FILE COPY

STATE OF WISCONSIN

BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
GERALD D. O'MARRO, D.D.S. RESPONDENT.	:	96 DEN 035

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

Gerald D. O'Marro, D.D.S.
3970 North Oakland Avenue
Shorewood, WI 53211

Wisconsin 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 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 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. Gerald D. O'Marro (D.O.B. 6/25/34) is duly licensed in the state of Wisconsin as a dentist (license # 4001512). This license was first granted on June 27, 1959. Dr. O'Marro is engaged in the general practice of dentistry.

2. Respondent's latest address on file with the Department of Regulation and Licensing is 3970 North Oakland Avenue, Shorewood, WI 53211.

3. A survey of 78 dental patients who received prescription orders from Respondent revealed that during the period June, 1995, to June, 1996, Respondent prescribed Schedule II controlled substances in a dosage exceeding a 14 day supply to more than 30 of the patients. During the period 64 of the patients received at least one prescription order for Schedule II controlled substances from Respondent. Of the remaining 14 patients surveyed, 12 received at least one prescription order for a Schedule III or schedule IV controlled substance.

4. In many instances there was no supporting documentation in the patient record for the prescription orders and in other cases there was merely an entry stating " emergency examination, chief complaint pain," without a current diagnosis or treatment of the dental condition.

5. Oxycodone is a Schedule II controlled substance having a high potential for abuse. Because of its potential for producing psychic dependence, physical dependence and tolerance upon repeated administration, oxycodone should be given in the smallest effective dose and as infrequently as possible. Oxycodone may be effective in the treatment of acute postoperative pain.

6. Demerol® (meperidine hydrochloride) is also a Schedule II controlled substance having a high potential for abuse which should be given in the smallest dose and as infrequently as possible. Meperidine hydrochloride may be effective as an analgesic to relieve moderate to severe pain.

7. Tylenol® with codeine phosphate is a Schedule III controlled substance which has a moderate potential for abuse. Tolerance, psychic and physical dependence may result from repeated use of products containing codeine. Codeine is a mild analgesic which may be useful in the relief of mild to moderate pain.

8. Flurazepam hydrochloride and diazepam are benzodiazepines and are Schedule IV controlled substances which have some potential for abuse. Benzodiazepines may induce drowziness, confusion, weakness and dizziness. Benzodiazepines may be used preoperatively to relieve anxiety and provide sedation.

9. Examples of the prescribing practice of Respondent demonstrated in the patient files surveyed follow:

a. During the period 6/24/95 to 4/13/96, Respondent issued 23 prescription orders to patient DC for oxycodone in quantities of 20 to 40 tablets per prescription. For 15 of the prescription orders there is no corresponding documentation in the patient record of a diagnosis of a medical need for the controlled substance. None of the prescription orders were properly documented in the patient record.

b. During the period 3/29/96 to 6/18/96, Respondent issued 11 prescription orders to patient WC for oxycodone in quantities of 30 to 40 tablets per prescription. For 7 of the prescription orders there is no corresponding documentation in the patient record of a diagnosis of a medical need for the controlled substance. None of the prescription orders were properly documented in the patient record.

c. During the period 1/24/96 to 5/22/96, Respondent issued 9 prescription orders to patient SC for oxycodone in quantities of 30 to 40 tablets per prescription, and one prescription order of 10 tablets of flurazepam hydrochloride. For 4 of the prescription orders there is no corresponding documentation in the patient record of a diagnosis of a medical need for the controlled substance. None of the prescription orders were properly documented in the patient record.

d. During the period 1/16/96 to 6/04/96, Respondent issued 10 prescription orders to patient AG for oxycodone in quantities of 20 to 40 tablets per prescription, and one prescription order for 30 flurazepam hydrochloride tablets. Notations in the patient record for the corresponding dates typically indicate "emergency oral examination" or "chief complaint pain."

e. During the period 9/05/95 to 5/14/96, Respondent issued 11 prescription orders to patient SI for Tylenol® with codeine #4 in quantities of 20 tablets per prescription, and 4 prescription orders for oxycodone in quantities of 30 tablets per prescription. Typical notations in the patient record for the corresponding dates indicate "emergency oral examination - chief complaint pain- unit #11 fracture," however, the record does not indicate treatment of unit #11 until 4/04/96, when crown work was initiated.

f. The patient record of CL indicates that as of June 1, 1995, CL was endentulous. During the period 6/07/95 to 2/02/96, Respondent issued 15 prescription orders to CL for oxycodone in quantities of 20 to 40 tablets per prescription. Typical of the notations in the patient record for the corresponding dates is "emergency oral examination - chief complaint pain - provided RX."

g. During the period 12/21/95 to 5/22/96, Respondent issued 9 prescription orders to patient MN for oxycodone in quantities of 20 to 30 tablets per prescription, and 4 prescription orders for other controlled substances. For 8 of the prescription orders there is no corresponding documentation in the patient record of a diagnosis of a medical need for the controlled substances. None of the prescription orders were properly documented in the patient record.

h. In March, 1996, Respondent surgically removed root tips from the mouth of patient AT. In the month of March Respondent issued 5 prescription orders to AT for oxycodone in quantities of 30 to 40 tablets per prescription. Thereafter in April Respondent issued 3 additional prescription orders to AT for oxycodone in quantities of 30 tablets each without documentation in the patient record of a medical need for the controlled substances. In May, 1996, according to the patient record, the patient actively sought controlled substances from Respondent.

10. Respondent stated to a Division of Enforcement investigator that some patients exhibited drug seeking behavior, and others intimidated him with drug requests.

CONCLUSIONS OF LAW

By the conduct described above, Gerald D. O'Marro is subject to disciplinary action against his license to practice as a dentist in the state of Wisconsin, pursuant to Wis. Stats. sec. 447.07(3)(a) and (L), and Wis. Adm. Code sec. 5.02(1), (5), (6) and (18)

Respondent: 1) failed to make and document a comprehensive diagnosis of the dental condition of the patients;

2) failed to timely treat the dental condition of the patients, other than to provide palliative treatment through the prscribing of controlled substances;

3) failed to explore alternatives to the use of controlled substances for pain management;

4) failed to properly monitor and limit long term patient access to controlled substances.; and

5) failed to properly document the prescribing of controlled substances

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that :

1. Gerald D. O'Marro is REPRIMANDED for his unprofessional conduct in this matter.

2. The license of Gerald D. O'Marro to practice as a dentist in the state of Wisconsin is LIMITED as follows:

   a. Respondent shall not prescribe, administer, dispense, or order any controlled substance until he has taken and successfully completed the 45 hour course *in the Proper Prescribing of Controlled Dangerous Substances sponsored by* the Forensic and Educational Consultants of Margate, New Jersey, or an equivalent course which has been approved in advance by the Board. Respondent shall arrange for the course sponsor to report directly to the Department Monitor and shall release all records of his participation in the required training. Respondent shall be responsible for all costs associated with the required training. Respondent shall complete the required training within nine months of the date of this Order.

   b. Upon certification of the successful completion of the training required in paragraph 2a of this Order, Respondent may petition the Board for reinstatement of his prescribing privileges for controlled substances . The Board may determine, in its sole discretion, whether or not to grant the petition of Respondent, and denial in whole or in part of such a petition by the Board shall not constitute a denial of license within the meaning of sec. 227.01(3)(a) Stats. In the event that the Board grants to Respondent a reinstatement of any prescribing privileges:

      1) Respondent shall prescribe, administer and dispense controlled substances only as medically necessary and in the smallest dose and as infrequently as possible. Respondent shall not exceed the dosage and administration of a drug recommended by the Physicians Desk Reference®. If Respondent is granted prescribing privileges for Schedule II controlled substances, he shall not prescribe, administer or dispense more than a four

(4) day supply of the drug to a patient. In the event Respondent determines additional amounts of the controlled substance is medically necessary he shall refer the patient to another licensed medical practitioner.

2) Respondent shall maintain a log of all legend drugs and controlled substances prescribed, administered or dispensed by him. The log shall be a separate document from the individual patient records and shall list in chronological order the following:

(1) patient name
(2) date of prescription/dispensing/administration
(3) name of prescriber
(4) drug ID, strength, dosage
(5) refills authorized
(6) condition for which patient is being treated.

3) Every month following the date of this Order Respondent shall submit an accurate copy of the log entries for the preceding month to the Department Monitor, Division of Enforcement, P.O. Box 8935, Madison, WI 53708-8935, for review. Upon request Respondent shall produce the log for inspection by an investigator of the Division of Enforcement.

c. Respondent shall, within 9 months of the date of this Order certify to the Board the successful completion of an approved course of instruction of not less than 20 hours in modern dental record keeping. Respondent shall submit a course outline to the Board or its designee for approval within three (3) months of the date of this Order. To be acceptable the outline must contain the name of the institution providing the instruction, the name of the instructor, and the course content. Respondent shall be responsible for all costs associated with the required training.

3. Respondent shall pay the COSTS of investigation and prosecution of this action in the sum of six hundred dollars ($ 600.00) to the Department of Regulation and Licensing within 60 days of the date of this Order.

4. In the event Respondent fails to timely comply with any of the requirements set forth in this Order, his license to practice shall be suspended, without further notice or hearing until Respondent has fully complied with all of the terms of this Order.

5. Respondent may petition the Board at any time after one year from the date of this Order to modify any of the conditions or limitations contained in the Order. The Board may in its sole discretion grant or deny the petition, and denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. sec. 227.01(3) and 227.42.

6. 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".

7. This Order shall become effective upon the date of its signing.

WISCONSIN DENTISTRY EXAMINING BOARD

By: 11/6/96

A Member of the Board Date

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STATE OF WISCONSIN

BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	STIPULATION
GERALD D. O'MARRO, D.D.S., RESPONDENT.	:	96 DEN 035

It is hereby stipulated between Gerald D. O'Marro, personally on his own behalf and Joseph M. Fasi, II, his attorney, and by James W. Harris, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. Respondent 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 a preponderance of the 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. Respondent is aware of his right to seek legal representation and has obtained legal advice prior to signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Dentistry Examining Board. 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. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by he contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney for the Division of Enforcement may appear before the Dentistry Examining Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the Stipulation.

7. The Division of Enforcement joins Respondent in recommending the Dentistry Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Gerald D. O'Marro, D.D.S.	Date
Joseph M. Fasi, II, Attorney for Respondent	11/1/96 Date
James W. Harris, Attorney Division of Enforcement	November 5, 1996 Date

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935
(608)
TTY# (608) 267-2416] hearing or speech
TRS# 1-800-947-3529] impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On November 6, 1996, the Pharmacy Examining Board took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a forfeiture.

The amount of the costs assessed is: $600.00 Case #: 96DEN035

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of $ 600.00

The costs and/or forfeitures are due: January 5, 1997

NAME: Gerald D. O'Marro, D.D.S. LICENSE NUMBER: 4001512

STREET ADDRESS: 3970 North Oakland Avenue

CITY: Shorewood STATE: WI ZIP CODE: 53211

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

_____

For Receipting Use Only

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
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STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE DENTISTRY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Gerald D. O'Marro, D.D.S.,

Respondent.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On November 12, 1996, I served the Final Decision and Order dated November 6, 1996, and Guidelines for Payment of Costs and/or Forfeitures upon the Respondent Gerald D. O'Marro, D.D.S. and his attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and his attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the Respondent's envelope is P 213 340 147 and the certified mail receipt number on his attorney's envelope is P 213 340 148.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address:

Gerald D. O'Marro, D.D.S.
3970 North Oakland Avenue
Shorewood WI 53211

Joseph M. Fasi II, Attorney
100 E. Wisconsin Ave., Suite 2600
Milwaukee WI 53202

NOTARY PUBLIC
RUBY JEFFERSON-MOORE
STATE OF WISCONSIN

Kate Rotenberg

Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me
this 12th day of November, 1996.

Ruby Jefferson-Moore

Notary Public, State of Wisconsin
My commission is permanent.

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN DENTISTRY EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

November 12, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)