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STATE OF WISCONSIN

BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

THOMAS J. MCCARTHY, D.D.S.,

FINAL DECISION AND ORDER

RESPONDENT

LS0105021DEN

The parties to this proceeding for purposes of sec. 227.53, Stats., are:

Thomas J. McCarthy, D.D.S.

20100 W. Greenfield Ave.

Brookfield, WI 53045

Wisconsin Dentistry Examining Board

1400 E. Washington Ave.

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation and Licensing

Division of Enforcement

1400 E. Washington Ave.

P.O. Box 8935

Madison, WI 53708-8935

The Wisconsin Dentistry Examining Board received a Stipulation submitted by the parties to the above-captioned matter. The Stipulation, a copy of which is attached hereto, was executed by Thomas J. McCarthy, D.D.S., and by Gilbert C. Lubcke, attorney for the Department of Regulation and Licensing, Division of Enforcement. Based upon the Stipulation of the parties, the Wisconsin Dentistry Examining Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Thomas J. McCarthy, D.D.S., 20100 West Greenfield Avenue, Brookfield, Wisconsin, 53045, was born on 6/13/48 and has been licensed and registered to practice dentistry in the state of Wisconsin since 3/11/75, license #5001433.

2. Dr. McCarthy is engaged in the practice of general dentistry.

3. Judy Toepfer graduated from the University of Guadalajara in 1979 with a degree in dentistry. Ms. Toepfer has never held a license or certificate to practice dentistry in the state of Wisconsin. Ms. Toepfer was employed as a dental assistant by Mobile Dental commencing in December 1994. Mobile Dental was owned, in part, by Dr. McCarthy. At the time that Dr. McCarthy hired Ms. Toepfer, Ms. Toepfer represented to Dr. McCarthy that she had a temporary certificate issued to her by the state of Wisconsin that permitted her to practice dentistry in Wisconsin. Dr. McCarthy did not attempt to verify this representation. In selected cases where a licensed dentist

employed by Mobile Dental had examined the patient and developed a treatment plan that included extraction of a tooth, Dr. McCarthy allowed Ms. Toepfer to extract the tooth while under his general supervision. The extraction of human teeth constitutes the practice of dentistry and cannot be delegated to a person not licensed or otherwise permitted by law to practice dentistry in the state of Wisconsin. Dr. McCarthy terminated Ms. Toepfer's employment with Mobile Dental in December 1995.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction in this proceeding pursuant to sec. 447.07, Stats.
2. The Wisconsin Dentistry Examining Board has the authority to resolve this disciplinary proceeding by stipulation without an evidentiary hearing pursuant to sec. 227.44(5), Stats.
3. Dr. McCarthy's conduct as described in paragraph 3 of the Findings of Fact was conduct in violation of to sec. 447.07(3)(j), Stats. in that he employed an unlicensed person to perform an act requiring license.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Stipulation of the parties is approved.

IT IS FURTHER ORDERED that Thomas J. McCarthy, D.D.S. is reprimanded.

IT IS FURTHER ORDERED that Thomas J. McCarthy, D.D.S., will pay a forfeiture in the amount of \$3,000.00 within 60 days of the date of this Final Decision and Order to the Department of Regulation and Licensing, P.O. Box 8935, 1400 East Washington Avenue, Madison, Wisconsin 53708-8935.

IT IS FURTHER ORDERED that Thomas J. McCarthy, D.D.S. will not employ, directly or indirectly, any unlicensed or uncertified person to perform any act that requires licensure or certification under Ch. 447, Stats.

The rights of a party aggrieved by this Final Decision and Order to petition the Wisconsin Dentistry Examining Board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin, this 2nd day of May, 2001.

WISCONSIN DENTISTRY EXAMINING BOARD

Bruce Barrette

Member, Wisconsin Dentistry Examining Board