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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST THEODORE R. PRICE, JR., D.D.S., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER

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

Theodore R. Price, Jr., D.D.S.
3073 N. 53rd Street
Milwaukee, WI 53210

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 rights of a party aggrieved by this decision to petition the Board for rehearing and to petition for judicial review are set forth in the attached "Notice of Appeal Information."

A disciplinary hearing was held in the above-captioned matter before Donald R. Rittel, Administrative Law Judge. The respondent, Theodore R. Price, Jr., D.D.S., appeared personally and by his attorney, Thomas E. Hayes, Law Offices of Nathaniel D. Rothstein, Suite 200, 238 West Wisconsin Avenue, Milwaukee, Wisconsin 54203. The complainant appeared by Attorney Ruth E. Heike, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

The Administrative Law Judge filed his Proposed Decision on July 6, 1990, and the State filed its objections to the Proposed Decision on July 27, 1990. The Board considered the matter after a review of the record of the case, including the transcript, exhibits, Proposed Decision and Objections. Based upon the record herein, the Dentistry Examining Board issues as its Final Decision in this case the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Theodore R. Price, Jr.,,D.D.S., the respondent herein, of 3073 N. 53rd Street, Milwaukee, Wisconsin 53210, is licensed to practice dentistry in the State of Wisconsin, pursuant to license #2419, granted on November 30, 1979.

Count I

2. Steven Gutter was a patient of respondent's in August through September, 1983.

3. Respondent filed an insurance claim form shortly after September 30, 1983 with Prudential Insurance Company of America (Prudential) of Merrillville, Indiana, relating to his treatment of Steven Gutter. See, Exhibit A attached. Among other things, respondent represented upon the insurance claim form that:

a. tooth #17 was an impaction with surgical extraction performed on September 30, 1983;

b. tooth #32 was an impaction with surgical extraction performed on September 30, 1983;

c. tooth #1 was an impaction with surgical extraction performed on September 9, 1983.

d. tooth #16 was an impaction with surgical extraction performed on September 9, 1983.

4. When respondent submitted the insurance claim form for payment, he knew that he had not extracted any of the four wisdom teeth of Steven Gutter on any occasion.

5. On or about October 25, 1983, and pursuant to the representations upon the insurance claim form, Prudential sent an explanation of benefits and a check payable respondent in the amount of $954.00. Of that amount, $686.00 was paid for the extraction of the four teeth.

6. Under date of November 9, 1984, respondent directed a letter to Prudential in which he indicated that Prudential should not have been billed for the extraction of the concerned wisdom teeth of Steven Gutter. Thereafter, he returned $686.00 to Prudential.

Count II

7. Earline Gutter was a patient of respondent's between July, 1983 and July, 1984.

8. Respondent filed two insurance claim forms with Prudential relating to his services for Earline Gutter. The first was filed on or about August 30, 1983, and the other in May, 1984.

9. Respondent represented upon a claim form that root canal treatment was performed upon Earline Gutter regarding tooth #15 on May 16, 1984, and that his fee was $280.00.

10. When respondent submitted the insurance claim form for payment, he knew that although he had commenced root canal treatment upon tooth #15 of Earline Gutter, by opening the tooth and inserting cotton in the pulp chamber, he had neither opened the canals nor completed the procedure.

11. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the claimed root canal treatment.

Count III

12. Respondent represented upon a claim form that osseous surgery U/L flap was performed upon Earline Gutter on April 24, 1984, and that his fee was $287.00.

13. When respondent submitted the insurance claim form for payment, he knew that he had not performed osseous surgery; but rather, essentially gingival curettage.

14. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the claimed osseous surgery U/L flap.

Count IV

15. Respondent represented upon a claim form that osseous surgery U/R flap was performed upon Earline Gutter on May 2, 1984, and that his fee was $287.00.

16. When respondent submitted the insurance claim form for payment, he knew that he had not performed osseous surgery; but rather, essentially gingival curettage.

17. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the claimed osseous surgery U/R flap.

Count V

18. Respondent represented upon a claim form that osseous surgery L/R flap was performed upon Earline Gutter on May 9, 1984, and that his fee was $287.00.

19. When respondent submitted the insurance claim form for payment, he knew that he had not performed osseous surgery; but rather, essentially gingival curettage.

20. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the claimed osseous surgery L/R flap.

Count VI

21. Respondent represented upon a claim form that a full occlusal adjustment was performed upon Earline Gutter on May 16, 1984, and that his fee was $125.00.

22. When respondent submitted the insurance claim form for payment, he knew that he had not performed a full occlusal adjustment.

23. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment a full occlusal adjustment.

Count VII

24. Respondent represented upon a claim form that he placed an amalgam on surfaces MO of tooth #13 of Earline Gutter on August 20, 1983, and that his fee was $34.00.

25. When respondent submitted the insurance claim form for payment, he had, in fact, placed an amalgam on surfaces MO of tooth #13 of Earline Gutter.

26. On or about September 9, 1983, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the amalgam on surfaces MO of tooth #13.

27. Subsequently, respondent represented upon a second claim form that he placed an amalgam on surfaces MO of tooth #13 of Earline Gutter on May 16, 1984, and that his fee was $34.00.

28. When respondent filed the second claim for an amalgam on tooth #13, he knew that he had not provided the service as claimed, and was not entitled to the payment claimed.

29. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for an amalgam on surfaces MO of tooth #13.

Count VIII

30. Respondent represented upon a claim form that a lower partial denture was provided to Earline Gutter on August 25, 1983, and that his fee was $425.00.

31. When respondent submitted the insurance claim form for payment, he knew that he had not provided a lower partial denture, although he had initiated procedures to begin construction of the partial.

32. On or about July 9, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the lower partial denture.

Count IX

33. Respondent represented upon a claim form that a three-surface composite was performed on surfaces DLF of tooth #9 of Earline Gutter on August 20, 1983, and that his fee was $40.00.

34. When respondent submitted the claim for payment for services for tooth #9, he knew that he had not performed the services claimed and was not entitled to the payment claimed.

35. On or about September 13, 1983, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for a three-surface composite on tooth #9.

Count X

36. Respondent represented upon a claim form that he had provided an upper partial for Earline Gutter on 8/25/25 (sic, read 1983), and that his fee was $375.00.

37. When respondent submitted the insurance claim form for payment, he knew that he had not provided an upper partial, but had only initiated procedures to begin construction of the upper partial.

38. At the time respondent submitted the claim form he intended to be paid for the upper partial.

39. On or about September 9, 1983, Prudential sent an explanation of benefits to respondent in which it indicated that the charges for the upper partial were excluded from coverage and that no payment was being made.

Count XI

40. Respondent represented, upon a claim form that he had provided a lower partial for Earline Gutter on 8/25/25 (sic, read 1983), and that his fee was $375.00.

41. When respondent submitted the insurance form for payment, he knew that he had not provided a lower partial, but had only initiated procedures to begin construction of the lower partial.

42. At the time respondent submitted the claim form he intended to be paid for the lower partial.

43. On or about September 9, 1983, Prudential sent an explanation of benefits to respondent in which it indicated that the charges for the lower partial were excluded from coverage and that no payment was being made because there was no indication that the tooth it was to replace had been extracted while under coverage.

Count XII.

44. Respondent represented upon a claim form that he had extracted tooth #19 of Earline Gutter on June 5, 1983, and that his fee was $25.00.

45. Respondent did extract tooth #19 of Earline Gutter. However, respondent knew that this service was performed while he was previously employed in a clinic which had already billed for the service.

46. At the time respondent submitted the claim form he intended to be paid for the extraction of tooth #19.

47. On or about July 9, 1984, Prudential sent an explanation of benefits to respondent in which it indicated that the charges for the extraction of tooth #19 had been previously considered, were excluded from coverage and that no payment was being made.

Insurance Audit

48. Prudential sent correspondence to respondent under date of September 7, 1984 in which it was indicated that the company was conducting a "periodic audit" and requested respondent to confirm that he had provided the enumerated dental services to Earline Gutter.

49. Respondent replied by letter dated November 9, 1984 and stated that Earline Gutter had ceased seeing him before "all procedures were completed." He further indicated that the root canal therapy had not been completed (Count II), and that the occlusal adjustment was "limited" (Count VI). He also wrote that he would "refund the amounts paid by you to restore her benefits for whatever dentist completes her treatment."

50. Respondent also returned Prudential's letter, certifying that the services had been performed for Earline Gutter "except where crossed out." The services crossed out were the lower partial denture (Counts VIII and XI) and the osseous surgery in all three areas (Counts III, IV and V).

51. Respondent further notified Prudential by correspondence dated November 9, 1984, that he had not extracted any of Steven Gutter's wisdom teeth (Count I). After further discussion with Prudential, respondent returned the $686.00 he had been paid for the procedure.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 447.07(3).

2. By knowingly submitting false insurance claims in which he represented to have performed and completed services known not to have been performed and completed, with the intent that they be paid, and by obtaining payment for those services, as set forth in Counts I through IX above, respondent violated Wis. Adm. Code sec. DE 5.02(8), and Wis. Stats. secs. 447.07(3)(a)(f)(i) and (k).

3. By knowingly submitting false insurance claims in which he represented to have performed and completed services known not to have been performed and completed, with the intent that they be paid, as set forth in Counts X, XI and XII above, respondent violated Wis. Adm. Code sec. DE 5.02(15), and Wis. Stats. secs. 447.07(3)(a)(f) and (k).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Theodore R. Price, Jr., D.D.S., to practice dentistry in the State of Wisconsin shall be, and hereby is, REVOKED, effective on the date of this order.

Respondent Theodore R. Price, Jr., is further ordered to return all license certificates issued by the Dentistry Examining Board to the Board offices.

EXPLANATION OF VARIANCE

The Administrative Law Judge in this case reduced a confusing record to a clear statement of the case, and the Board accepts all but three of the Administrative Law Judge's recommendations. The Board disagrees with the Administrative Law Judge on the appropriate discipline to be imposed against respondent, and makes amendments to two findings of fact in which the Administrative Law Judge made inferences the Board declines to make. The Board amended findings of fact number 28 and 34 because the Board's review of the transcript of the hearing did not reveal sufficient evidence to support a conclusion of mistake on the part of Dr. Price in filing a claim for

restoration work on tooth 13 when he meant tooth 12, or a conclusion that Dr. Price had placed any restoration on tooth 9. To the contrary, the record of the hearing demonstrated to the Board that Dr. Price was continually changing his explanation of his work and billings regarding these patients, confusing the issue of what work, if any, he had performed on which teeth. On the record of the hearing, there is no support, other than Dr. Price's assertion, for a finding that Dr. Price did any work on those teeth. Dr. Price is not a credible witness in this regard, and even he has no firm testimony to offer on the point, testifying that he does not know whether he did anything with tooth 9 (Transcript, p. 78), and retreating from any claim of treating tooth 12 (Transcript, p. 75-76). The Board declines to give credit to Dr. Price's assertions without independent corroborating evidence. Dr. Price engaged in a clearly dishonest course of dealing with these patients, and clearly intended to do so. The record compels the conclusion that Dr. Price cannot be trusted to voluntarily tell the truth regarding his charges for treatment of these patients.

Dr. Price billed for services he did not perform, and which he knew he did not perform, and for which he knew he had no claim to payment. When challenged, he claimed mistake, but made no timely restitution. In this action, he has attempted to defend his fraud on the basis of mistake, but has offered no evidence of any substance to support the defense in the face of overwhelming evidence of intentional fraud.

The goals of discipline are rehabilitation of the licensee, protection of the public, and deterrence of other licensees from similar behavior. In this case, the Board is convinced that it is not possible to predict when, or if, Dr. Price may be rehabilitated. This case presents the difficult issue of dealing with a person who is basically dishonest. Such a case is as serious as many forms of incompetence, but much harder to deal with. An incompetent licensee can attain competence through training and study, and the Board can be assured that the licensee has attained competence by testing the skills of the licensee. Dishonesty can only be overcome by the motivation and commitment of the dishonest person. There is nothing in the record of this case to support the notion that Dr. Price has or will develop that motivation or commitment to honesty. Competence can be tested, but honesty, unfortunately, can be feigned.

Protection of the public is also more difficult when dealing with a case of basic dishonesty by a licensee. A licensee who is not competent in some area of dentistry can be permitted to practice under a limited license which prohibits the licensee from engaging in that type of practice. A dishonest licensee cannot be so easily prevented from harming the public because the opportunities for a dishonest licensee to cheat his patients are so numerous. Because there is no satisfactory method of predicting when, or if, Dr. Price will commit to being honest, there is no alternative to revocation of his license to protect his potential victims from further fraud. Dr. Price was willing to bill for and accept payment for having removed wisdom teeth which were still firmly placed in his patient's mouth; prevention of similar fraud in the future would require the constant supervision of every detail of Dr. Price's practice, including patient examinations and consultations.

Deterrence is a primary concern of the Board. The record in this matter makes a compelling case of long term fraud carried out by Dr. Price. The Board cannot stress too strongly its conviction that honesty is a necessary part of the relation between a dentist and patient, and between the dentist and the entity which pays for a patient's care when the patient is not directly paying the bills. The Board believes that this case presents such a clear and flagrant violation of the expectation of honesty on the part of a professional that anything less than revocation of Dr. Price's license to practice in the state of Wisconsin would unreasonably depreciate the seriousness of the offense, and would lead other professionals and the public to question whether the standard is honesty, or something less.

Dated this 11th day of September, 1990.

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

Eva Dahl

Eva Dahl, D.D.S.
Chairperson

X17959A

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)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Dentistry Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Dentistry Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Dentistry Examining Board.

The date of mailing of this decision is September 12, 1990.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

BEFORE THE STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	NOTICE OF FILING PROPOSED DECISION
THEODORE R. PRICE, JR., D.D.S., RESPONDENT.	:	

TO: Thomas E. Hayes
Nathaniel D. Rothstein Law Offices
Attorneys at Law
238 West Wisconsin Avenue
Suite 200
Milwaukee, WI 53203

Ruth E. Heike,
Attorney at Law
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 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, Donald R. Rittel. 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 July 27, 1990.

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 6th day of July, 1990.

Donald R. Rittel
Hearing Examiner

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST THEODORE R. PRICE, JR., D.D.S., RESPONDENT.	: : : : :	PROPOSED DECISION

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

Theodore R. Price, Jr., D.D.S.
3073 N. 53rd Street
Milwaukee, WI 53210

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

A hearing was held in the above-captioned matter. The respondent, Theodore R. Price, Jr., D.D.S., appeared personally and by his attorney, Thomas E. Hayes, Law Offices of Nathaniel D. Rothstein, Suite 200, 238 West Wisconsin Avenue, Milwaukee, Wisconsin 54203. The complainant appeared by Attorney Ruth E. Heike, Department of Regulation and Licensing, Division of Enforcement, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

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

FINDINGS OF FACT

1. Theodore R. Price, Jr., D.D.S., the respondent herein, of 3073 N. 53rd Street, Milwaukee, Wisconsin 53210, is licensed to practice dentistry in the State of Wisconsin, pursuant to license #2419, granted on November 30, 1979.

Count I

2. Steven Gutter was a patient of respondent's in August through September, 1983.

3. Respondent filed an insurance claim form shortly after September 30, 1983 with Prudential Insurance Company of America (Prudential) of Merrillville, Indiana, relating to his treatment of Steven Gutter. See, Exhibit A attached. Among other things, respondent represented upon the insurance claim form that:

a. tooth #17 was an impaction with surgical extraction performed on September 30, 1983;

b. tooth #32 was an impaction with surgical extraction performed on September 30, 1983;

c. tooth #1 was an impaction with surgical extraction performed on September 9, 1983.

d. tooth #16 was an impaction with surgical extraction performed on September 9, 1983.

4. When respondent submitted the insurance claim form for payment, he knew that he had not extracted any of the four wisdom teeth of Steven Gutter on any occasion.

5. On or about October 25, 1983, and pursuant to the representations upon the insurance claim form, Prudential sent an explanation of benefits and a check payable respondent in the amount of $954.00. Of that amount, $686.00 was paid for the extraction of the four teeth.

6. Under date of November 9, 1984, respondent directed a letter to Prudential in which he indicated that Prudential should not have been billed for the extraction of the concerned wisdom teeth of Steven Gutter. Thereafter, he returned $686.00 to Prudential.

Count II

7. Earline Gutter was a patient of respondent's between July, 1983 and July, 1984.

8. Respondent filed two insurance claim forms with Prudential relating to his services for Earline Gutter. The first was filed on or about August 30, 1983 (Exhibit C, attached), and the other in May, 1984 (Exhibit D, attached).

9. Respondent represented upon a claim form (Exhibit D) that root canal treatment was performed upon Earline Gutter regarding tooth #15 on May 16, 1984, and that his fee was $280.00.

10. When respondent submitted the insurance claim form for payment, he knew that although he had commenced root canal treatment upon tooth #15 of Earline Gutter, by opening the tooth and inserting cotton in the pulp chamber, he had neither opened the canals nor completed the procedure.

11. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the claimed root canal treatment.

Count III

12. Respondent represented upon a claim form (Exhibit D) that osseous surgery U/L flap was performed upon Earline Gutter on April 24, 1984, and that his fee was $287.00.

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14. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the claimed osseous surgery U/L flap.

Count IV

15. Respondent represented upon a claim form (Exhibit D) that osseous surgery U/R flap was performed upon Earline Gutter on May 2, 1984, and that his fee was $287.00.

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Count V

18. Respondent represented upon a claim form (Exhibit D) that osseous surgery L/R flap was performed upon Earline Gutter on May 9, 1984, and that his fee was $287.00.

19. When respondent submitted the insurance claim form for payment, he knew that he had not performed osseous surgery; but rather, essentially gingival curettage.

20. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the claimed osseous surgery L/R flap.

Count VI

21. Respondent represented upon a claim form (Exhibit D) that a full occlusal adjustment was performed upon Earline Gutter on May 16, 1984, and that his fee was $125.00.

22. When respondent submitted the insurance claim form for payment, he knew that he had not performed a full occlusal adjustment.

23. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment a full occlusal adjustment.

Count VII

24. Respondent represented upon a claim form (Exhibit C) that he placed an amalgam on surfaces MO of tooth #13 of Earline Gutter on August 20, 1983, and that his fee was $34.00.

25. When respondent submitted the insurance claim form for payment, he had, in fact, placed an amalgam on surfaces MO of tooth #13 of Earline Gutter.

26. On or about September 9, 1983, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the amalgam on surfaces MO of tooth #13.

27. Subsequently, respondent represented upon a second claim form (Exhibit D) that he placed an amalgam on surfaces MO of tooth #13 of Earline Gutter on May 16, 1984, and that his fee was $34.00.

28. In fact, respondent's reference to tooth #13 upon the second claim form was in error, in that it should have referenced tooth #12. However, when respondent submitted the insurance claim form for payment, he knew that he had not placed a two-surface amalgam upon the tooth; but rather, only a single-surface, occlusal amalgam.

29. On or about June 26, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for an amalgam on surfaces MO of tooth #13.

Count VIII

30. Respondent represented upon a claim form (Exhibit D) that a lower partial denture was provided to Earline Gutter on August 25, 1983, and that his fee was $425.00.

31. When respondent submitted the insurance claim form for payment, he knew that he had not provided a lower partial denture, although he had initiated procedures to begin construction of the partial.

32. On or about July 9, 1984, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for the lower partial denture.

Count IX

33. Respondent represented upon a claim form (Exhibit C) that a three-surface composite was performed on surfaces DLF of tooth #9 of Earline Gutter on August 20, 1983, and that his fee was $40.00.

34. When respondent submitted the insurance claim form for payment, he knew that he had not performed a three-surface composite on surfaces DLF of tooth #9; but rather, only a single-surface composite on surface D.

35. On or about September 13, 1983, and pursuant to the representations upon the insurance claim, Prudential sent an explanation of benefits and a check payable to the respondent, which included payment for a three-surface composite on tooth #9.

Count X

36. Respondent represented upon a claim form (Exhibit C) that he had provided an upper partial for Earline Gutter on 8/25/25 (sic, read 1983), and that his fee was $375.00.

37. When respondent submitted the insurance claim form for payment, he knew that he had not provided an upper partial, but had only initiated procedures to begin construction of the upper partial.

38. At the time respondent submitted the claim form he intended to be paid for the upper partial.

39. On or about September 9, 1983, Prudential sent an explanation of benefits to respondent in which it indicated that the charges for the upper partial were excluded from coverage and that no payment was being made.

Count XI

40. Respondent represented upon a claim form (Exhibit C) that he had provided a lower partial for Earline Gutter on 8/25/25 (sic, read 1983), and that his fee was $375.00.

41. When respondent submitted the insurance form for payment, he knew that he had not provided a lower partial, but had only initiated procedures to begin construction of the lower partial.

42. At the time respondent submitted the claim form he intended to be paid for the lower partial.

43. On or about September 9, 1983, Prudential sent an explanation of benefits to respondent in which it indicated that the charges for the lower partial were excluded from coverage and that no payment was being made because there was no indication that the tooth it was to replace had been extracted while under coverage.

Count XII.

44. Respondent represented upon a claim form (Exhibit D) that he had extracted tooth #19 of Earline Gutter on June 5, 1983, and that his fee was $25.00.

45. Respondent did extract tooth #19 of Earline Gutter. However, respondent knew that this service was performed while he was previously employed in a clinic which had already billed for the service.

46. At the time respondent submitted the claim form he intended to be paid for the extraction of tooth #19.

47. On or about July 9, 1984, Prudential sent an explanation of benefits to respondent in which it indicated that the charges for the extraction of tooth #19 had been previously considered, were excluded from coverage and that no payment was being made.

Insurance Audit

48. Prudential sent correspondence to respondent under date of September 7, 1984 in which it was indicated that the company was conducting a "periodic audit" and requested respondent to confirm that he had provided the enumerated dental services to Earline Gutter.

49. Respondent replied by letter dated November 9, 1984 and stated that Earline Gutter had ceased seeing him before "all procedures were completed." He further indicated that the root canal therapy had not been completed (Count II), and that the occlusal adjustment was "limited" (Count VI). He also wrote that he would "refund the amounts paid by you to restore her benefits for whatever dentist completes her treatment."

50. Respondent also returned Prudential's letter, certifying that the services had been performed for Earline Gutter "except where crossed out." The services crossed out were the lower partial denture (Counts VIII and XI) and the osseous surgery in all three areas (Counts III, IV and V).

51. Respondent further notified Prudential by correspondence dated November 9, 1984, that he had not extracted any of Steven Gutter's wisdom teeth (Count I). After further discussion with Prudential, respondent returned the concerned $686.00. (See, paragraph 6 above).

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 447.07(3).

2. By knowingly submitting false insurance claims in which he represented to have performed and completed services known not to have been performed and completed, with the intent that they be paid, and by obtaining payment for those services, as set forth in Counts I through IX above, respondent violated Wis. Adm. Code sec. DE 5.02(8), and Wis. Stats. secs. 447.07(3)(a)(f)(i) and (k).

3. By knowingly submitting false insurance claims in which he represented to have performed and completed services known not to have been performed and completed, with the intent that they be paid, as set forth in Counts X, XI and XII above, respondent violated Wis. Adm. Code sec. DE 5.02(15), and Wis. Stats. secs. 447.07(3)(a)(f) and (k).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Theodore R. Price, Jr., D.D.S., to practice dentistry in the State of Wisconsin shall be, and hereby is, suspended for a period of six (6) months, effective thirty days after the date of the final decision and order of the board.

OPINION

The respondent, Theodore R. Price, Jr., D.D.S., is charged with twelve separate counts of unprofessional conduct relating to allegedly fraudulent insurance claims he filed with Prudential regarding dental services provided to Steven Gutter and his mother, Earline Gutter. The first count concerns services claimed for Steven, and the remaining eleven pertain to Earline. In each instance Dr. Price is alleged to have made knowingly false representations upon insurance claim forms with the intent that he receive reimbursement.

The first nine counts involve cases where the insurance company relied upon respondent's false representations and paid the claim. The last three concern situations in which the insurance company did not pay the claims, despite respondent's false representations. In all cases the fraudulent intent of respondent is alleged, but the specific statutory and code violations found differ depending upon whether or not respondent received payment.

The state's case in this matter consisted primarily of the testimony of Peter Schelkun, D.D.S., who was contracted by Prudential to perform "in-mouth" audits of Steven Gutter and his mother, Earline, on October 2, 1984. The purpose of his examinations was to determine whether or not respondent had actually performed or completed the dental services which he had claimed.

The state also introduced the three relevant claim forms involved in this case. The first, attached as Exhibit A, relates to Steven Gutter and was filed sometime after September 30, 1983. The second and third, labeled Exhibits C and D, involve Earline Gutter and were filed on or about August 30, 1983 and in May, 1984, respectively.

The respondent, on the other hand, disputed several of the findings set forth by Dr. Schelkun. He also offered several mitigating circumstances, including his having informed the insurance company of his billing "errors" upon its contacting him pursuant to an audit.

Steven Gutter--Wisdom Teeth

Steven Gutter saw respondent for dental services in 1983. In an insurance claim sent to Prudential (Exhibit A), respondent represented that he extracted the four wisdom teeth of Steven, two on September 9, 1983 and two on September 30, 1983. At the time respondent submitted the claim form, he knew that he had not performed the extractions claimed. Relying upon this representation, Prudential paid respondent $686.00.

Respondent's primary defense to this allegation of fraud is that his major error was due to "billing in advance". Dr. Price indicated that appointments for actually performing the extractions were broken by the patient on several occasions. In other words, he truly intended to perform the extractions, but was unable to do so when the patient failed to return.

The central problem with respondent's position is that at the time he sought reimbursement from Prudential the teeth had not been extracted as represented to the contrary upon the claim form. Good intentions notwithstanding, the respondent falsely certified upon the claim form that he had actually performed the services. He had not. He was fully aware when he filed the claim that he was only entitled to receive payment when the services were performed. Respondent clearly obtained payment by fraud upon this count.

Earline Gutter

The remaining eleven counts pertain to the two claim forms filed by Dr. Price regarding services performed for Earline Gutter. The services may be broken down into the following seven areas:

1. Root Canal Therapy on tooth #15 (Count II).
2. Osseous Surgery (with flap) on upper left, upper right and lower left (Counts III, IV and V).
3. Occlusal Adjustment (Count VI).
4. Amalgam on tooth #13 (Count VII).
5. Providing a partial lower denture (Counts VIII and XI) and a partial upper denture (Count X).
6. Composite on tooth #9 (Count IX).
7. Extraction of tooth #19 (Count XII).

In each case the state claims that respondent did not perform or complete the procedure, contrary to his representation upon the claim forms.

Root Canal Therapy (Count II)

In May, 1984, respondent submitted an insurance claim to Prudential indicating, among other things, that he had completed root canal therapy upon tooth #15 on May 16, 1984.

Dr. Schelkun x-rayed tooth #15 during his audit and found there to be no indication that root canal therapy had been performed, although there was a temporary filling present. (Trans., p. 36). Thereafter, on October 16, 1984 Dr. Schelkun opened the tooth and found a cotton pellet in the pulp chamber. (Trans., p. 37). He removed the cotton, and finding none of the canals to be open, proceeded to open the canals and place reamers. (Trans., p. 38). Dr. Schelkun further testified that a dentist cannot truthfully claim to have performed root canal therapy if the canals have not been opened. (Trans., p. 38).

Contrary to Dr. Schelkun's findings that none of the canals had been opened, respondent claimed he did open and file one of the three canals--the palatal canal--but that Earline Gutter's pain was such that he did not complete the process with regard to all three canals. (Trans., pp. 72, 96-97). However, he also admitted a root canal is not complete upon performing service on only one canal. (Trans., p. 96). Accordingly, whether or not respondent actually opened one canal is not significantly relevant herein, since there is no disagreement between Dr. Schelkun and respondent that all canals must be opened and treated before a dentist may represent upon an insurance claim form that root canal therapy has been completed upon a tooth.

It cannot be seriously disputed but that respondent intended to, and did, receive compensation from Prudential upon his false claim that root canal therapy was completed on tooth #15 of Earline Gutter. Such conduct constitutes fraud.

Osseous Surgery (Counts III, IV and V)

Respondent represented on his May, 1984 claim form that he had performed osseous surgery upon Earline Gutter in the upper left area on April 24, 1984, in the upper right area on May 2, 1984, and in the lower right area on May 9, 1984. Respondent also indicated that the procedure involved a "flap" with respect to all three procedures. See, Exhibit D.

However, Dr. Schelkun's examination found no indication that osseous surgery had been performed, or that any flaps had been utilized upon the patient in any of the areas. Dr. Schelkun also testified that osseous surgery, by definition, requires the creation of a flap. (Trans., pp. 54-55). What respondent did, according to Dr. Schelkun, was gingival curettage rather than osseous surgery. (Trans., pp. 116-117). The difference in insurance reimbursement rates between gingival curettage and osseous surgery is substantial.

In response to Dr. Schelkun's objective findings, respondent admitted that he did not create a "flap", despite his representation to the contrary upon the insurance claim forms. He maintained, however, that he had "technically" performed osseous surgery because he engaged bone with his instruments. (Trans., p. 20). Dr. Price testified regarding his procedure as follows:

> "A. What I did was to use my curettes and my scalars. I used--I did some root planing, and to clean out--I did do some root planing on those visits. I got my curettes down and was able to remove granulation tissue, and I curetted the bone around these defects--areas. I did that. That's exactly what I did....
>
> "Q. You were able to engage your instrument on the bone without the use of the flap?
>
> "A. I was, yes."
>
> "Q. And did you intend at a later date to use the flap if necessary?"
>
> "A. If I thought it would be necessary, I did. I was conservative. It's a conservative approach, I think.
>
> "Q. Is the use of the flap a radical procedure?
>
> "A. Well, as compared to what I did, it is, yes." (Trans., pp. 73-74).

Respondent's claim that he performed osseous surgery is not convincing. Even if one were to concede that a dentist can engage in osseous surgery without the creation of a flap, the question becomes why he indicated on the claim form that he had used a flap in all three areas. His response was weak: "habit". (Trans., p. 21). In my opinion, the actual reason why respondent indicated that he used flaps was in order to deceive Prudential into paying him more than that to which he was entitled.

Additionally, if respondent's procedure was truly "less radical osseous surgery", as he claimed, then why did he bill at the full rate? In my opinion, the answer is the same--he intended to, and did in fact, defraud Prudential.

Occlusal Adjustment (Count VI)

Respondent claimed that he had performed an occlusal adjustment upon Earline Gutter on May 16, 1984. Dr. Schelkun's testimony was that his examination of Earline indicated that an occlusal adjustment probably was not performed because there were high spots on several fillings and other areas. (Trans., p. 34). However, he admitted that it was "very conceivable" that an occlusal adjustment was performed, but that it did not meet his professional standards. (Trans., p. 57).

In this regard, it appears clear that respondent did not perform a "full" occlusal adjustment upon Earline. Respondent admitted that the adjustment was "limited" because Earline's partial dentures (more about this below) had not been installed at the time. (Trans., p. 82). He also acknowledged this within a letter to Prudential Insurance of November 9, 1984, in which he offered to refund the amount received necessary for another dentist to complete the procedure, as well as in his testimony. (Respondent's Ex. 2; Trans. p. 83).

Dr. Price appears to have performed a limited occlusal adjustment, yet charged the insurance company for the full procedure. Such embellishment to achieve additional payment constitutes fraud.

Amalgam (Count VII)

Dr. Price indicated he performed a two-surface amalgam on surfaces MO of Earline's tooth #13 in his claim form of August 30, 1983. (Exhibit C). His subsequent claim form of May, 1984 (Exhibit D) represented that the identical procedure had been performed on the same tooth at a later date. Prudential paid both claims.

Dr. Schelkun did confirm that a two-surface amalgam had been performed upon tooth #13. However, when confronted with the specific allegation of double billing for the tooth, respondent indicated that he had mistakenly listed tooth #13 on the second claim form, when it actually should have referred to tooth #12. (Trans., p. 19).

Accordingly, it appears that Dr. Price probably made a scrivener's error in alluding to tooth #13, rather than #12, on the claim form.

But, according to Dr. Schelkun, tooth #12 had only a one-surface amalgam and possessed a distal cavity (Trans., 35), and respondent's own office records do not reflect his having worked on tooth #12 the day claimed on the insurance form. See, Complainant's Ex. 1, Exhibit I.

Confronted with these discrepancies, respondent then claimed that he may not have performed any services on teeth #12 and #13 at all; but rather, their counterparts on the other side of the mouth, teeth #4 and #5. (Trans., p. 76). Yet this version of respondent's treatment presents another problem. Dr. Schelkun's examination and testimony revealed that there were fillings in teeth #4 and #5, but that they were clearly older than when respondent could have placed them. (Complainant's Ex. 3). In fact, respondent's own office records suggest that the amalgams on #4 and #5 were to be replaced in the future, but were not actually serviced at that time. (Complainant's Ex. 1, Exhibit I).

Given the age of the fillings present in teeth #4 and #5, as well as respondent's office records, it appears that Dr. Price's claim of confusing teeth #12 and #13 for #4 and #5 cannot be accepted, especially when it is clear that Dr. Price performed a two-surface composite on tooth #13.

In any event, the testimony and records lead to the conclusion that Dr. Price should not have been paid twice for a two-surface amalgam on tooth #13. To the extent that it is more likely he should have referenced tooth #12 in his second billing, it appears that a charting error was made--but also that only a one-surface, not two-surface, amalgam was provided.

In my opinion, he was aware at the time he filed the second claim that he had "overstated" the service provided on the second tooth, in order to receive greater compensation than that to which he was entitled.

Partial Lower (Counts VIII and XI)--Partial Upper (Count X)

On the insurance form submitted August 30, 1983 (Exhibit C), Dr. Price claimed to have provided Earline Gutter with both partial lower and upper dentures. Both were initially rejected by Prudential because there was no indication that respondent had extracted the teeth to be replaced by the partials while covered by their insurance.

In May, 1984, respondent resubmitted his claim for reimbursement regarding the lower partial, indicating that he had extracted the tooth involved, #19 (See, discussion below regarding Count XII). This time he received reimbursement.

There is no question but that Dr. Price at no time provided either a lower or upper partial denture to Earline Gutter. Respondent admits as much. (Trans., p. 18). He claims that his representations upon the insurance forms meant that he had taken impressions for the creation of the partials (Trans., pp. 13, 22), and that he was taking the necessary preliminary steps in providing the partials (Trans., p. 17). In fact, according to Dr. Price, when Earline Gutter stopped seeing him in July of 1984, 70-75% of the work necessary prior to installing the partials had been completed. (Trans., p. 81).

Dr. Schelkun, on the other hand, questioned whether respondent had even went so far as to create the impressions, since his examination established that "rest seats" had not been provided in order to adequately perform the impression process. (Trans., pp. 31, 39). Dr. Price testified that "rest seats" were not necessary. (Trans., pp. 105-106). Dr. Schelkun agreed that bent wire clasps could be used in place of rest seats, but only if they were to be temporary partials, which is not what Dr. Price claimed to have provided on the insurance forms. (Trans., pp., 57-58).

The record indicates that Dr. Price had initiated the process leading to providing Earline Gutter with lower and upper partial dentures at the time he filed the claim forms, but had not actually provided them as claimed. Thus, as in the instances regarding Steven Gutter's wisdom teeth and Earline's root canal and occlusal adjustment, Dr. Price appears to have again engaged here in billing the insurance company in advance for future services. Respondent may have seen that practice as a minor indiscretion, since he intended to ultimately complete the procedures; but, legally, it constitutes fraud.

Composite (Count IX)

Dr. Price claimed that he had performed a three-surface composite on tooth #9 of Earline Gutter. In fact, the examination performed by Dr. Schelkun establishes that respondent performed only a one-surface composite on the tooth. (Complainant's Ex. 3; Trans., p 31). Respondent's exaggerated billing regarding the number of surfaces involved constitutes fraud.

Extraction (Count XII)

This count concerns respondent's extraction of tooth #19. As discussed above, Dr. Price was not initially reimbursed for providing a lower partial to Earline Gutter because the first claim form did not indicate that a tooth the partial was to substitute for (#19) had actually been extracted. The second claim submitted by respondent (Exhibit D) set forth the extraction of the tooth. Payment for the lower partial was subsequently made.

The concern upon this count is not so much as to whether or not respondent actually extracted the tooth--as it appears he did--but rather, the fact that he charged Prudential for its extraction.

Prior to going into private practice, Dr. Price had worked at another dental clinic. It was while he was employed there that he extracted tooth #19 of Earline Gutter. He also testified that he did not charge her for the extraction at that time. (Trans., pp. 79-80). However, Dr. Price was not involved in the billing and collection from patients at his previous employment (Trans., p. 111). This leads to the obvious inference that although Dr. Price had not personally charged Earline for the extraction, the clinic had. In fact, this appears to be borne out by Prudential's rejecting the claim because the "charge was previously considered." See, Complainant's Ex. 1, Exhibit H.

Quite simply, Dr. Price attempted to get Prudential to pay a second time for the extraction of the tooth, this time with payment coming directly to himself. Such attempt constituted fraud.

Discipline

Having found that Dr. Price has engaged in making fraudulent representations to an insurance company, the remaining issue is the appropriate disciplinary action to be taken. In this regard, the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar misconduct. State v. Aldrich, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. State v. MacIntyre, 41 Wis. 2d 481, 485 (1969).

The conduct of Dr. Price is serious and repetitive. During 1983 and 1984, he filed false insurance claims regarding the dental services provided for two patients, Steven and Earline Gutter. The record establishes that Dr. Price's falsifications were essentially of two types: one, those in which he

never performed the services claimed, such as the extraction of Steven's wisdom teeth, and two, where be embellished the actual services performed, as with Earline's occlusal adjustment. Under both approaches, and in all instances, respondent knew that he was misrepresenting his actual services to Prudential. Such conduct necessitates strong disciplinary measures in order to deter other licensees from engaging in similar actions.

In mitigation of the sanction to be applied in this case, Dr. Price set forth several factors. First, he indicated that beginning around 1983, he began experiencing symptoms of failing mental health. Dr. Price stated that his physicians initially believed he was suffering from chronic anxiety and fatigue. However, his problems grew worse and to the point where he was only able to work half days. In January of 1987, respondent visited the Mayo Clinic where he was diagnosed as suffering from major depression. Dr. Price said that since then he has been better able to cope with his problem with the aid of medications. (See, Trans., pp. 66-68).

Second, Dr. Price indicates that a part of his inability to better document the actual services performed in this case was due to his failure to keep clear and accurate dental records, which he has since corrected. The record in this case does demonstrate that Dr. Price's bookkeeping in 1983-84 was inadequate.

Third, respondent claimed that he actually intended to complete the various services represented. However, when Steven and Earline Gutter decided not to continue under his care in the summer of 1984, he was unable to do so. Dr. Price admitted to "advance" billing, but not to an intent that the services never be performed. He suggested that the Gutter's were difficult patients--for example, Steven broke several appointments regarding his wisdom teeth. It was also noted that the allegations involved only the Gutter's and none of his other patients.

Fourth, respondent pointed to his positive response to Prudential's initial contact regarding questions they had on the billings for Earline. In this regard, Prudential sent correspondence to respondent, dated September 7, 1984 in which it was requested that Dr. Price confirm that Earline had received the services claimed. (Complainant's Ex. 5). Dr. Price responded on November 9, 1984 indicating that Earline had ceased seeing him before "all procedures were completed". His correspondence noted that the root canal procedure had not been completed, that the occlusal adjustment was "limited", and that he would "refund the amounts paid by you to restore her benefits for whatever dentist completes her treatment." (Respondent's Ex. 2). He also returned Prudential's letter of September 7th (Complainant's Ex. 5), upon which he indicated he had not provided osseous surgery in any of the three areas claimed and had not provided a lower partial denture. In addition, Dr. Price notified Prudential by a second letter, also dated November 9, 1984, that he had not extracted Steven's wisdom teeth. (Respondent's Ex. 6).

As a result of the foregoing, and upon further communication from Prudential, Dr. Price repaid the insurance company regarding the charges claimed for extracting Steven's wisdom teeth. However, he testified that Prudential never contacted him again regarding an amount or method of reimbursement with respect to Earline's billings.

It is my opinion, under all of the circumstances presented in this case, that something less than the revocation or two year suspension recommended by complainant, yet something more than the reprimand proposed by respondent, should be imposed in this matter. Past decisions by the board give some, though not definitive guidance regarding appropriate sanctions for insurance fraud. For example, see In the Matter of David L. Herbst (10/22/81), in which the license was revoked for one year subsequent to a criminal conviction upon 18 counts of insurance fraud where no credible mitigating circumstances or evidence of remorse were established. However, in another case of insurance fraud with numerous mitigating circumstances, and absent a criminal conviction, the licensee received a reprimand. See, In the Matter of Paul F. Cotey (5/23/81).

This case clearly falls somewhere between the two above cited. In recommending a six month suspension, this examiner recognizes especially that when confronted with the audit by Prudential, respondent did make a sincere effort to inform the company truthfully of his previous false claims. Although it might be argued that this constituted little more than offering to return the cookies to the jar after getting caught, it does indicate a positive approach to the problem at that time by Dr. Price. The more severe sanctions should often be reserved for those who show little or no degree of remorse or cooperation upon discovery of wrongdoing.

Essentially, the issue of discipline in this case boils down to imposing a discipline sufficient to deter respondent from engaging in such activity again in the future, as well as deterring other dentists from engaging in similar misconduct. In my opinion, a six month suspension will adequately accomplish both.

Dated: July 6, 1990.

Respectfully submitted,

Donald R. Rittel

Donald R. Rittel
Hearing Examiner

EXC17959

WISCONSIN ELECTRIC POWER COMPANY
WISCONSIN NATURAL GAS COMPANY

The Prudential Insurance Company of America
Dental Group Claim Office
Prudential Plaza
Merrillville, IN 46316

TO BE COMPLETED BY EMPLOYEE

1. PATIENT NAME: Steven M. Gutier
2. RELATIONSHIP TO EMPLOYEE: SELF / SPOUSE / CHILD ✓ / OTHER
3. SEX: M / F
4. PATIENT BIRTHDATE: MO 8 DAY 11 YEAR 63
5. IF FULL TIME STUDENT: SCHOOL / CITY
6. EMPLOYEE NAME: FIRST Jack MIDDLE LAST GUTIER
7. EMPLOYEE SOCIAL SECURITY NO.: 428-54-2710
8. MARITAL STATUS: Single ☐ Divorced ☐ Married ☑ Separated ☐
9. EMPLOYEE HOME MAILING ADDRESS: 1345 N 18th St
CITY, STATE: Milwaukee Wis
ZIP: 53205
10. EMPLOYER (COMPANY) NAME AND ADDRESS: WISCONSIN ELECTRIC POWER COMPANY / WISCONSIN NATURAL GAS COMPANY
11. CONTROL NUMBER: 49911
12. LOCATION (LOCAL, BRANCH)
13. ARE OTHER FAMILY MEMBERS EMPLOYED? NO ☑ YES ☐ EMPLOYEE NAME / SOC. SEC. NO.
13a. NAME AND ADDRESS OF EMPLOYER IN ITEM 13
14. IS PATIENT COVERED BY ANOTHER DENTAL PLAN? NO ☑ YES ☐ DENTAL PLAN NAME / UNION LOCAL / GROUP NO.
14a. NAME AND ADDRESS OF CARRIER

TO BE COMPLETED BY ATTENDING DENTIST

I authorize my attending dentist to release information relating to the claim.
Patient's Signature (Parent if a minor) Date

15. WAS TREATMENT DUE TO ACCIDENTAL INJURY? NO ☐ YES ☑
IF SO, WAS INJURY WORK RELATED? NO ☑ YES ☐

16. DENTIST NAME: FIRST THEODORE MIDDLE R. LAST PRICE, JR. D.D.S
17. MAILING ADDRESS: 6110 W. CAPITOL DRIVE
CITY, STATE: MILWAUKEE, WISCONSIN
ZIP: 53216
18. DENTIST SOC. SEC. OR T.I.N.: 376-32-5137
19. DENTIST LICENSE NO.: 2419
20. DENTIST PHONE NO.: 414-464-4353

24. IS TREATMENT RESULT OF OCCUPATIONAL ILLNESS OR INJURY? NO ✓ YES ☐ IF YES, ENTER BRIEF DESCRIPTION AND DATES
25. IS TREATMENT RESULT OF AUTO ACCIDENT? X
26. OTHER ACCIDENT? X #9 TRAUMATIC BLOW
27. ARE ANY SERVICES COVERED BY ANOTHER PLAN? ✓ per call #9 crown due to accidente
10-03-83
28. IF PROSTHESIS, CROWN, INLAY OR BRIDGE, IS THIS INITIAL PLACEMENT? X IF NO, REASON FOR REPLACEMENT? 29. DATE OF PRIOR PLACEMENT

21. FIRST VISIT DATE CURRENT SERIES: 8-26-83 X
22. PLACE OF TREATMENT: OFFICE / HOSP / ECF / OTHER
23. RADIOGRAPHS OR MODELS ENCLOSED? NO / YES X / HOW MANY? 12
30. IS TREATMENT FOR ORTHODONTICS? X IF SERVICES ALREADY COMMENCED, ENTER DATE APPLIANCES PLACED / MOS. TREATMENT REMAINING

FACIAL — LINGUAL — RIGHT — LEFT — LOWER — UPPER — PRIMARY — PERMANENT

IDENTIFY MISSING TEETH WITH "X"

ORTHODONTICS: (give class of malocclusion and describe services in treatment section).

DATE FIRST APPLIANCE INSTALLED

TREATMENT PERIOD (number of mos.)

TOTAL FEE $

31. EXAMINATION AND TREATMENT PLAN – LIST IN ORDER FROM TOOTH NO. 1 THROUGH TOOTH NO. 32 USE CHARTING SYSTEM SHOWN

Tooth No. or Ltr.	Surface	Description of Services (Including X-Rays, Prosthesis, Materials Used, etc.)	Date Service Performed (Mo. Day Yr.)	Procedure Number	Fee	Administrative Use Only: Basic	Administrative Use Only: Major
		ORAL EXAMINATION	8 26 83	0110	16 00		
		PROPHYLAXIS	8 26 83	1110	26 00		
		FULL MOUTH X-RAYS	8 26 83	0210	36 00		
9		Porcelain to gold CROWN	9 30 83	2750	335 00		
~~[illegible]~~		~~[illegible]~~					
28	DO	AMALGAM	9 16 83	2150	34 00		
~~[illegible]~~		~~[illegible]~~		~~[illegible]~~	~~[illegible]~~		
~~[illegible]~~		~~[illegible]~~		~~[illegible]~~	~~[illegible]~~		
~~[illegible]~~		~~[illegible]~~		~~[illegible]~~	~~[illegible]~~		
~~[illegible]~~		~~[illegible]~~		~~[illegible]~~	~~[illegible]~~		
17		IMPACTION-SURGICAL EXT	9 30 83	7245	225 00		
32		IMPACTION-SURGICAL EXT	9 30 83	7245	225 00		
1		IMPACTION-SURGICAL EXT	9 14 83	7235	149 00		
16		IMPACTION-SURGICAL EXT	9 14 83	7235	149 00		

TOTAL FEE CHARGED 1195

TO BE COMPLETED BY EMPLOYEE – IMPORTANT READ CAREFULLY

CERTIFICATION: I hereby certify that statements in Part 1 are correct and I have reviewed the plan of treatment and the fees to be charged as shown in Part 2.

ASSIGNMENT: I hereby assign benefits payable to the attending dentist: NO ☐ YES ☑

EMPLOYEE'S SIGNATURE: Jack Gutier DATE: 9-26-83

If Applicable: Deductible
% Private
Amt. Private

TO BE COMPLETED BY DENTIST

I hereby certify that the services listed above have been performed on the patient named on the dates indicated.

DENTIST'S SIGNATURE: Theodore R. Price DATE

These benefits are subject to plan provisions, be payable if the listed procedures are performed during a period of the patient's eligibility.

The patient's personal eligibility has not been verified at the time of predetermination.

PLAN PAYS
PATIENT PAYS

FOR VERIFICATION OF ELIGIBILITY

Exhibit A

WISCONSIN NATURAL GAS COMPANY

The Prudential Insurance Company of America
Dental Group Claim Office
Prudential Plaza
Merrillville, IN 46316

PART I TO BE COMPLETED BY EMPLOYEE

1. PATIENT NAME: Caroline Hutter
2. RELATIONSHIP TO EMPLOYEE: SELF / SPOUSE ✓ / CHILD / OTHER
3. SEX: M / F ✓
4. PATIENT BIRTHDATE: MO 9 DAY 13 YEAR 35
5. IF FULL TIME STUDENT: SCHOOL / CITY
6. EMPLOYEE NAME: FIRST Nick MIDDLE / LAST Hutter
7. EMPLOYEE SOCIAL SECURITY NO.: 428-54-2710
8. MARITAL STATUS: Single ☐ Married ☒ Divorced ☐ Separated ☐
9. EMPLOYEE HOME MAILING ADDRESS: 1345 11th St
CITY, STATE: 53205
ZIP:
10. EMPLOYER (COMPANY) NAME AND ADDRESS: WISCONSIN ELECTRIC POWER COMPANY / WISCONSIN NATURAL GAS COMPANY
11. CONTROL NUMBER: 49911 G
12. LOCATION (LOCAL BRANCH): 4
13. ARE OTHER FAMILY MEMBERS EMPLOYED? NO ☒ YES ☐ EMPLOYEE NAME / SOC. SEC. NO.
13a. NAME AND ADDRESS OF EMPLOYER IN ITEM 13
14. IS PATIENT COVERED BY ANOTHER DENTAL PLAN? NO ☒ YES ☐
DENTAL PLAN NAME / UNION LOCAL / GROUP NO.
14a. NAME AND ADDRESS OF CARRIER

PART II TO BE COMPLETED BY ATTENDING DENTIST

I authorize my attending dentist to release any information relative to the claim.
X Caroline Hutter 7-16-83
Patient Signature (Parent if a minor) / Date

15. WAS TREATMENT DUE TO ACCIDENTAL INJURY? NO ☒ YES ☐
IF SO, WAS INJURY WORK RELATED? NO ☐ YES ☐

16. DENTIST NAME: FIRST THEODORE MIDDLE R. LAST PRICE, JR. DDS
17. MAILING ADDRESS: 6110 W. CAPITOL DRIVE
CITY, STATE: MILWAUKEE, WI.
ZIP: 53216
18. DENTIST SOC. SEC. OR T.I.N.: 346-32-5137
19. DENTIST LICENSE NO.: 2419
20. DENTIST PHONE NO.: 414-44-4353
21. FIRST VISIT DATE CURRENT SERIES: 7-16-83
22. PLACE OF TREATMENT: OFFICE X / HOSP. / ECF / OTHER
23. RADIOGRAPHS OR MODELS ENCLOSED? NO / YES X / HOW MANY?
24. IS TREATMENT RESULT OF OCCUPATIONAL ILLNESS OR INJURY? NO X / YES / IF YES, ENTER BRIEF DESCRIPTION AND DATES
25. IS TREATMENT RESULT OF AUTO ACCIDENT? X
26. OTHER ACCIDENT? X
27. ARE ANY SERVICES COVERED BY ANOTHER PLAN? X
28. IF PROSTHESIS, CROWN, INLAY OR BRIDGE, IS THIS INITIAL PLACEMENT? X
(IF NO, REASON FOR REPLACEMENT) dentic unserviceable
29. DATE OF PRIOR PLACEMENT: 1975
30. IS TREATMENT FOR ORTHODONTICS? X
IF SERVICES ALREADY COMMENCED, ENTER: DATE APPLIANCES PLACED / NO. OF MONTHS REMAINING

FACIAL
UPPER RIGHT / UPPER LEFT / LOWER RIGHT / LOWER LEFT
LINGUAL
IDENTIFY MISSING TEETH WITH "X"

31. EXAMINATION AND TREATMENT PLAN – LIST IN ORDER FROM TOOTH NO. 1 THROUGH TOOTH NO. 32 USE CHARTING SYSTEM SHOWN

Tooth No. or Ltr.	Surface	DESCRIPTION OF SERVICES (Including X-Rays, Prosthesis, Materials Used, etc.)	Date Service Performed (Mo. Day Yr.)	Procedure Number	FEE	Basic	Major
		ORAL EXAMINATION	7 16 83	0120	14.00		
7 & 8		Porcelain & gold crown	8 5 83	2750	335.00	O.K.	
10		Porcelain & gold crown	8 5 83	2750	335.00	O.K.	
8 DLF		Composite	8 20 83	2332	40.00	? ? NO	
9 DLF		Composite	8 20 83	2332	40.00	NO	
		Upper Partial	8 25 25	5235	375		
		Lower Partial	8 25 25	5235	375		
		Perio Scaling & root planing	7 16 83	4340	67	NO	
		Gingival Curettage	7 16 83	4220	55	NO	
		Gingival Curettage	7 16 83	4220	55	NO	
13 MO		AMALGAM	8 20 83	2150	32	O.K.	
		Full Mouth X-Rays	7 16 83	0210	36		

ADMINISTRATIVE USE ONLY

ORTHODONTICS (give date of malocclusion and describe services in treatment section)
DATE FIRST APPLIANCE INSTALLED
TREATMENT PERIOD (number of mos.)
TOTAL FEES

PART III TO BE COMPLETED BY EMPLOYEE – IMPORTANT READ CAREFULLY

TOTAL FEE CHARGED 1759.00

CERTIFICATION: I hereby certify that statements in Part I are correct and I have received the plan of treatment and the rate to be charged.

ASSIGNMENT: I hereby assign benefit payments to the attending dentist: NO ☐ YES ☑

"If the teeth in question were extracted while covered, please submit a completed claim form for these services."

EMPLOYEE'S SIGNATURE X Nick Hutter DATE 7-16-83

PART IV TO BE COMPLETED BY DENTIST

I hereby certify that the services listed above have been performed in accordance with the statements made on the claim form.

DENTIST'S SIGNATURE [illegible] 8-30-83

PART V FOR PURCHASER USE ONLY

Exhibit C

ATTENDING DENTIST'S STATEMENT

CHECK ONE:
- ☐ DENTIST'S PRE-TREATMENT ESTIMATE
- ☐ DENTIST'S STATEMENT OF ACTUAL SERVICES

INSURANCE CO. NAME AND ADDRESS
PRUDENTIAL INSURANCE COMPANY.
DENTAL GROUP CLAIM SERVICE OFF
Merrillville IN. 46316

1. PATIENT NAME: EARLINE GUTTER
2. RELATIONSHIP TO EMPLOYEE: SELF | SPOUSE X | CHILD | OTHER
3. SEX
4. PATIENT BIRTHDATE: MO. 9 DAY 13 YEAR 35
5. IF FULL TIME STUDENT: SCHOOL / CITY
6. EMPLOYEE/SUBSCRIBER NAME: FIRST MACK MIDDLE LAST GUTTER
7. EMPLOYEE/SUBSCRIBER SOCIAL SECURITY NO.
8. NAME OF GROUP DENTAL PROGRAM: WISCONSIN ELECTRIC POWER COMPANY / WISCONSIN NATURAL GAS COMPANY
9. EMPLOYEE/SUBSCRIBER MAILING ADDRESS: 1345 N. 18th STREET
10. EMPLOYER (COMPANY) NAME AND ADDRESS
CITY, STATE, ZIP: MILWAUKEE, WI. 53205
11. GROUP NUMBER: 49911
12. LOCATION (LOCAL)
13. ARE OTHER FAMILY MEMBERS EMPLOYED? EMPLOYEE NAME: NO / SOC. SEC. NO.
14. NAME AND ADDRESS OF EMPLOYER IN ITEM 13
15. IS PATIENT COVERED BY ANOTHER DENTAL PLAN? DENTAL PLAN NAME / UNION LOCAL / GROUP NO. / NAME AND ADDRESS OF CARRIER

I HAVE REVIEWED THE FOLLOWING TREATMENT PLAN. I AUTHORIZE RELEASE OF ANY INFORMATION RELATING TO THIS CLAIM.
SIGNED (PATIENT OR PARENT IF MINOR): Earline Gutter — DATE

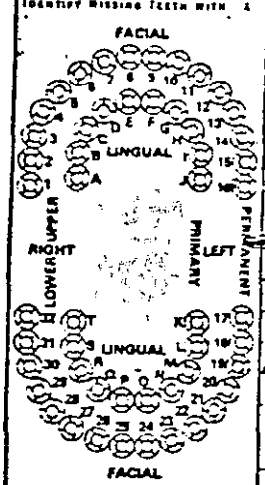
I HEREBY AUTHORIZE PAYMENT DIRECTLY TO THE BELOW-NAMED DENTIST OF THE GROUP INSURANCE BENEFITS OTHERWISE PAYABLE TO ME.
SIGNED (INSURED PERSON): Mack Gutter — DATE

16. DENTIST NAME: THEODORE R. PRICE, JR. DDS
17. MAILING ADDRESS: 6110 W. CAPITOL DRIVE
CITY, STATE, ZIP: MILWAUKEE, WI 53216
18. DENTIST SOC. SEC. OR T.I.N.: 346-32-5137
19. DENTIST LICENSE NO.: 2419
20. DENTIST PHONE NO.: 414-464-4353

	NO	YES	IF YES, ENTER BRIEF DESCRIPTION AND DATES
24. IS TREATMENT RESULT OF OCCUPATIONAL ILLNESS OR INJURY?	X		
25. IS TREATMENT RESULT OF AUTO ACCIDENT?	X		
26. OTHER ACCIDENT?	X		
27. ARE ANY SERVICES COVERED BY ANOTHER PLAN?	X		
28. IF PROSTHESIS IS THIS INITIAL PLACEMENT?		X	(IF NO, REASON FOR REPLACEMENT) — 29. DATE OF PRIOR PLACEMENT
30. IS TREATMENT FOR ORTHODONTICS?	X		IF SERVICES ALREADY COMMENCED, ENTER DATE APPLIANCES PLACED — NO. OF MONTHS REMAINING

21. FIRST VISIT DATE — CURRENT SERIES
22. PLACE OF TREATMENT: OFFICE X | HOSP | ECF | OTHER
23. RADIOGRAPHS OR MODELS ENCLOSED? NO | YES X | WILL BE SENT

IDENTIFY MISSING TEETH WITH X



31. EXAMINATION AND TREATMENT PLAN - LIST IN ORDER FROM TOOTH NO. 1 THROUGH TOOTH NO. 32 - USE CHARTING SYSTEM SHOWN

TOOTH # OR LETTER	SURFACE	DESCRIPTION OF SERVICE (INCLUDING X-RAYS, PROPHYLAXIS, MATERIALS USED, ETC.) LINE NO.	DATE SERVICE PERFORMED (MO DAY YEAR)	PROCEDURE NUMBER	FEE	FOR ADMINISTRATIVE USE ONLY
8	1	Porcelain to Herm CROWN	5 16 84	2750	335.00	O.K. WD
		Osseous Surgery UR FLAP	4 24 84	4260	287.00	NO TWA
13	MO	AMALGAM	5 16 84	2150	34.00	O.K.
15		RCT	5 16 84	3330	280.00	NO WA
		Osseous Surgery UR FLAP	5 2 84	4260	287.00	NO WA
		Osseous Surgery LR FLAP	5 19 84	4260	287.00	NO WA
		Occlusal Adjustment	5 16 84	4331	125.00	NO WA
19		EXTRACTION	6 15 83	7110	25.00	NO SUN WA
		Lower PARTIAL	8 25 83	5230	425.00	NO Th

32. REMARKS FOR UNUSUAL SERVICES

I HEREBY CERTIFY THAT THE PROCEDURES AS INDICATED BY DATE HAVE BEEN COMPLETED.
SIGNED (DENTIST): Theodore R. Price DDS — DATE 5-

TOTAL FEE CHARGED	2415.00
MAX ALLOWABLE	
DEDUCTIBLE	
CARRIER %	
CARRIER PAYS	
PATIENT PAYS	

Exhibit D