FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
CRAIG R. HOLTEY, D.D.S., RESPONDENT.	:	(Case No. LS 9406301 DEN)

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

Craig R. Holtey, D.D.S.
2307 114th Lane NW
Coon Rapids, MN 55433

Dentistry Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708

Division of Enforcement
Department of Regulation and Licensing
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 hearing was held in this matter on September 21, 1994, at the Department's offices in Madison, Wisconsin. Attorney James Harris appeared for the complainant Division of Enforcement. Craig R. Holtey, D.D.S., the Respondent, appeared in person, without counsel.

The Administrative Law Judge issued a Proposed Decision on September 23, 1994. Neither the complainant nor respondent filed any objective to the Proposed Decision.

On the basis of the entire proceeding and record in this matter, the Dentistry Examining Board adopts the following Findings of Fact, Conclusions of Law and Order as its Final Decision and Order in this matter.

FINDINGS OF FACT

1. Craig R. Holtey, D.D.S., is and at all times material to this action was licensed to practice dentistry in the state of Wisconsin.

2. On September 1, 1993, an Order was entered by the Dentistry Examining Board against the license of the Respondent, pursuant to a stipulation entered into between the Respondent and the Division of Enforcement. The Order of September 1, 1993, required, among other things, that:

a. Respondent was prohibited from performing any endodontic practice until he had submitted to the Board satisfactory evidence of having completed not less than 30 hours of remedial education in endodontics.

b. Respondent complete the remedial education within six months of the date of the Board's Order.

3. By letter of September 15, 1993, Respondent was notified that the Board had signed the Order on September 1, 1993, and he was further notified of the specific dates by which he was required to provide evidence of compliance with the various parts of the Order.

4. Respondent did not provide any evidence of compliance with any part of the Order by the dates required, and, at the time of the hearing on September 21, 1994, had still not either asked for approval of any course or completed any course in endodontics.

5. Between September 1, 1993, and December 30, 1993, Respondent regularly provided endodontic treatment to various patients in defiance of the Board Order of September 1, 1993.

6. On January 10, 1994, Respondent suddenly abandoned his practice, patients, and records without notice to any patient, and without making any provision for the care and treatment of current patients, referral of patients to another dentist, or disposition of patient records. In March, 1994, Respondent wrote to his former wife, who held a promissory note for the adjudged value of half of his practice pursuant to a divorce, stating that he was giving her the entire practice to dispose of as she wished. Respondent's former wife is not licensed to practice dentistry in Wisconsin.

7. Respondent is an alcoholic, is not currently in any treatment program, has declined to participate in two previous attempts by family to obtain treatment, and has regularly abused alcohol under circumstances causing substantial risk to patient health, safety and welfare. Because of Respondent's use of alcohol, his employees regularly took it upon themselves to cancel patient appointments to prevent Respondent from having professional contact with additional patients after having observed that his ability to practice was clearly impaired by the consequences of alcohol consumption. Respondent's pattern of alcohol abuse was consistent from at least 1984, and continued through his abandonment of his practice on January 10, 1994.

8. Respondent has consistently abused nitrous oxide as an intoxicant before, during, and after patient hours.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to s. 447.07(2), Stats.

2. By continuing to engage in the practice of endodontics after September 1, 1993, and continuing through December 1993, without completing satisfactory remedial education on the topic, Respondent has violated s. 447.07(3)(a) and (n), Stats., and s. DE 5.02(3) and (17), Wis. Admin. Code.

3. By abandoning his patients without making arrangements for the continued care and treatment of his patients or the disposition of their records, Respondent has violated s. 447.07(3)(a) and s. DE 5.02(5), Wis. Admin. Code.

3. By treating patients while under the influence of an intoxicant, either alcohol or nitrous oxide, Respondent has violated s. 447.07(3)(a) and (g), Stats. and s. DE 5.02(4)and (5), Wis. Admin. Code.

ORDER

Now, therefore, it is ordered that the license previously issued to Craig R. Holtey to practice dentistry in the state of Wisconsin be and hereby is suspended for a period of not less than one year. After one year, Dr. Holtey may apply to the Board for a temporary stay of the suspension of his license, on satisfactory proof by Dr. Holtey to the Board that he has maintained sobriety for the entire year, that he has made good faith efforts to make proper disposition of the records of his former practice, and that he has paid the assessable costs of this proceeding.

1. CONDITIONS FOR STAY OF SUSPENSION AFTER ONE YEAR. The suspension may be STAYED for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. Upon a showing by respondent of successful compliance for a period of five years with the terms of paragraph 2., below, the Board may grant a petition by the Respondent for return of full licensure.

d. The applications for extension under 1.a. and all required reports under 2.a-c. shall be due on each and every October 1st, January 1st, April 1st and July 1st for the period that this Order remains in effect.

2. CONDITIONS OF STAY AND LIMITATIONS. The initial stay of suspension and any subsequent stay shall be conditioned upon the following terms and limitations:

a. Non-Prescription Use of Drugs and Alcohol Prohibited. Respondent shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the respondent within 3 days of such prescribing.

b. Rehabilitation, Monitoring and Treatment Program. Respondent shall continue to participate in a rehabilitation, monitoring and treatment program acceptable to the Board for the treatment of chemical abuse and dependency. Such program shall consist of the following elements and requirements:

(1) AODA Rehabilitation. Respondent shall continue to participate in an AODA rehabilitation program under the care and supervision of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Dentistry Examining Board prior approval of the drug and alcohol abuse/dependency treatment facility and the supervising physician or therapist. The supervising physician or therapist shall be responsible for the Respondent's total rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order. If the supervising physician deems it appropriate, respondent shall consume Antabuse or other medication, as the supervising physician prescribes.

(2) Individual/Group Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under sec. 227.01(3) or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

(3) AA Meetings. Respondent shall attend Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Screening. Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of breath, urine and/or blood specimens for monitoring for the presence of alcohol in his breath, blood and/or urine on a frequency of not less than:

(a) Four times per month for the first year following the date of the first stay of suspension.

(b) Two times per month for the second through fifth year following the first stay of suspension.

All urine screens shall include testing and reporting of the specific gravity of the urine specimen, and shall be conducted by a NIDA-certified facility.

The random screening program shall include weekends and holidays for collection of specimens, and random timing of such screening throughout the hours of the day and evening. Failure of the screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspension, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

Respondent shall appear and provide a specimen not later than 5 hours following a request for a body fluid specimen, but in no event later than the same calendar date that the request is made. If a breath sample is requested, respondent shall immediately provide the sample.

If the physician or therapist supervising the respondent's plan of care, respondent's employer, the Dentistry Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional breath, blood or urine screens are warranted, including for controlled substances or other drugs, respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall exceed the above stated minimum frequency for obtaining drug and alcohol screens to prevent ability of respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met. Respondent shall also submit to such alcohol tests as an agent of the Board or department shall, from time to time, request, including by taking a

standard police breath alcohol test (including by portable breathalyzer or by Intoxilyzer).

Respondent is responsible for obtaining a monitoring facility and reporting system acceptable to the Board. Respondent shall immediately provide a copy of this Order to the monitoring facility conducting the collection of specimen and/or chemical analyses upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility and supervising physician and therapist shall agree to provide random and witnessed gatherings of specimens for analysis for all controlled substances and alcohol under NIDA collection guidelines. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry (hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility and supervising physician and therapist shall agree to immediately file a written report directly with the Dentistry Examining Board and the respondent's supervising physician upon any of the following occurrences: if the respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the specific gravity of a urine specimen is below 1.008; or if respondent fails or refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.d. above.

The monitoring facility shall further agree to keep a record of all specimens collected and subjected to analysis. The facility shall further agree to preserve any blood or urine specimens which yielded positive results for any controlled substance or alcohol, or specific gravity below 1.008, pending further written direction from the Board, not to exceed one year.

Respondent understands and agrees that the accuracy of the monitoring facility obtained is respondent's responsibility. For purposes of further board action under this order, it is rebuttably presumed that all confirmed positive reports are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in testing or fault in the chain of custody regarding a positive monitoring report.

(5) Quarterly Reports. Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

(a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,

(b) Respondent's attendance in AA or other similar program meetings,

(c) Respondent's participation in and results of his random witnessed screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(6) Immediate Reports. Respondent shall arrange for agreement by his supervising physician or therapist, and his employer, partners, associates, office sharing professionals, and personal staff, to report immediately to the Board any conduct or condition of respondent that may constitute a danger to the public in his practice of dentistry, and any occurrence that constitutes a failure on the part of respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled substances, failure to appear for a screening, notice of any positive breath, blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. Practice of Dentistry: Limitations and Conditions. Any practice of dentistry by respondent during the term of this Order shall be subject to the following terms and conditions:

(1) Full Compliance with Order Required. Respondent shall not practice as a dentist in any capacity unless he is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.

(2) Provision of Copy of Order to Employers. Respondent shall provide any employer, professional associate, or partner; any prospective employers, professional associates, or partners; any health care professional with whom he shares office space; and his personal office staff, with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment, or partnership status.

(3) Monitoring of Access to Drugs. Respondent shall not receive or maintain an office supply, including samples, of any controlled substance.

(4) Immediate Reports. Respondent shall arrange for agreement by his office staff and any health care professional with whom he shares offices to

report to the board any conduct or condition of respondent that may constitute a violation of this Order or a danger to the public.

d. Consents for Release of Information. Respondent shall provide and keep on file with his supervising physician/therapist and all treatment facilities and personnel current releases which comply with state and federal laws, authorizing release of all his medical and drug and alcohol counseling, treatment and monitoring records to the Dentistry Examining Board and the Department of Regulation and Licensing, Division of Enforcement, and permitting his supervising physician/therapist and treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation and all matters relating thereto with the Dentistry Examining Board or its duly authorized representatives or agents. Copies of these releases shall be filed simultaneously with the Dentistry Examining Board and the Division of Enforcement. Respondent shall also provide and keep on file with his current employer(s) current releases authorizing release of all employment records and reports regarding respondent to the Dentistry Examining Board and the Division of Enforcement, and authorizing his employer to discuss with the Board or its authorized agents and representatives Respondents employment history, progress and status and all matters relating thereto. Copies of these employment records releases shall be filed simultaneously with the Board and the Division of Enforcement.

e. Notification of Change of Address and Employment. The Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

3. TERMS FOR MODIFICATION OF ORDER. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of respondent's supervising physician or therapist expressly supporting the specific modifications sought. A denial of such a petition for modification shall not be deemed a denial of license under §§227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

4. RESPONDENT RESPONSIBLE FOR COSTS AND EXPENSES OF COMPLIANCE. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

5. BOARD/DEPARTMENT INSPECTIONS. The Board or the Department in its discretion may conduct unannounced inspections and/or audits, and make copies of drug records and inventory where respondent is employed (including self-employed) as a physician.

6. VIOLATIONS OF ORDER. Violation of any of the terms of this Order or of any law substantially relating to the practice of dentistry may result in a summary suspension of

the Respondent's license; the denial of an extension of the stay of suspension or the termination of the stay; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

7. OTHER CONDITIONS. Respondent shall not be self-employed in the practice of dentistry at any time during the term of suspension or any stay of suspension.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Craig R. Holtey pursuant to s. 440.22, Stats.

EXPLANATION OF VARIANCE

The Dentistry Examining Board has accepted the Findings of Fact, Conclusions of Law and Order recommended by the Administrative Law Judge in his Proposed Decision, and agrees with the reasoning set forth detailing the necessity for taking such action in this case. The only change from the Proposed Decision is to delete two inadvertent references in the Order to respondent's practicing medicine, and replace them with references to his dentistry practice.

Dated this 7th day of November, 1994.

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

James A. Sievert, D.D.S.

James A. Sievert, D.D.S. DRR
Vice-Chair

holtey.doc

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

THE STATE OF WISCONSIN DENTISTRY EXAMINING BOARD.

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

The Date of Mailing this Decision is:

NOVEMBER 7, 1994.

1. REHEARING

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

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

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

2. JUDICIAL REVIEW.

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

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

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

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against
CRAIG R. HOLTEY, D.D.S.
Respondent.
LS 9406031 DEN

Affidavit of Costs, Office of Board Legal Services

STATE OF WISCONSIN
COUNTY OF DANE, SS:

James E. Polewski, being first duly sworn on oath deposes and says:

1. He is an attorney licensed in the state of Wisconsin, and employed by the Department of Regulation and Licensing, Office of Board Legal Services.

2. In the course of that employment, he was assigned to act as Administrative Law Judge in the above captioned proceeding, and in the course of that assignment he expended the following time and committed the Department to the payment of the following costs:

DATE	ACTIVITY	TIME
8/25/94	Preside at Prehearing conference, prepare memo	30 min.
9/21/94	Preside at hearing	4 hours 30 min
9/22/94	Draft decision	4 hours
	TOTAL TIME	9 hours

Total assessable costs, administrative law judge, 9 hours @ $35.74:	$321.66
Court reporter fee, Magne Script, Madison:	$125.00

TOTAL ASSESSABLE COSTS, OFFICE OF BOARD LEGAL SERVICES: $446.66

James E. Polewski
Administrative Law Judge

Sworn and subscribed before me this 23d day of September, 1994.

Notary Public
My Commission is Permanent

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST CRAIG R. HOLTEY, D.D.S., RESPONDENT.	: : : : :	AFFIDAVIT OF COSTS LS 9406301 DEN

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

James W. Harris, being duly sworn, deposes and states as follows:

1. That I am an attorney licensed in the state of Wisconsin and am employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties I was assigned as a prosecutor in the above-captioned matter; and

3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

Date	Activity	Time Spent
6/15/94	file review (PIC)	3.0
6/20/94	file review; prep Formal Complaint, Notice	3.0
7/20/94	telconf: Atty. Bunde	0.3
7/26/94	review correspondence Atty. Bunde; letter	0.3
7/28/94	telconf: Atty. Bunde	0.3
8/03/94	review Answer and correspondence, Atty. Bunde	0.3
8/17/94	telconf: Atty. Bunde; memo ALJ	0.5
8/18/94	telconf: Atty. Anich	0.5
8/25/94	Prehearing Conference	0.3
8/29/94	prepare subpoenas	2.0
9/01/94	conf: Wald, Johnson, Carter	2.0
9/06/94	conf: Johnson, Carter	2.0
9/08/94	conf: Sherri Holtey	2.0

9/09/94	Depositions: Wald, Carter, Johnson	6.0
9/10/94	serve subpoena, review patient files	6.0
9/19/94	hearing prep.; conf Dr. Rypel	6.0
9/20/94	hearing prep.	6.0
9/21/94	hearing	6.0
10/03/94	review Proposed Decision re: objection	1.0

Total Attorney expense:

47.7 hours at $30.00 per hour: $ 1,431.00

INVESTIGATOR EXPENSE

3/11/94	review alleged violation	---
3/30/94	investigation at Hayward, WI	8.0
4/05/94	telconf Sherri Holtey	0.5
4/07/94	conf. Johnson	1.0
4/10/94	review evidence, prep releases	1.0
4/21/94	review respondent correspondence w Atty.	0.5
4/25/94	letters to facilities for records	1.
5/05/94	review evidence	1.0
5/16/94	letters and releases prepped	0.5
6/15/94	telconf: Holtey	0.3
6/15/94	transmittal file	---
6/29/94	review and sign Complaint	0.3

Total Investigator Expense:

14 hours at $ 18.00 per hour: $ 252.00

DEPOSITION EXPENSE

9/16/94	Northwestern Court Reporters	$ 287.80

MISCELLANEOUS EXPENSE

7/12/94	Northern Minnesota Record Service	$ 237.85
7/26/94	Health Information Service	$ 8.60

TOTAL ASSESSABLE COSTS: $ 2,217.25
(subject to 11 USC 362(b)(4))

James W. Harris, Attorney
Department of Regulation & Licensing
Division of Enforcement

Subscribed and sworn to before me this
10TH day of November, 1994.

Notary Public, Dane County, Wisconsin
My Commission is Permanent

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST CRAIG R. HOLTEY, D.D.S., RESPONDENT.	: : : : :	NOTICE OF FILING PROPOSED DECISION LS9406301DEN

TO: Craig R. Holtey, D.D.S.
2307 114th Lane NW
Coon Rapids, MN 55433
Certified P 205 985 981

James Harris, Attorney
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 Administrative Law Judge, James E. Polewski. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. Your objections and argument must be received at the office of the Dentistry Examining Board, Room 178, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before October 7, 1994. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Dentistry Examining Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge'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 23d day of September, 1994.

James E. Polewski
James E. Polewski
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against
CRAIG R. HOLTEY, D.D.S.
Respondent.
LS 9406301 DEN

PROPOSED DECISION

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

Craig R. Holtey, D.D.S.
2307 114th Lane NW
Coon Rapids MN 55433

Dentistry Examining Board
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison WI 53708

A hearing was held in this matter on September 21, 1994, at the Department's offices in Madison, Wisconsin. Attorney James Harris appeared for the complainant Division of Enforcement. Craig R. Holtey, D.D.S., the Respondent, appeared in person, without counsel.

On the basis of the entire proceeding and record in this matter, the administrative law judge recommends that the Dentistry Examining Board adopt the following Findings of Fact, Conclusions of Law and Order as its Final Decision and Order in this matter.

FINDINGS OF FACT

1. Craig R. Holtey, D.D.S., is and at all times material to this action was licensed to practice dentistry in the state of Wisconsin.

2. On September 1, 1993, an Order was entered by the Dentistry Examining Board against the license of the Respondent, pursuant to a stipulation entered into between the Respondent and the Division of Enforcement. The Order of September 1, 1993, required, among other things, that:

a. Respondent was prohibited from performing any endodontic practice until he had submitted to the Board satisfactory evidence of having completed not less than 30 hours of remedial education in endodontics.

b. Respondent complete the remedial education within six months of the date of the Board's Order.

3. By letter of September 15, 1993, Respondent was notified that the Board had signed the Order on September 1, 1993, and he was further notified of the specific dates by which he was required to provide evidence of compliance with the various parts of the Order.

4. Respondent did not provide any evidence of compliance with any part of the Order by the dates required, and, at the time of the hearing on September 21, 1994, had still not either asked for approval of any course or completed any course in endodontics.

5. Between September 1, 1993, and December 30, 1993, Respondent regularly provided endodontic treatment to various patients in defiance of the Board Order of September 1, 1993.

6. On January 10, 1994, Respondent suddenly abandoned his practice, patients, and records without notice to any patient, and without making any provision for the care and treatment of current patients, referral of patients to another dentist, or disposition of patient records. In March, 1994, Respondent wrote to his former wife, who held a promissory note for the adjudged value of half of his practice pursuant to a divorce, stating that he was giving her the entire practice to dispose of as she wished. Respondent's former wife is not licensed to practice dentistry in Wisconsin.

7. Respondent is an alcoholic, is not currently in any treatment program, has declined to participate in two previous attempts by family to obtain treatment, and has regularly abused alcohol under circumstances causing substantial risk to patient health, safety and welfare. Because of Respondent's use of alcohol, his employees regularly took it upon themselves to cancel patient appointments to prevent Respondent from having professional contact with additional patients after having observed that his ability to practice was clearly impaired by the consequences of alcohol consumption. Respondent's pattern of alcohol abuse was consistent from at least 1984, and continued through his abandonment of his practice on January 10, 1994.

8. Respondent has consistently abused nitrous oxide as an intoxicant before, during, and after patient hours.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to s. 447.07(2), Stats.

2. By continuing to engage in the practice of endodontics after September 1, 1993, and continuing through December 1993, without completing satisfactory remedial education on the topic, Respondent has violated s. 447.07(3)(a) and (n), Stats., and s. DE 5.02(3) and (17), Wis. Admin. Code.

3. By abandoning his patients without making arrangements for the continued care and treatment of his patients or the disposition of their records, Respondent has violated s. 447.07(3)(a) and s. DE 5.02(5), Wis. Admin. Code.

3. By treating patients while under the influence of an intoxicant, either alcohol or nitrous oxide, Respondent has violated s. 447.07(3)(a) and (g), Stats. and s. DE 5.02(4)and (5), Wis. Admin. Code.

ORDER

Now, therefore, it is ordered that the license previously issued to Craig R. Holtey to practice dentistry in the state of Wisconsin be and hereby is suspended for a period of not less than one year. After one year, Dr. Holtey may apply to the Board for a temporary stay of the suspension of his license, on satisfactory proof by Dr. Holtey to the Board that he has maintained sobriety for the entire year, that he has made good faith efforts to make proper disposition of the records of his former practice, and that he has paid the assessable costs of this proceeding.

1. CONDITIONS FOR STAY OF SUSPENSION AFTER ONE YEAR. The suspension may be STAYED for a period of three months, conditioned upon compliance with the conditions and limitations outlined in paragraph 2., below.

a. Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed on the respondent for rehabilitation and practice during the prior three (3) month period.

b. The Board may without hearing deny an application for extension of the stay, or commence other appropriate action, upon receipt of information that respondent has violated any of the terms or conditions of this Order. If the Board denies the petition by the respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

c. Upon a showing by respondent of successful compliance for a period of five years with the terms of paragraph 2., below, the Board may grant a petition by the Respondent for return of full licensure.

d. The applications for extension under 1.a. and all required reports under 2.a-c. shall be due on each and every October 1st, January 1st, April 1st and July 1st for the period that this Order remains in effect.

2. CONDITIONS OF STAY AND LIMITATIONS. The initial stay of suspension and any subsequent stay shall be conditioned upon the following terms and limitations:

a. Non-Prescription Use of Drugs and Alcohol Prohibited. Respondent shall remain free of alcohol, prescription drugs and controlled substances not prescribed by a practitioner for legitimate medical purposes. Respondent shall have his physician report in writing to the supervising physician or therapist under paragraph 2.b.(1) all medications prescribed to the respondent within 3 days of such prescribing.

b. Rehabilitation, Monitoring and Treatment Program. Respondent shall continue to participate in a rehabilitation, monitoring and treatment program acceptable to the Board for the treatment of chemical abuse and dependency. Such program shall consist of the following elements and requirements:

(1) AODA Rehabilitation. Respondent shall continue to participate in an AODA rehabilitation program under the care and supervision of a qualified physician or therapist (hereinafter, "supervising physician or therapist"), at an accredited drug and alcohol abuse/dependency treatment facility. Respondent shall obtain from the Dentistry Examining Board prior approval of the drug and alcohol abuse/dependency treatment facility and the supervising physician or therapist. The supervising physician or therapist shall be responsible for the Respondent's total rehabilitation program. Respondent shall immediately provide a copy of this order to his supervising physician or therapist. Respondent shall participate in and comply with all recommendations for treatment, subject to the requirements of this order. If the supervising physician deems it appropriate, respondent shall consume Antabuse or other medication, as the supervising physician prescribes.

(2) Individual/Group Therapy. The rehabilitation program shall include and respondent shall participate in individual and/or group therapy sessions for the first year of the stayed suspension upon a schedule as recommended by the supervising physician or therapist, but not less than once weekly. Such therapy shall be conducted by the supervising physician or therapist, or another qualified physician or therapist as designated by the supervising physician or therapist and acceptable to the Board. After the first year of stayed suspension, this requirement for therapy sessions may be modified only upon written petition, and a written recommendation by the supervising physician or therapist expressly supporting the modifications sought. A denial of such petition for modification shall not be deemed a denial of the license under sec. 227.01(3) or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

(3) AA Meetings. Respondent shall attend Alcoholic Anonymous meetings or an equivalent program for recovering professionals, upon a frequency as recommended by the supervising physician or therapist, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to the supervising physician or therapist.

(4) Screening. Respondent's rehabilitation program shall include and Respondent shall participate in a program of random, witnessed collection of breath, urine and/or blood specimens for monitoring for the presence of alcohol in his breath, blood and/or urine on a frequency of not less than:

(a) Four times per month for the first year following the date of the first stay of suspension.

(b) Two times per month for the second through fifth year following the first stay of suspension.

All urine screens shall include testing and reporting of the specific gravity of the urine specimen, and shall be conducted by a NIDA-certified facility.

The random screening program shall include weekends and holidays for collection of specimens, and random timing of such screening throughout the hours of the day and evening. Failure of the screening program to be conducted on a random basis shall be deemed a violation of this Order and may result in denial of extension of Stay of Suspension, disapproval of the monitoring facility or program, or other action as deemed appropriate by the Board.

Respondent shall appear and provide a specimen not later than 5 hours following a request for a body fluid specimen, but in no event later than the same calendar date that the request is made. If a breath sample is requested, respondent shall immediately provide the sample.

If the physician or therapist supervising the respondent's plan of care, respondent's employer, the Dentistry Examining Board or the Department of Regulation and Licensing, Division of Enforcement deems that additional breath, blood or urine screens are warranted, including for controlled substances or other drugs, respondent shall submit to such additional screens as requested or recommended. The supervising physician or therapist shall exceed the above stated minimum frequency for obtaining drug and alcohol screens to prevent ability of respondent to predict that no further screens will be required for a given period because the minimum frequency for that period has been met. Respondent shall also submit to such alcohol tests as an agent of the Board or department shall, from time to time, request, including by taking a standard police breath alcohol test (including by portable breathalyzer or by Intoxilyzer).

Respondent is responsible for obtaining a monitoring facility and reporting system acceptable to the Board. Respondent shall immediately provide a copy of this Order to the monitoring facility conducting the collection

of specimen and/or chemical analyses upon specimens for the random witnessed drug and alcohol screening program.

To be an acceptable program, the monitoring facility and supervising physician and therapist shall agree to provide random and witnessed gatherings of specimens for analysis for all controlled substances and alcohol under NIDA collection guidelines. Any specimen that yields a positive result for any controlled substance or alcohol shall be immediately subjected to a gas chromatography-mass spectrometry (hereinafter, "GC-MS") test to confirm the initial positive screen results. The monitoring facility and supervising physician and therapist shall agree to immediately file a written report directly with the Dentistry Examining Board and the respondent's supervising physician upon any of the following occurrences: if the respondent fails to appear for collection of a specimen as requested; or if a drug or alcohol screen and confirmatory GC-MS test prove positive; or if the specific gravity of a urine specimen is below 1.008; or if respondent fails or refuses to give a specimen for analysis upon a request authorized under the terms of this Order. Respondent shall arrange for quarterly reports from the monitoring facility directly to the Board and to Respondent's supervising physician or therapist providing the dates and results of specimen analyses performed. Such reports shall be due on dates specified in paragraph 1.d. above.

The monitoring facility shall further agree to keep a record of all specimens collected and subjected to analysis. The facility shall further agree to preserve any blood or urine specimens which yielded positive results for any controlled substance or alcohol, or specific gravity below 1.008, pending further written direction from the Board, not to exceed one year.

Respondent understands and agrees that the accuracy of the monitoring facility obtained is respondent's responsibility. For purposes of further board action under this order, it is rebuttably presumed that all confirmed positive reports are valid. Respondent has the burden of proof to establish by a preponderance of the evidence an error in testing or fault in the chain of custody regarding a positive monitoring report.

(5) Quarterly Reports. Respondent shall arrange for quarterly reports from his supervising physician or therapist directly to the Board evaluating and reporting:

(a) A summary of Respondent's progress in his rehabilitation program to date, and all recommendations for continuing rehabilitation treatment,

(b) Respondent's attendance in AA or other similar program meetings,

(c) Respondent's participation in and results of his random witnessed screening program.

Such quarterly reports shall be due on the dates specified under paragraph 1.d. of this Order.

(6) Immediate Reports. Respondent shall arrange for agreement by his supervising physician or therapist, and his employer, partners, associates, office sharing professionals, and personal staff, to report immediately to the Board any conduct or condition of respondent that may constitute a danger to the public in his practice of medicine, and any occurrence that constitutes a failure on the part of respondent to comply with the requirements of this Order or treatment recommendations by the supervising physician or therapist, including any indications of consumption of alcohol or unauthorized use of any controlled substances, failure to appear for a screening, notice of any positive breath, blood and/or urine screen for alcohol or controlled substances, and any urine specimen that is below a specific gravity of 1.008.

c. Practice of Dentistry: Limitations and Conditions. Any practice of medicine by respondent during the term of this Order shall be subject to the following terms and conditions:

(1) Full Compliance with Order Required. Respondent shall not practice as a dentist in any capacity unless he is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.

(2) Provision of Copy of Order to Employers. Respondent shall provide any employer, professional associate, or partner; any prospective employers, professional associates, or partners; any health care professional with whom he shares office space; and his personal office staff, with a copy of this Stipulation and Final Decision and Order immediately upon issuance of this Order, and upon any change in employment, or partnership status.

(3) Monitoring of Access to Drugs. Respondent shall not receive or maintain an office supply, including samples, of any controlled substance.

(4) Immediate Reports. Respondent shall arrange for agreement by his office staff and any health care professional with whom he shares offices to report to the board any conduct or condition of respondent that may constitute a violation of this Order or a danger to the public.

d. Consents for Release of Information. Respondent shall provide and keep on file with his supervising physician/therapist and all treatment facilities and personnel

current releases which comply with state and federal laws, authorizing release of all his medical and drug and alcohol counseling, treatment and monitoring records to the Dentistry Examining Board and the Department of Regulation and Licensing, Division of Enforcement, and permitting his supervising physician/therapist and treating physicians and therapists to disclose and discuss the progress of his treatment and rehabilitation and all matters relating thereto with the Dentistry Examining Board or its duly authorized representatives or agents. Copies of these releases shall be filed simultaneously with the Dentistry Examining Board and the Division of Enforcement. Respondent shall also provide and keep on file with his current employer(s) current releases authorizing release of all employment records and reports regarding respondent to the Dentistry Examining Board and the Division of Enforcement, and authorizing his employer to discuss with the Board or its authorized agents and representatives Respondents employment history, progress and status and all matters relating thereto. Copies of these employment records releases shall be filed simultaneously with the Board and the Division of Enforcement.

e. Notification of Change of Address and Employment. The Respondent shall report to the Board any change of employment status, residence address or phone number within five (5) days of any such change.

3. TERMS FOR MODIFICATION OF ORDER. Following successful compliance with and fulfillment of the provisions of paragraph 2. of this Order for a period of two years, the Respondent may petition the Board, in conjunction with an application for extension of the stay of suspension, for modification of the conditions or limitations for stay of suspension. Any such petition shall be accompanied by a written recommendation of respondent's supervising physician or therapist expressly supporting the specific modifications sought. A denial of such a petition for modification shall not be deemed a denial of license under §§227.01(3), or 227.42, Wis. Stats., or Ch. RL 1, Wis. Adm. Code, and shall not be subject to any right to further hearing or appeal.

4. RESPONDENT RESPONSIBLE FOR COSTS AND EXPENSES OF COMPLIANCE. Respondent shall be responsible for all costs and expenses of complying with this Order and for arranging any alternative means for covering such costs and expenses.

5. BOARD/DEPARTMENT INSPECTIONS. The Board or the Department in its discretion may conduct unannounced inspections and/or audits, and make copies of drug records and inventory where respondent is employed (including self-employed) as a physician.

6. VIOLATIONS OF ORDER. Violation of any of the terms of this Order or of any law substantially relating to the practice of dentistry may result in a summary suspension of the Respondent's license; the denial of an extension of the stay of suspension or the termination of the stay; the imposition of additional conditions and limitations; or the imposition of other additional discipline, including revocation of license.

7. OTHER CONDITIONS. Respondent shall not be self-employed in the practice of dentistry at any time during the term of suspension or any stay of suspension.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Craig R. Holtey pursuant to s. 440.22, Stats.

OPINION

The evidence in this proceeding establishes beyond any question that Dr. Holtey intentionally defied the Board's Order of September 1, 1993, and continued to practice endodontics as a matter of course. By the middle of September 1993 there is no question at all that he knew the Order had been issued, and that he was required to stop the practice of endodontics and get remedial education in endodontics. He did not do so, nor is there any substantial evidence that he made any effort to even find the education required. There is overwhelming evidence that he ignored the Order.

Dr. Holtey is a liar. Both the answer he submitted in response to the complaint in this proceeding and his testimony in the early part of the hearing denied that he practiced any endodontics in violation of the Order. After he denied violating the Order, records of several patients were admitted in evidence, identified by Dr. Holtey as records he had kept of those patients. Those records contain treatment notes showing that Dr. Holtey performed endodontic treatment on numerous occasions between September 1 and December 30, 1993. The records of the patients contain several sets of pre- and post-treatment x-rays, dated during the last couple months of 1993, showing the progress of endodontic treatment corresponding with the notes in the records.

Dr. Holtey also testified that of his staff was aware of the limitation on his license, and that the notations in the appointment log which seemed to indicate endodontic treatment were merely indications that a referral might be necessary for the purpose. The testimony of his staff contradicts his assertion. In particular, the testimony of one member of his staff, who was also a patient abandoned in the middle of a root canal, shows that they were not aware of the limitation, and that he had never indicated any qualms about doing endodontic procedures.

Dr. Holtey appears to have been angry at any number of people, and he is not subtle about blaming his former wife for his circumstances and the failure of his practice. His attempt to give her the entire practice, and so relieve himself of responsibility for his patients, was both several months too late and objectively pointless. After he had left, suddenly and without notice either before or after the fact, any significant value the practice might have had was destroyed. At the hearing, Dr. Holtey attempted to portray his former wife as the person responsible for taking care of the patients after he left, because she had been awarded a security interest in the practice to protect her ability to collect the property division in the divorce, and because he had left the state. That rationale was clearly a creation after the fact, given that Dr. Holtey did not tell his former wife he was abandoning the practice, and the fact that he knew she was living more than one hundred miles away, and had been for some months.

Dr. Rypel, Dean of the University of Marquette School of Dentistry, testified that Dr. Holtey's conduct in abandoning his practice and patients was below the minimal standard of practice of dentistry in Wisconsin. That the manner of the abandonment harmed patients is clear from the testimony of Dr. Holtey's displaced staff, who recount inquiries by patients as to what happened to their records, and what were they supposed to do, and what was going to happen next; the staff were unable to do anything for any of the patients.

Finally, I am convinced that there is no reason to expect that Dr. Holtey will come to grips with his substance abuse. His former wife, who was also a dental assistant for some time in the office, testified that she regularly came upon him using the nitrous oxide, before, during, and after hours. His staff testified to the unexplained rate of consumption of nitrous oxide in the office, with the nitrous oxide supply diminishing far more rapidly than patient use would justify. At one point, the supplier was asked to check the assembly for leaks; none were found. Dr. Holtey testified that he did not dose himself with the nitrous oxide, but would "sample" it now and then to be sure the equipment was working properly. Moreover, Dr. Holtey has twice resisted treatment for alcohol abuse, and his testimony at the hearing was evasive on the topic of attendance at Alcoholics Anonymous meetings he claimed to follow, leading to the clear indication that he has not attempted to maintain sobriety in the past several months.

Contumacious refusal to obey a Board Order which directly addresses an issue of competence in the treatment of patients is a form of defiance which the public health, safety and welfare cannot afford. Dr. Holtey's proclivity to substance abuse is another clear danger to public health, safety and welfare. His dishonesty makes far more difficult the already daunting task of developing adequate means to permit him to have a license while protecting the public. It appears to me that the first necessary step in Dr. Holtey's rehabilitation is solid evidence that he has committed himself to change his conduct. The minimum essential of a change of conduct is the attempt to alleviate the problems he caused his patients by abandoning them, and that requires at least a good faith attempt to make proper disposition of the records of his practice. While this will be more difficult now than it would have been had Dr. Holtey done it in a timely fashion, the effort will be instructive and conducive to rehabilitation.

Secondly, it appears to me that given the long-term substance abuse and adverse consequences which Dr. Holtey was willing to endure, public health, safety and welfare requires at least one year of documented sobriety as a condition of a stay of suspension and return to the practice of dentistry. Dr. Holtey is employed by an insurance company now, according to his testimony, so the year's respite from the practice of dentistry will not deprive him of income. It will permit the Board the opportunity to review Dr. Holtey's conduct with regard to substance abuse in a way which will not put the health, safety or welfare of dental patients at risk.

Finally, Dr. Holtey should not be permitted to be in charge of his practice of dentistry. The need for a check on his conduct by a person with real authority and incentive to use it is amply demonstrated by his conduct during his recent practice of dentistry.

Dated this 23rd day of September, 1994.

James E. Polewski
Administrative Law Judge
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Madison WI 53708
608/266-0358