of the dentistry examining board:

- (2) "Active practice of dentistry" means having engaged in at least 750 hours of the practice of dentistry within the 12-month period preceding application for licensure in Wisconsin in private practice, the armed forces of the United States, the United States public health service, or as a clinical instructor in a school of dentistry accredited by the American dental association, with a current license to practice dentistry in that jurisdiction.
- (4) "Clinical and laboratory demonstration" means a comprehensive examination approved by the board consisting of a demonstration of skills, operative and restorative techniques and practical application of

the basic principles of the practice of dentistry or a comprehensive examination approved by the board consisting of a written part and a demonstration of skills, techniques and practical application of the basic principles of the practice of dental hygiene.

DE 2.04 Endorsement. (1) The board may grant a license as a dentist to an applicant who holds a valid license issued by the proper authorities of any other jurisdiction of the United States or Canada upon payment of the fee authorized by s. 440.05 (2), Stats., and submission of evidence satisfactory to the board that all of the following conditions are met:

(d) The applicant has been engaged in the active practice of dentistry, as defined in s. DE 1.02 (2), in one or more jurisdictions in which the applicant has a current license in good standing, for at least 48 of the 60 months preceding the application for licensure in Wisconsin.

(e) The applicant has successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or, alternatively, has successfully completed a board specialty certification examination of an American dental association accredited specialty within the previous 10 years.

II. Application for Licensure by Endorsement

On July 15, 1999, Dr. Callahan filed an application with the Dentistry Examining Board for licensure by endorsement to practice dentistry. He is currently licensed to practice dentistry in Illinois. His license to practice dentistry in the state of Colorado has been placed on "retired" status.

The Dentistry Examining Board notified Dr. Callahan by letter, dated November 5, 1999, that his application for licensure by endorsement had been denied. The Board's letter to Dr. Callahan reads, in part, as follows [Exhibit 3, p. 31]:

Your application for licensure as a dentist in Wisconsin has been reviewed. The board's determination is that you do not meet the active practice requirement of 48 months out of the last 60 months, and it appears there was no periodontics portion of the exam you originally took, therefore you do not qualify for licensure in Wisconsin. You may obtain licensure by taking and passing the C.R.D.T.S. examination. ...

Dr. Callahan filed a request on or about November 29, 1999 for a hearing on the denial of his application.

The Division of Enforcement filed a Notice of Hearing on or about January 25, 2000. The Notice of Hearing reads, in part, as follows:

The issues presented for consideration at the hearing on the denial of the applicant's application for a license to practice dentistry in Wisconsin are:

1. Was the Board's denial based upon the requirements of Wis. Admin. Code

s. DE 2.04 (1) (d) arbitrary or capricious under the facts of this case?

2. Is the Applicant entitled to an accommodation to the requirements of Wis. Admin.

Code s. DE 2.04 (1) (d) under the Americans with Disabilities Act of 1990 to allow

for his recuperation from knee replacement surgery?

- a. Does applicant's health history qualify as a disability under the ADA?
- b. Is the Board's option for taking the Central Regional Dental Testing Service Exam a reasonable accommodation for Applicant's inability to fulfill the active practice requirements (48 months out of the last 60 months) of Wis. Admin.

Code s. DE 2.04 (1) (d)?

3. Was the Board's second basis for denial ("no periodontics portion of the exam you originally took") valid?

- a. Was there a periodontics portion on Applicant's original Illinois examination?
- b. Can the Board's 11/05/99 "no periodontics portion" language be construed to reference the requirements of Wis. Admin. Code s. DE 2.04 (1) (d) requiring a clinical and laboratory demonstration licensing examination on a human subject?

III. Evidence Presented

The Dentistry Examining Board denied Dr. Callahan's application for licensure because it determined that Dr. Callahan: 1) had not satisfied the active practice requirement of 48 months out of the last 60 months, and 2) he had not taken an examination on periodontics. *Ex. 3, p. 31.*

Under s. DE 2.04 (1), Code, an applicant seeking licensure by endorsement in Wisconsin must submit evidence satisfactory to the board that certain conditions have been met including,

but not limited to, the following:

(d) The applicant has been engaged in the active practice of dentistry, as defined in s. DE 1.02 (2), in one or more jurisdictions in which the applicant has a current license in good standing, for at least 48 of the 60 months preceding the application for licensure in Wisconsin.

(e) The applicant has successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or, alternatively, has successfully completed a board specialty certification examination of an American dental association accredited specialty within the previous 10 years.

The evidence presented establishes that Dr. Callahan has not met the conditions for licensure for endorsement required under s. DE 2.04 (1) (d) and (e), Code.

First, Dr. Callahan has not been engaged in the active practice of dentistry, in one or more jurisdictions in which he has a current license in good standing, for at least 48 of the 60 months preceding his application for licensure in Wisconsin, as required under s. DE 2.04 (1) (d), Code.

Dr. Callahan's application for licensure for endorsement was received by the Board on July 15, 1999. Dr. Callahan admits that he has not engaged in the active practice of dentistry for at least 48 of the 60 months preceding his application for licensure in Wisconsin. In fact, Dr. Callahan practiced dentistry in Illinois only 24 of the 60 months preceding the Board's receipt of his application for licensure. Between July 16, 1994 and July 16, 1995, Dr. Callahan practiced dentistry in excess of 1600 hours. Between July 16, 1995 and February 16, 1996, Dr. Callahan practiced dentistry in excess of 800 hours. Between February 16, 1996 and July 16, 1996, Dr. Callahan practiced

dentistry in excess of 750 hours. On July 16, 1996, Dr. Callahan underwent a total left knee replacement operation. As a result, he was unable to practice dentistry for a period of two years [between July 16, 1996 and August 2, 1998]. Between August 3, 1998 and July, 1999, Dr. Callahan attempted to find employment as an orthodontist, but was unsuccessful until he was offered a position at the Dental Clinic of Marshfield, S.C., in July, 1999. *Exhibit 1, par. 6, 14-16.*

Second, Dr. Callahan has not successfully completed a clinical and laboratory demonstration licensing examination on a human subject which, in the board's judgment, is substantially equivalent to the clinical and laboratory demonstration examination administered by the central regional dental testing service, or alternatively, a board specialty certification examination of an American dental association accredited specialty within the previous ten years, as required under s. DE 2.04 (1) (e), Code.

The evidence establishes that since graduating from dentistry school in 1957, Dr. Callahan took and passed five examinations that were designed to test his knowledge and/or skills relating to the practice of dentistry.

Between 1955 and 1957, Dr. Callahan took and passed the national dental examination given by the Joint Commission on National Dental Examinations. At that time, the national dental examination did not include a portion on periodontics. *Exhibit 3, p. 13.*

In August 1957, Dr. Callahan passed an examination in Illinois in order to obtain a license to practice dentistry there. Dr. Callahan testified that the Illinois examination involved placing braces on the 6 front teeth of a patient and "putting a short wire in" to show that he could do that. He was also given two sets of records on a case, which included models, x-rays and photographs, and was asked to diagnose the cases, explain "what was wrong" and to identify appropriate corrective measures. He also stated that he did "full mouth x-rays", discussed the x-rays with a radiologist and did a "tracing" of a head x-ray.

In 1960, Dr. Callahan passed an examination in Colorado in order to obtain a license to practice dentistry there. Dr. Callahan described the examination as a "general dentistry" examination. He said that he brought a patient in and had to do fillings; denture set-up; finish and put in a gold crown, and finish and put in a gold inlay. The examination lasted 2-3 days.

In 1972, Dr. Callahan passed an examination in conjunction with his application for certification by the American Board of Orthodontics. Dr. Callahan testified that the examination consisted of a written examination and a review of 15 cases that he worked on while in his practice. The cases were reviewed by a Board member who questioned him regarding his handling of the cases.

In September 1999, Dr. Callahan successfully completed the jurisprudence examination on the provisions of Wisconsin statutes and administrative rules relating to dentistry and dental hygiene.

None of the five examinations taken by Dr. Callahan included a portion on periodontics.

IV. Legal Arguments

Dr. Callahan argues that despite the fact that he has not satisfied the requirements under

s. DE 2.04 (1) (d) and (e), Code, his application for licensure by endorsement should be granted because: 1) The Board's November 5, 1999, notice of denial did not sufficiently allege a denial based on s. DE 2.04 (1)(e), Code; 2) the notice of denial did not comply with the notice requirements under s. 227.44, Stats., and 3) the Board's refusal to waive the "active practice" requirement under s. DE 2.04 (1) (d), Code violates the Americans With Disabilities Act.

(A) Notice of Denial

The Board's notice of denial reads, in part, as follows: "it appears there was no periodontics portion of the exam you originally took, therefore you do not qualify for licensure in Wisconsin. You may obtain licensure by taking and passing the C.R.D.T.S. examination. ..."

First, in my opinion, the Board's notice is sufficient for purposes of informing Dr. Callahan that it has determined that he has not satisfied the examination requirement for licensure by endorsement. The Board's notice specifically states that Dr. Callahan has not completed the periodontics portion of the examination that he originally took and that he may obtain licensure by taking and passing the C.R.D.T.S. examination. In addition, there are only two other examination provisions in s. DE 2.04, Code, neither of which apply to Dr. Callahan. Section DE 2.04 (1) (c), Code states that an applicant qualifies for licensure if the applicant "has not failed the

central regional dental testing service clinical and laboratory demonstration examination, or any other dental licensing examination, within the previous 3 years". Based upon the evidence, Dr. Callahan has never failed a dental licensing examining. Section DE 2.04 (1) (f), Code requires an applicant to pass the jurisprudence examination on the provisions of Wisconsin statutes and administrative rules relating to dentistry and dental hygiene. Dr. Callahan passed the jurisprudence examination in September 1999. *Ex. 3, p. 3, par. 2 and 11.*

Second, in my opinion, the requirements under s. 227.44, Stats., were satisfied in the Notice of Hearing filed in this matter by the Division of Enforcement. As pointed out by

Dr. Callahan in his arguments, s. 227.44, Stats., requires that all parties in a contested case be afforded an opportunity for a hearing after reasonable notice. The statutes provide that notice shall include: "A short plain statement of the matters asserted. If the matters cannot be stated with specificity at the time the notice is served, the notice may be limited to a statement of the issues involved." In my opinion, the Notice of Hearing filed by the Division of Enforcement specifically identifies the "issues presented for consideration at the hearing". Such issues included, but are not limited to, the following: "b. Can the Board's 11/05/99 "no periodontics portion" language be construed to reference the requirements of Wis. Admin. Code s. DE 2.04 (1) (d) requiring a clinical and laboratory demonstration licensing examination on a human subject?"

Finally, based upon the evidence presented, it can be inferred that Dr. Callahan had knowledge of the examination requirements under s. DE 2.04 (1) (d), Code before the Board denied his application. Section DE 2.04 (f), Code requires an applicant for endorsement to complete a jurisprudence examination on the provisions of Wisconsin statutes and administrative rules relating to dentistry and dental hygiene. Dr. Callahan successfully completed the jurisprudence examination in September 1999.

(B) Application of the Americans With Disabilities Act of 1990

(1) Applicable Law

42 USC 12102 Definitions. As used in this Act: **(2) Disability.** The term "disability" means, with respect to an individual - (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.

42 USC 12131 Definitions. As used in this subchapter: **(2) Qualified individual with a disability.** The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 USC 12132. Discrimination Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

28 CFR 35.104 Definitions. (2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

28 CFR 35.130 General prohibitions against discrimination.

(b) (6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of a disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(b) (7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(b) (8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(2) Arguments

Dr. Callahan argues that the Board's refusal to waive the "active practice" requirement under s. DE 2.04 (1) (d), Code [the 48 out of 60 month rule] violates the Americans With Disabilities Act of 1990 ("Act").

First, it should be noted that there is no evidence in the record that the Board ever considered the issue regarding Dr. Callahan's disability or that it "refused" to waive the active practice requirement under s. DE 2.04 (1) (d), Code. In fact, Dr. Callahan did not raise the issue regarding his disability until after the Board denied his application for licensure. In his application for licensure, Dr. Callan wrote the following regarding his activities between September 1996 and July 1999: "Retired, Travel". In reference to why he was applying for licensure in Wisconsin, Dr. Callahan wrote the following: "I've tried retirement and I'd rather practice my profession. I feel that I have a lot of good years left and I hate to waste them." Finally, after the Board denied Dr. Callahan's application, he sent a letter to the Board in which he referred to his knee problems for the first time. The letter states, in part, [Ex. 3, p. 2, 27]:

I haven't received your official letter yet, but the lady in the DRL office said that my application had been denied because I didn't meet the "recent practice" requirement. She also said something about my not having enough periodontia questions on my state board exam (1957).

I'm writing to ask you to waive these conditions and grant me a license for the following reasons:

Reason #3. I am physically and mentally able to practice indefinitely.

I sold my previous practice mainly because my left knee was hurting so badly that I could hardly walk. I wasn't sure that surgery could solve the problem. Just a week after I retired I had a complete knee replacement and it is wonderful. I now walk five miles a day, at least 4 days per week and I have since September, 1996. My knee is no problem because I did my rehab, I exercise almost every day and I control my weight (5' 11" - 168#).

Second, based upon the evidence, it can be concluded that Dr. Callahan's prior medical condition constitutes a disability under the Act. In 1996, Dr. Callahan developed severe osteoarthritis in his left knee. On July 16, 1996, Dr. Callahan underwent a total left knee replacement operation. As a result, Dr. Callahan was unable to practice dentistry for a period of two years following his July 16, 1996 operation. Although Dr. Callahan does not currently suffer from the disability, he does have a "record" of a physical impairment that substantially limited one or more of his "major life activities". *Exhibit 1, par. 6, 8, 10 and 18.* ¹

1. Osteoarthritis is a chronic disease involving the joints, especially those bearing weight. It is characterized by destruction of articular cartilage, overgrowth of bone with lipping and spur formation, and impaired function. This disease is an almost inevitable consequence of aging and is a major cause of severe chronic disability, affecting nearly 10% of the population over age 60. *Taber's Cyclopedic Medical Dictionary, 17 Edition.*

Third, based upon the evidence presented, it can be concluded that Dr. Callahan is not a "qualified individual with a disability, as that phrase is defined under the Act. Dr. Callahan has not met the "essential eligibility requirements" for licensure by endorsement because he has not passed the examination required under s. DE 2.04 (1) (e), Code. Dr. Callahan does not claim that his prior disability impedes his ability to satisfy the examination requirement. Dr. Callahan argues instead that the cost associated with taking the examination, approximately \$5,000 for equipment, is burdensome. He also argues that he should not be required to take the examination because he does not practice general dentistry and because he has completed 36 hours of continuing education

courses in general dentistry and orthodontics, which included 12 hours of periodontics education. Under s. DE 2.04, Code, in order to obtain a license by endorsement, an applicant must satisfy the "active practice" and the examination requirement. Dr. Callahan has not satisfied the examination requirement for licensure by endorsement; therefore, he has not met all of the "essential eligibility requirements" for licensure. *Applicant's Proposed Findings of Fact and Conclusions of Law, par. 19 and 20; Exhibit 2.*

(3) Recommendations

Based upon the evidence presented, it is recommended that, at least initially, Dr. Callahan's application for licensure be denied because he has not satisfied the examination requirement under s. DE 2.04 (1) (e), Code.

It is also being recommended that if Dr. Callahan completes the examination requirement under s. DE 2.04 (1) (e), Code, he be granted a limited license for an indefinite period of time subject to the conditions and limitations set forth in the proposed Order. This recommendation is being made based upon the conclusion that Dr. Callahan was unable to satisfy the practice requirement under s. DE 2.04 (1) (d), Code because of his disability. Since Dr. Callahan has already completed 24 months of active practice, it is recommended that he be permitted to complete the remaining 24 months of practice under supervision as provided in the proposed Order. In addition, there is no evidence in the record that by granting a limited license to Dr. Callahan the public would be endangered in any manner. He has provided direct treatment to patients in excess of 50,000 hours and he has kept abreast of the field of dentistry by attending numerous educational programs. Finally, it should be noted that Dr. Callahan testified at the hearing that the issuance of a limited license would be an appropriate resolution of this matter. *Exhibit 2.*

Based upon the record herein, the Administrative Law Judge recommends that the Dentistry Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 31st day of July 2000.

Respectfully submitted,

Ruby Jefferson-Moore

Administrative Law Judge