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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST LOUIS MONTAGANO, D.D.S., RESPONDENT.	:	FINAL DECISION AND ORDER CASE NO. LS8806082DEN

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

Louis Montagano, D.D.S.
Route 1, Box 32
West Branch, Iowa 52358

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

Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, Wisconsin 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 on the attached "Notice of Appeal Information."

A hearing was conducted in the above-captioned matter on September 1, 1988 at 1400 East Washington Avenue, Madison, Wisconsin. Attorney Ruth E. Heike appeared on behalf of the Complainant, Department of Regulation & Licensing, Division of Enforcement. The Respondent, Louis Montagano, did not appear.

Based upon the record in this matter the Dentistry Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Louis Montagano, D.D.S., Respondent herein, of Route 1, Box 32, West Branch, Iowa was licensed to practice dentistry in the State of Wisconsin. Respondent's Dentistry license #5001296-2, was issued on February 5, 1974. Montagano's license registration expired on September 30, 1987. The respondent practiced dentistry in Janesville, Wisconsin until approximately February 10, 1986. A large part of his practice was devoted to orthodontics.

2. A Complaint and a Notice of Hearing, were filed in this matter on or about June 8, 1988. The Complaint alleges that the Respondent failed to complete work which he started and failed to refund prepaid fees in violation of sec. DE 5.02(1) Wis. Admin. Code and sec. 447.07(3)(a) and (f) Wis. Stats.

3. That on June 8, 1988, the Complainant forwarded to the Respondent, by certified mail, a copy of the Notice of Hearing and the Complaint. The Respondent acknowledged receiving the Notice of Hearing and the Complaint on or about June 10, 1988. The Respondent filed a response to the Complaint on or about June 28, 1988, alleging that he was forced to close his dental office because of financial difficulties.

4. That on or about February 10, 1988, the Respondent mailed a letter to his patients and/or the parents of his patients, stating that his office was closed and that they should obtain the services of another orthodontist for completion of treatment. The letter stated that because of financial difficulties the Respondent could not continue his practice, that a list of area orthodontists was attached to the letter, and that the Respondent would forward orthodontic records to another orthodontist upon request.

5. That the Respondent routinely received payment for orthodontic treatment before the work was completed.

6. That between 1984 and 1986, the Respondent provided orthodontic treatment to Andy Crone. That Lawrence Crone, the patient's father, paid the Respondent $1,300.00 of an estimated $2,200.00 for the patient's treatment. That the Respondent did not complete the treatment. That after the Respondent closed his office, the patient's records were transferred to another orthodontist for completion of treatment.

7. That the models made by the secondary orthodontist who treated Andy Crone indicate the patient's malocclusion deteriorated during the Respondent's treatment of the patient. That the lateral bites were open so there was no contact on the majority of the back teeth. The bad bite was actually created by the Respondent and that the problem creates the threat that the TM joints, which were not getting proper support, would deteriorate and could be damaged due to the correction not being made. That if the patient had gone very long without someone qualified taking over his care, he would definitely have suffered very serious harm to his dental health.

8. That between 1982 and 1986, the Respondent provided orthodontic treatment to Steven Titus. That Charles Titus, the patient's father, paid the Respondent $1,800.00 for the patient's orthodontic treatment. The Respondent did not complete the treatment and did not refund any portion of the money paid for the treatment. That after the Respondent closed his office, Steven Titus's records were transferred to another orthodontist for completion of treatment.

9. That the records of Steven Titus which were transferred to a secondary orthodontist were lacking in plan, progress notes and personal observations. The records show that the Respondent extracted teeth, but did

not close the spaces. That if treatment had not been completed, Steven Titus could have suffered periodontal problems where the extractions had been done. The patient could also have suffered TM joint deterioration caused by the poor bite.

10. That between 1983 and 1986, the Respondent provided orthodontic treatment to Char Jacobs. That Arthur Jacobs, the patient's father, paid the Respondent $2,200.00 for complete orthodontic treatment for the patient. That the Respondent did not complete the treatment and did not refund any portion of the money paid to him for the treatment. That after the Respondent closed his office, the orthodontic records of Char Jacobs were transferred to another orthodontist for completion of the treatment.

11. That the intake records of Char Jacobs for the secondary treating orthodontist reveal root resorbtion in the upper front teeth which should have been avoided. That extractions were performed by the Respondent which created a very deep bite resulting in tissue irritation in the palate. The extraction sites remain open. The patient can expect periodontal problems in the future due to the open extraction sites and the palate irritation.

12. That between 1980 and 1986, the Respondent provided orthodontic treatment to Jackie and Johnnie Stoller. That John Stoller III, the father of the patients, gave the Respondent full payment for the orthodontic treatment of the patients. That the Respondent did not complete the treatment of the patients and did not refund any portion of the money paid to him for the treatment. That after the Respondent closed his office, the patients' records were transferred to another orthodontist for additional treatment.

13. That the secondary orthodontist's intake records of Jackie Stoller indicate tissue recessions on some teeth, open bite on the left biting area, and root resorbtion on the upper front teeth. The patient will probably have periodontal problems in the future and has the potential for joint problems as a result of the open bite.

14. That the orthodontic records of Johnnie Stoller indicate that the patient has bilateral open bites due to over retracted upper incisors. There was resorbtion of the upper front teeth roots. That the patient's future joint health is in jeopardy, as well as, localized dental problems due to the poor bite.

15. That the patient records which the Respondent transferred to secondary orthodontists were not complete in that they did not contain adequate information on the plan of treatment, personal observations or progress notes and that the Respondent did not provide an address or telephone number at which he could be contacted for consultation.

16. That the Respondent did not provide secondary orthodontists with financial accountings of the patients' payments and did not give an estimate of the percentage of completion of treatment for each patient. That the Respondent did not refund excess payments to the patients or transfer the payments to secondary orthodontists for completion of treatment.

17. That the Respondent did not give his patients reasonable notice of his plans to close his office, so that they could arrange to have another orthodontist agree to accept them for treatment.

18. That when the Respondent closed his office, he did not provide emergency treatment and monitoring of his patients to assure that deterioration did not occur. That many of the Respondent's patients wore active appliances which required monitoring to prevent serious harm to the patients' dental health.

19. That the Respondent's financial condition in 1986 was a factor which influenced his decision to close his Janesville office.

CONCLUSIONS OF LAW

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

2. The Respondent's failure to complete the treatment of Andy Crone or to assure that treatment would continue with another orthodontist, constituted a substantial danger to the health, welfare and safety of the patient in violation of sec. DE 5.02(1) Wis. Adm. Code and sec. 447.07(3)(a) and (f) Wis. Statutes.

3. The Respondent's failure to complete the treatment of Steven Titus or to assure that treatment would continue with another orthodontist, and his failure (after discontinuing treatment) to refund money prepaid for treatment,constituted a substantial danger to the health, welfare and safety of the patient, in violation of sec. DE 5.02(1) Wis. Adm. Code and sec. 447.07(3)(a) and (f) Wis. Statutes.

4. The Respondent's failure to complete the treatment of Char Jacobs or to assure that treatment would continue with another orthodontist, and his failure (after discontinuing treatment) to refund money prepaid for treatment, constituted a substantial danger to the health, welfare and safety of the patient in violation of sec. DE 5.02(1) Wis. Adm. Code and sec. 447.07(3)(a) of (f) Wis. Statutes.

5. The Respondent's failure to complete the treatment of Jackie Stoller or to assure that treatment would continue with another orthodontist, and his failure (after discontinuing treatment) to refund money repaid for treatment, constituted a substantial danger to the health, welfare and safety of the patient, in violation of sec. DE 5.02(1) Wis. Adm. Code and sec. 447.07(3)(a) and (f) Wis. Statutes.

6. The Respondent's failure to complete the treatment of Johnnie Stoller or to assure that treatment would continue with another orthodontist, and his failure (after discontinuing treatment) to refund money prepaid for treatment, constituted a substantial danger to the health, welfare and safety of the patient in violation of sec. DE 5.02(1) Wis. Adm. Code, and sec. 447.07(3)(a) and (f) Wis. Statutes.

Now, THEREFORE, it is ORDERED that the license of Louis Montagano to practice dentistry in Wisconsin is REVOKED, effective immediately.

EXPLANATION OF VARIANCE

The Board finds that it has jurisdiction in this matter pursuant to Wis. Stat. sec. 447.07(3) because Louis Montagano was licensed at the time of the events giving rise to this complaint, and, although he was not registered at the time the complaint was filed, his license was still in force. The law requires both licensure and registration as prerequisites to legal practice, but until the underlying license is revoked or suspended there is no bar to renewing a lapsed registration and resuming practice as a dentist.

The findings of fact and conclusions of law are adopted, except for the clarification that it was Montagano's registration which expired in September, 1987, not his license, and the jurisdictional conclusion which results from that change. Because the findings of fact and conclusions of law show Louis Montagano to present a clear danger to the health and welfare of his dental patients, the Board orders that his license to practice dentistry in Wisconsin be revoked. The revocation will prevent renewal of Montagano's lapsed registration and his resumption of practice, without further action by the Board.

Dated This 11th day of January, 1989.

For the Board

Kathleen Kelly, D.D.S.
Chairman

KK:JP:mkm
BDLS-369

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 January 13, 1989.

WLD:dms
886-490

BEFORE THE STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	NOTICE OF FILING
LOUIS MONTAGANO, D.D.S., RESPONDENT.	:	PROPOSED DECISION

To: Louis Montagano, D.D.S.
Route 1, Box 32
West Branch, Iowa 52358

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, Ruby Jefferson-Moore. 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 November 1, 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 20th day of October, 1988.

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Hearing Examiner