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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF APPLICATION FOR A LICENSE TO PRACTICE DENTISTRY OF RICHARD O. HEINZELMAN, APPLICANT.	: : : : :	FINAL DECISION AND ORDER LS8712221 DEN

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

Richard O. Heinzelman
676 North Holden Street
Port Washington, WI 53064

State of Wisconsin
Dentistry Examining Board
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708

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

The parties in this matter agree to the terms and conditions of the attached stipulation as the final deposition 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 makes the following:

FINDINGS OF FACT

1. Richard O. Heinzelman, applicant, 676 North Holden Street, Port Washington, Wisconsin 53704, was licensed to practice dentistry in the State of Wisconsin on June 17, 1968.

2. Applicant's license to practice dentistry expired September 30, 1983, without renewal.

3. On May 4, 1984, the Dentistry Examining Board revoked Applicant's license pursuant to Wis. Stats. sec. 447.07(1).

4. Applicant did not renew or attempt to renew his license until August, 1987.

5. Applicant continued to practice as a dentist until November, 1987.

6. Applicant requested renewal of his license in August, 1987.

7. On September 2, 1987, the board denied renewal and, pursuant to Wis. Stats. sec. 447.07(1), required reexamination prior to relicensure.

8. Applicant requested the Board to reconsider its September 2, 1987, decision.

9. On November 4, 1987, the Board reconsidered and reaffirmed its September 2, 1987 decision.

10. Applicant requested a hearing regarding the denial.

11. A hearing was held February 12, 1988, at which substantial evidence was presented that Applicant is a competent practitioner.

12. A Proposed Decision was filed by the hearing examiner on February 29, 1988. The attorney for the Department of Regulation and Licensing, Division of Enforcement filed Objections to the Proposed Decision on March 10, 1988.

13. The Applicant and the attorneys for both parties have requested that the Proposed Decision and the Objections to the Proposed Decision be disregarded and that this Order be issued as the final resolution of this matter.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction of this matter pursuant to Wis. Stats. sec. 447.07.

2. Wis. Stats. sec. 447.07(1) grants the Board discretion in determining whether to reinstate the Applicant's license without reexamination.

ORDER

NOW THEREFORE IT IS ORDERED that the Dentistry license of Richard O. Heinzelman is reinstated upon payment of all fees and penalties established by Wis. Stats. sec. 440.05.

IT IS FURTHER ORDERED that Richard O. Heinzelman shall not advertise or engage in treatment of patients by immune therapy or oral vaccines unless he has obtained a written modification of this board order.

IT IS FURTHER ORDERED that investigative files 87 DEN 47; 87 DEN 51; and 87 DEN 88 shall be closed.

Dated this 6 day of July, 1988.

WISCONSIN DENTISTRY EXAMINING BOARD

By Katherine A. Kelly, DDS
A Member of the Board Chair

REH:lml
DOEATTY-162
6/27/88

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF APPLICATION FOR A LICENSE TO PRACTICE DENTISTRY OF RICHARD O. HEINZELMAN, APPLICANT.	: : : : :	STIPULATION LS8712221 DEN

It is hereby stipulated and agreed by and between Richard O. Heinzelman, applicant; Gerald P. Boyle, attorney for the applicant; and Ruth E. Heike, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. That this stipulation may be submitted directly to the Dentistry Examining Board and need not be submitted to Wayne Austin, the hearing examiner appointed in this matter.

2. That the Final Decision and Order attached to this Stipulation, may be made and entered in this matter, by the Dentistry Examining Board, without prior notice to any party.

3. That a hearing in this matter was held before Hearing Examiner Austin on February 12, 1988, and a Proposed Decision was filed by Hearing Examiner Austin on February 29, 1988.

4. That the attorney for the Division of Enforcement filed Objections to the Proposed Decision on March 10, 1988.

5. That the Proposed Decision and Objections to it are scheduled to be considered at the July 6, 1988 meeting of the Board.

6. That it is the desire and intent of the applicant and the attorneys for both parties that the hearing examiner's Proposed Decision and the Division of Enforcement's Objections be disregarded and that this Stipulation and Final Decision and Order be the Final Resolution of this matter.

7. That the applicant and the attorneys for the parties may appear before the Dentistry Examining Board and argue in favor of acceptance of this stipulation and the entry and issuance of the attached Final Decision and Order.

8. That in the event the Dentistry Examining Board accepts this stipulation in its entirety and issues the attached Findings of Fact, Conclusions of Law, Final Decision and Order exactly as written, the parties agree to waive any right to appeal the decision in case #LS8712221 DEN.

Dated this 6TH day of ~~June,~~ JULY 1988.

Richard O. Heinzelman

Richard O. Heinzelman, Applicant

Dated this 6TH day of ~~June,~~ JULY 1988.

Gerald P. Boyle

Gerald P. Boyle, Attorney ~~for~~ Applicant

Dated this 6th day of ~~June,~~ July 1988.

Ruth E. Heike

Ruth E. Heike, Attorney
Division of Enforcement
Department of Regulation & Licensing

REH:lml
DOEATTY-162
6/27/88

BEFORE THE STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE APPLICATION FOR A LICENSE TO PRACTICE DENTISTRY OF RICHARD O. HEINZELMAN, APPLICANT.	:	NOTICE OF FILING PROPOSED DECISION

To: Gerald P. Boyle
Attorney at Law
1124 West Wells Street
Milwaukee, Wisconsin 53233

Ruth E. Heike
Attorney at Law
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, Wisconsin 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Dentistry Examining Board by the Hearing Examiner, Wayne R. Austin. A copy of the Proposed Decision is attached hereto.

If you are adversely affected by, and have objections to, the Proposed Decision, you may file your objections, briefly stating the reasons and authorities for each objection, and argue with respect to those objections in writing. Your objections and argument must be submitted and received at the office of the Dentistry Examining Board, Room 176, Department of Regulation and Licensing, 1400 East Washington Avenue, P. O. Box 8935, Madison, Wisconsin 53708, on or before March 14, 1988.

The attached Proposed Decision is the Examiner's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision together with any objections and arguments filed, the Dentistry Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 29th day of February, 1988.

Wayne R. Austin
Hearing Examiner

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE APPLICATION FOR A LICENSE TO PRACTICE DENTISTRY OF RICHARD O. HEINZELMAN, APPLICANT	:	PROPOSED DECISION

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

Richard O. Heinzelman
2610 North 76th Street
Milwaukee, WI 53213

State of Wisconsin Dentistry Examining Board
1400 E. Washington Avenue
P.O. Box 8935
Madison, WI 53708

Department of Regulation & Licensing
Division of Enforcement
1400 E. Washington Avenue
P.O. Box 8935
Madison, WI 53708

A hearing was conducted in the above-captioned matter on February 12, 1988, at 1400 East Washington Avenue, Madison, Wisconsin. Applicant appeared in person and by Attorney Gerald P. Boyle. The Division of Enforcement appeared by Attorney Ruth E. Heike.

Based upon the entire record in this case, the hearing examiner recommends that the Dentistry Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Richard O. Heinzelman (applicant), 2610 North 76th Street, Milwaukee, Wisconsin, was licensed by the Dentistry Examining Board (board) to practice as a dentist in Wisconsin on June 17, 1968.

2. Applicant's license to practice as a dentist expired on September 30, 1983, and applicant failed to renew his license at that time.

3. Pursuant to Wis. Stats. sec. 447.07(1), the board revoked applicant's license on May 4, 1984 for failure to renew his license within 60 days following the expiration.

4. In early 1982, applicant moved his dental practice from Mequon, Wisconsin to Fox Point, Wisconsin. Applicant failed to notify the board of his new address.

5. Based upon applicants failure to notify the board of his new address in 1982, it is probable that he did not receive the board's application for renewal in 1983, which was sent to the Mequon address.

6. Applicant failed to renew or attempt to renew his registration from the time of its expiration in September of 1983 until August, 1987. He continued to practice as a dentist, however, until November, 1987.

7. Applicant received notice from the board that he did not hold a current registration in August, 1987. Applicant thereafter applied for reinstatement of his license, which was denied by the board on September 2, 1987. Applicant appealed the denial of his application on October 22, 1987, and the board affirmed its previous action denying the application on November 4, 1987.

8. Applicant continued to practice between August, 1987, and November, 1987, based upon his assumption that he could continue to practice while his appeal of the board's action was pending. He ceased practice in November, 1987, upon being notified by his attorney that his assumption was incorrect.

9. Applicant's failure to renew his registration from 1983 to 1987 was inadvertent. There is no evidence in the record of this case that prior to August, 1987, applicant knew that his registration was not current, and no evidence that his failure to renew or attempt to renew his registration arose from some purposeful motivation. Evidence that applicant was not aware of the status of his license includes the probability that he received no actual notice of the expiration of his license, and the fact that throughout the period in question he continued to maintain his license to practice as a pharmacist in Wisconsin on a current basis.

10. Wis. Stats. sec. 447.07(1) permits the board to require an applicant who has not renewed his or her application within one year after revocation for nonrenewal to take an examination in order to "demonstrate current qualification to practice".

11. In the board's September 2, 1987 denial of applicant's application, as affirmed by its action of November 4, 1987, the board invoked the provisions of Wis. Stats. sec. 447.07(1) so as to require applicant to take and pass the Central Regional Dental Testing Service's examination prior to reregistration.

12. In its Notice of Hearing an applicant's appeal of the board's actions of September 2 and November 4, 1987, the board's statement of the issue to be decided at hearing is "whether your failure to be licensed for a period of four years raises sufficient questions regarding the current status of your dental skills to justify the Dentistry Examining Board in requiring you to take and to pass the Central Regional Exam prior to reinstatement of your license."

13. The evidence is clear and convincing that applicant is currently qualified to practice as a dentist in Wisconsin.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 447.07.

2. Under Wis. Stats. sec. 447.07(1), the board may order that a dentist who has failed to renew his or her license within one year following revocation of the license for failure to renew be required to "demonstrate current qualification to practice by taking an examination in such dental subjects as may be required by the examining board..."

3. The evidence is clear and convincing that applicant is currently qualified to practice as a dentist in Wisconsin within the meaning of Wis. Stats. sec. 447.07(1).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Richard O. Heinzelman to practice as a dentist in Wisconsin be, and hereby is, reinstated upon payment of all fees and penalties established by Wis. Stats. sec. 440.05.

OPINION

In the board's Notice of Hearing in this matter dated December 21, 1987, the board stated in part as follows:

> "On September 2, 1987, the Wisconsin Dentistry Examining Board denied your application for reinstatement of a license to practice dentistry on the grounds that since you have not had a license in Wisconsin since 1983, you should be required to take and pass the Central Regional Exam prior to reinstatement of your license."
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> * * *
>
> "The board reconsidered their September 2, 1987, decision at its meeting of November 4, 1987. The Dentistry Examining Board reaffirmed its action of September 2, 1987, requiring you to take and pass the Central Regional Dental Testing Service's examination prior to reinstatement of his (sic) dental license... The issue raised for consideration at the

hearing on the denial of your application for reinstatement of your license is whether your failure to be licensed for a period of four years raises sufficient questions regarding the current status of your dental skills to justify the Dentistry Examining Board in requiring you to take and pass the Central Regional Exam prior to reinstatement of your license."

The board's statement of the basis for its initial determination that applicant should be required to sit for examination is entirely consistent with the rationale set forth in Wis. Stats. sec. 447.07(1), which states in relevant part as follows:

> "The examining board may, without further notice or process, limit, suspend or revoke the license of a dentist who fails within 60 days after the mailing of notice in writing...to register and pay the fee due... . If application for reinstatement is not made within one year from the date of revocation the dentist may be required to demonstrate current qualification to practice by taking an examination in such dental subjects as may be required by the examining board..."

The board's statement of the issue to be determined at hearing and the statute authorizing the board to require examination in these circumstances are thus both premised upon a concern that one who has failed for a period exceeding one year to be currently registered to practice dentistry may no longer be competent to resume that practice. This is certainly a legitimate concern, and one conceded as such by the applicant. Accordingly, the examiner in assessing this case must attempt the following determination: Did the applicant submit sufficient evidence at hearing to meet his burden of establishing his current competency to practice? The unequivocal answer is that he did; for the following reasons.

While applicant was not currently registered between March, 1983 and November, 1987 he continued to practice dentistry throughout that period. Division of Enforcement Attorney Ruth Heike considers that fact significant in supporting the board's preliminary determination in this case (as will be discussed in more detail below). In the opinion of the hearing examiner, however, the real significance of applicant's uninterrupted practice militates for an entirely different result. Because applicant continuously engaged in the practice of dentistry throughout the entire period in question, any presumption or question of loss of competency raised by his failure to be currently registered is negated. Absent any evidence that his practice during that four year period actually demonstrated any negligence or incompetency, there is no reason to infer that any negligent or incompetent practice occurred and, concomitantly, no reason to assume that applicant is not presently fully competent to practice.

Not only is there no evidence in this record of applicant's current inability to competently practice as a dentist, but the only evidence presented at the hearing in this regard is that applicant is not only minimally competent to practice dentistry, but that he is highly competent and skilled in his practice. Three of applicant's patients testified on his behalf. Each had utilized applicant's services for more than 10 years

(including the years in question); each had had extensive work performed, including major reconstructive dentistry; and each testified that every facet of applicant's dental care was superb. Joan Byrd, applicant's dental assistant from 1983 until some time in 1985, testified to her extensive background in the health care field. She also testified that her observation of applicant's hands-on dental care, his concern for his patients, and his billing practices, were above reproach. Todd Krueger, a Milwaukee dentist specializing in prosthetics, testified that applicant had referred a number of his patients to Dr. Krueger in November, 1987. Dr. Krueger testified that based upon his examination of those patients, the services previously performed by respondent demonstrated complete competence. Krueger also testified that he examined patient records prepared by applicant for these and other patients for whom applicant had provided services, and that those records uniformly demonstrated high-quality dental care. Dr. Thomas Barry is a general dentist in Milwaukee, who testified that he has seen a number of applicant's patients, and that at the request of applicant's attorney he examined a number of patient records prepared by applicant. Dr. Barry testified that based upon his evaluations and observations, applicant's dental care was "highly competent".

The foregoing testimony, along with respondent's credible testimony that in 17 years of practice he's never had a single complaint regarding the quality of his dental care, establishes a record in this case entirely devoid of even the least suggestion that applicant is anything but a fully competent, highly skilled practitioner. Accordingly, given that the purpose of Wis. Stats. Sec. 447.07(1) and of the board's inquiry in this case is to ensure applicant's current competency to practice, and inasmuch as the uncontroverted evidence is that applicant is currently competent, the conclusion is compelled that there is no basis for requiring that applicant be reexamined.

In her closing argument, Ms. Heike nonetheless recommended that applicant be so required. First, she pointed out that in a letter to the board concerning this matter (which was not made a part of this record), applicant had indicated that during the period in question he had suffered some health problems and had for some period of time practiced on a less than full-time basis. Ms. Heike argued that this circumstance should raise concern by the board as to applicant's current competence. Applicant testified that for some period between expiration of his license in 1983 and the time he ceased practice in late 1987, he was treated for arthritis and allergies, and that he did not always practice full-time during that period. He also testified, however, that those health problems did not at any time interfere with his competency to practice, that he practiced between 30 and 40 hours a week even during the period of his treatment for those health problems, and that his medical treatment was successful. Absent any evidence to the contrary, there is no logical nexus between the circumstance of successful treatment for arthritis and allergies, and the ability to competently practice dentistry, and this record is devoid of any such contrary evidence.

Second, Ms. Heike seemed to argue that the very fact of applicant's failure to be currently registered for four years is, in and of itself, a basis for requiring reexamination when she stated "this board should not reward someone for practicing illegally for a number of years." As set forth in Finding of Fact #10, there can be little question based on this record that applicant's failure to renew his registration was inadvertent. There is also little question that his failure to renew resulted from his own negligence in failing to notify the board of his various changes of address. But the appropriate board response to applicant's negligent failure to renew is not to require reexamination. Assuming as we must that the purpose of the reexamination provision of 447.07(1) is exclusively to resolve questions as to current competency, and concluding as we have that applicant has satisfactorily demonstrated his competency, then to impose a requirement of reexamination in these circumstances would be clearly punitive rather than remedial.

It is well established that the objectives of discipline in licensee disciplinary proceedings are to protect the public, to rehabilitate the licensee, and to deter other licensees from engaging in similar conduct. State v. Aldrich, 71 Wis. 2d 206 (1976). It could certainly be argued that these same concepts are applicable in the circumstances of this matter. But even assuming that to be the case, it is the examiner's opinion that those circumstances do not support any action by the board beyond simply reinstating the applicant's license at this time. Because it has been concluded that applicant is currently competent to practice, reinstatement of his license will not negatively impact on the public health and safety. Further, because it has been concluded that applicant's failure to renew was inadvertent, the consideration of rehabilitation is probably of little significance. To the extent rehabilitation is a factor, however, the burden of having been out of practice for four months, along with the time and expense involved in these proceedings, will doubtless ensure that applicant will not be similarly remiss in the future. Finally, to the extent that deterrence of other licensees may be said to be a realistic goal where the conduct in question is inadvertent rather than intentional, applicant's loss of practice and his difficulties in accomplishing the reinstatement of his license should have that desired effect.

Dated at Madison, Wisconsin, this 29th day of February, 1988.

Respectfully submitted,

Wayne R. Austin
Hearing Examiner

WRA:skv
BDLS-63