

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
MARK A. NELSON, D.D.S., : LS0601111DEN
RESPONDENT. :

[Division of Enforcement Case # 04 DEN 128]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Mark A. Nelson, D.D.S.
102 Janesville Street
Oregon, WI 53575

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Dentistry Examining Board
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter subject to the approval of the Dentistry Examining 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. Mark A. Nelson, D.D.S., Respondent, date of birth November 1, 1943, is licensed and currently registered by the Dentistry Examining Board to practice dentistry in the state of Wisconsin, pursuant to license number 5000807, which was first granted May 29, 1970.

2. Respondent's last address reported to the Department of Regulation and Licensing is 102 Janesville Street Oregon, WI 53575.

3. Beginning in 1994, Ms. A, who on June 25, 2004 was 17 years old, and her family were patients at the dental clinic where Respondent practiced. Respondent did not provide any of the dental services Ms. A received at the clinic.

4. A representative of the clinic called the family and asked if Ms. A would be interested in a part-time job at the clinic. Ms. A accepted the offer and worked at the clinic from January 15, 2003 until June 25, 2004. On the latter date, the following occurred:

a. While Respondent and Ms. A were working at the clinic, Respondent gave Ms. A an affectionate hug, which he turned into a more romantic like hug and tried to kiss her on her mouth.

b. Respondent put his hand on one of Ms. A's breasts over her clothing. He then pulled her blouse away from her body as though he was going to reach under it and asked "May I?" Ms. A said "No" and pulled away.

c. Ms. A had not consented to the attempted kiss or the touching of her breast. After she left the office, she immediately told her parents what had occurred and they contacted the police. When the police interviewed Respondent, he said Ms. A was a nice young girl and that he had kissed her and touched her breast. He said he had touched her inappropriately and didn't know why he did it.

5. As a result of Respondent's conduct:

a. On August 20, 2004, Respondent was charged in Dane County Circuit Court case number 2004CM003237 with violating Wis. Stat. § 940.225(3m), 4th degree sexual assault.

b. On December 8, 2004, Respondent was placed in a deferred prosecution, the Dane County First Offenders Program, and to this date, has complied with all requirements of the program. If Respondent successfully completes the program, the criminal charge will be dismissed.

c. Respondent became depressed and was referred by his primary care provider to a clinical social worker who first saw him on July 7, 2004. The clinical social worker began treatment and also referred him to a psychiatrist for further evaluation and treatment beginning on July 9, 2004. On December 8, 2004, the psychiatrist wrote that it was his opinion and the opinion of the clinical social worker that Respondent is "extremely unlikely to repeat the behavior."

d. Beginning February 11, 2005, Respondent was evaluated by and entered treatment with Dr. James Gerndt, a psychologist experienced in evaluating and treating people who have committed sexual offenses. Based on Dr. Gerndt's evaluation and recommendation, on April 14, 2005, Respondent began treatment in the STOP program which has several phases and which takes 36-48 months to complete.

6. Wis. Stat. § 940.225(3m), 4th degree sexual assault, is a law which substantially relates to the practice of dentistry.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 447.07, and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by violating a law which relates to the practice of dentistry, is subject to discipline pursuant to Wis. Stat. § 447.07(3)(f).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Respondent, Mark A. Nelson, D.D.S., is REPRIMANDED for the above conduct.

2. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing forfeiture in the amount of \$500.00 pursuant to Wis. Stat. § 447.07(7).

3. Respondent's license is LIMITED, as follows:

a. Respondent shall continue to participate in treatment in the STOP program with Dr. Gerndt (treating professional), until Respondent provides proof sufficient to the Board that he has completed the program.

1) In the event that Dr. Gerndt is unable or unwilling to continue as Respondent's treating professional, the Board or its designee shall in its sole discretion approve subsequent treating professionals.

2) Respondent shall immediately provide each treating professional with a copy of this Final decision and Order.

3) Respondent shall cooperate with and follow all recommended treatment.

4) Respondent shall provide and keep on file with each treating professional current releases which comply with state and federal laws authorizing release of all medical and treatment records and reports to the Board and the Department Monitor, and permitting the treating professional to disclose and discuss the progress of Respondent's treatment and rehabilitation with the Board or any member thereof, the Department Monitor

and any other employee of the Department of Regulation and Licensing acting under the authority of the Board. Copies of these releases shall be filed simultaneously with the Department Monitor.

5) Respondent's treating professional shall submit quarterly reports to the Department Monitor regarding Respondent's participation and progress in treatment. Submission of the reports by the treating professional shall be Respondent's responsibility. The due date for the first report and subsequent reports shall be determined by the Department Monitor.

6) Upon becoming aware that Respondent has failed to cooperate with treatment, or has otherwise violated the terms of this Order, Respondent's treating professional shall immediately submit written notification to the Department Monitor.

b. Respondent shall practice under the supervision of a dentist approved by the Board or its designee. Michael D. Nelson, D.D.S., is approved as the supervising dentist.

1) The purpose of supervision is to make certain that Respondent complies with subparagraphs 2) and 3), below.

2) A dentist, dental hygienist or dental assistant shall be physically present in the room with Respondent for all examinations, consultations or treatments provided to female patients by Respondent. That person may leave the room briefly to attend to necessary business.

3) That person shall sign and date the patient's record and indicate in the record that he or she was physically present in the room with Respondent and the patient.

4) Respondent shall immediately provide a copy of this Final Decision and Order to the supervising dentist where Respondent is currently employed as a dentist and before commencing employment as a dentist at any other entity or location, shall provide a copy of this Final Decision and Order to that potential place of employment.

5) Respondent's supervising dentist shall submit quarterly reports to the Department Monitor regarding Respondent's practice and compliance with these requirements. Submission of the reports by the supervising dentist shall be Respondent's responsibility. The due date for the first report and subsequent reports shall be determined by the Department Monitor.

6) Upon becoming aware that Respondent has failed to abide by these practice requirements, or has otherwise violated the terms of this Order, Respondent's supervising dentist shall immediately submit written notification to the Department Monitor.

c. If Respondent fails to cooperate with treatment, or has otherwise violated the terms of this Order, Respondent shall immediately submit written notification to the Department Monitor.

4. These limitations shall end and Respondent shall be issued an unrestricted license upon Respondent providing proof sufficient to the Board that Respondent has successfully completed the STOP program and that it is the opinion of the treating professional, to a reasonable degree of professional certainty, that Respondent is not a risk to engage in inappropriate behavior with patients.

5. Respondent may also petition the Board to remove or amend any or all of the limitations. If the Board declines to grant a petition, in whole or in part, Respondent may request and be granted a class 1 hearing pursuant to Wis. Stat. § 227.01(3)(a) in which the burden shall be on Respondent to show that the Board's decision is arbitrary or capricious. The limitation shall remain in effect until there is a final decision in Respondent's favor on the issue.

6. Respondent shall, within 90 days of the date of this Order, pay to the Department of Regulation and Licensing the costs of this proceeding in the amount of \$750.00 pursuant to Wis. Stat. § 440.22(2).

7. All requests, reports, notifications and payment shall be sent to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935

Madison, WI 53708-8935

Fax (608) 266-2264

Telephone (608) 267-3817

8. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit any payment of the costs or forfeiture as set forth above, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

9. This Order is effective on the date of its signing.

Dentistry Examining Board

By: Bruce J Barrette DDS
A Member of the Board

1/11/06
Date