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STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST JERRY D. GRAGG, D.D.S., RESPONDENT.	: : : : :	FINAL DECISION AND ORDER LS9502211DEN

The State of Wisconsin, Dentistry Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Dentistry Examining Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 28 day of June, 1995.

Thomas G. Brandt DDS

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

PROPOSED DECISION
Case No. LS-9502211-DEN

JERRY D. GRAGG, D.D.S.,
RESPONDENT.

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Jerry D. Gragg
3904 North 68th Street
Milwaukee, Wisconsin 53216

Dentistry Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 53708

This matter was commenced by the filing of a Notice of Hearing on February 21, 1995. A hearing was held in the above-captioned matter on March 16, 1995. Atty. James W. Harris appeared on behalf of the Division of Enforcement. The respondent, Jerry D. Gragg appeared in person without legal counsel.

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

FINDINGS OF FACT

1. Jerry D. Gragg, 3904 North 68th Street, Milwaukee, Wisconsin 53216, was issued a license to practice dentistry in the State of Wisconsin, license #2473, on June 6, 1980.

2. On November 6, 1991, the Dentistry Examining Board issued a Final Decision and Order accepting the voluntary surrender of respondent's license to practice dentistry. The Order stated that respondent could petition for reinstatement of his license no sooner than 18 months after the effective date of the order; placed conditions to be met by him prior to the reinstatement of his license, and authorized the board to place limitations upon his license following reinstatement.

3. On November 29, 1993, the Board issued an "Order Reinstating and Limiting License". The order provided for the reinstatement of respondent's license and imposed a five year suspension to be stayed at three month intervals, conditioned upon his compliance with the terms and limitations set forth in the order.

4. One of the conditions contained in paragraph 2. b. (4) of the board order dated November 29, 1993, provided in material part as follows:

> (4) Drug Screening. Respondent's rehabilitation program shall include and respondent shall participate in a program of random, witnessed collection of urine and/or blood specimens for monitoring for the presence of all controlled substances and alcohol in his blood and/or urine on a frequency of not less than four (4) times per month for the duration of this Order.

5. Respondent failed to comply with the conditions set forth in paragraph 2. b. (4) of the board's order dated November 29, 1993, by failing to participate in the program of random drug screening. In a report to the Dentistry Examining Board, dated January 3, 1995, Dr. David G. Benzer, D.O., Director of the McBride Center, reported that the respondent "missed approximately seven urine drug tests in the last three months".

6. On January 9, 1995, the Dentistry Examining Board issued an Order Denying Extension of Stay of Suspension and Reinstating Suspension. The order terminated the stay of suspension of the respondent's license to practice as a dentist and reinstated the five year suspension of respondent's license, effective ten days following the date of the order.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to ch. 447, Stats., and is authorized under ch. 447, Stats., to enter its "Order Denying Extension of Stay of Suspension and Reinstating Suspension", dated January 9, 1995.

2. Respondent by having engaged in conduct as described in Findings of Fact #5 herein failed to comply with the conditions set forth in paragraph 2. b. (4) of the Dentistry Examining Board's order dated November 29, 1993.

ORDER

NOW, THEREFORE, IT IS ORDERED that the decision of the Dentistry Examining Board, dated January 9, 1995, terminating the stay of suspension and reinstating the 5 year suspension of the license of Jerry D. Gragg to practice dentistry in the State of Wisconsin be, and hereby is, affirmed.

This order is effective on the date on which it is signed by a designee of the Dentistry Examining Board.

OPINION

This matter was commenced by the filing of a Notice of Hearing on February 21, 1995. A hearing was held on March 16, 1995. Atty. James W. Harris appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Jerry D. Gragg, D.D.S., appeared in person without legal counsel.

The evidence presented in this case establishes that Dr. Gragg failed to comply with the Board order dated November 29, 1993, by not participating in the random drug screening as required in the order. His conduct does not constitute a minor or technical violation of the Board order, but instead constitutes conduct which could have resulted in harm to the public. Dr. Gragg stated at the hearing that he was unable to comply with the Board order because of financial difficulties. At no time did he communicate with the Board regarding his financial difficulties or seek an opinion from the Board relating to his inability to comply with the order.

The purpose of licensing statutes is not to benefit those persons licensed to practice under the statutes, but rather to protect the public by the requirement of a license as a condition precedent to practicing a given profession. Such statutes are grounded in the state's police power to protect the public welfare through safeguarding the life, health and property of its citizens. *Gilbert vs. Medical Examining Board*, 119 Wis. 2d 168, 349 N.W. 2d 68 (1984).

At some point in time in the future, Dr. Gragg may seek reinstatement of his license upon submission of satisfactory evidence to the Board that he is capable of practicing in a manner which safeguards the interest of the public.

In this case, there is no legal basis upon which to conclude that the Board's decision to deny the extension of stay of suspension and to reinstate suspension of Dr. Gragg's license constituted an improper exercise of discretion.

Based upon the record herein, the Administrative Law Judge recommends that the Dentistry Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 24th day of May, 1995

Respectfully submitted,

Ruby Jefferson-Moore

Ruby Jefferson-Moore
Administrative Law Judge

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:

JUNE 30, 1995.

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.)