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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
RICHARD O. HEINZELMAN, D.D.S., RESPONDENT.	:	(Case No. LS 9503202 DEN)

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

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

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

State of Wisconsin Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53709

This matter was commenced by the filing of a Complaint by the Division of Enforcement on March 20, 1995, and a hearing in the matter was conducted on September 21, 1995. Respondent appeared in person and by Attorneys Gerald P. Boyle and Bridget Boyle. Appearing for the Division of Enforcement was Attorney Arthur Thexton. The transcript of the proceedings was received on November 8, 1995.

The administrative law judge filed his Proposed Decision on December 18, 1995. Complainant filed his State's Objections on January 8, 1996.

On the basis of the entire record, the Dentistry Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Richard O. Heinzelman, D.D.S., 676 North Holden Street, Port Washington, WI 53074 (respondent) is licensed as a dentist in Wisconsin by license #5000527, granted on June 17, 1968. Respondent is also licensed as a pharmacist in Wisconsin.

2. On July 6, 1988, the Dentistry Examining Board issued its Final Decision and Order in a proceeding captioned *In the Matter of Application for a License to Practice Dentistry of Richard O. Heinzelman*. The board's Order, which was the result of a stipulation executed by the parties, ordered in part as follows:

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

3. At no time has the Dentistry Examining Board modified the terms of its July 6, 1988, Final Decision and Order.

4. At various times during 1994 and 1995, respondent treated his mother by immune therapy or oral vaccines in violation of the board's July 6, 1988, Final Decision and Order.

5. The purpose of respondent's treatment of his mother by immune therapy or oral vaccines was in part for the treatment and care of conditions within his mother's oral cavity and therefore constituted the practice of dentistry.

6. Respondent failed to maintain a patient record file documenting dental treatment provided to his mother and his mother's response to the treatment.

7. On November 4, 1994, respondent was employed as a pharmacist at The Pharmacy Station, Port Washington, Wisconsin. On or about that date, respondent prescribed nystatin, an antifungal prescription medication, to Terry Albinger, a coworker, for the treatment of acne. The oral consultation accompanying the prescription was to put a few drops of nystatin into boiling water, make a tent over the head, and permit the vapors to be absorbed into the skin. While the prescription form currently carries the notation "swirl and swallow," the prescription was not provided for treatment of a dental problem. Nystatin has no known effect on acne.

CONCLUSIONS OF LAW

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

2. In treating his mother by immune therapy or oral vaccines at various times during 1994 and 1995, respondent has violated the board's July 6, 1988, Final Decision and Order, in violation of sec. 447.07(3)(a) & (n), Stats., and sec. DE 5.02(17), Code.

3. In failing to maintain a patient record file documenting dental treatment provided to his mother and his mother's response to that treatment, respondent has violated sec. DE 11.10, Code.

4. In preparing a prescription for nystatin for the treatment of acne rather than for the treatment of a dental condition, respondent has practiced beyond the scope of his dentistry license, in violation of sec. DE 5.02(3), Code, and he has thereby engaged in unprofessional conduct in violation of sec. 447.07(3)(a), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Richard O. Heinzelman, D.D.S. to practice dentistry in the state of Wisconsin be, and hereby is, revoked, effective the date of this Final Decision and Order.

IT IS FURTHER ORDERED that pursuant to sec. 440.22, Stats., the costs of this proceeding shall be assessed to respondent.

EXPLANATION OF VARIANCE

The Dentistry Examining Board has adopted the Findings of Fact and Conclusions of Law recommended by the ALJ in his Proposed Decision. However, the board has not accepted the recommendation that respondent's license be suspended for 90 days. Rather, it is the opinion of the board that his license should be revoked.

The hearing established that respondent treated his mother by immune therapy or oral vaccines at various times during 1994 and 1995. This conduct was in direct violation of the board's Final Decision and Order dated July 6, 1988. Furthermore, respondent's unprofessional conduct is compounded in this proceeding by the findings that he failed to maintain patient records for his mother regarding her dental treatment, and practiced beyond the scope of his dentistry license by prescribing nystatin for the treatment of acne, a non-dental condition. Respondent's competency is additionally called into question since nystatin has no known effect on acne.

In establishing the appropriate discipline in this proceeding it is recognized that 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).

In this case, severe discipline is warranted in large part by virtue of the very nature of the violations committed. Respondent's intentional disregard of the board's prior order evidences an unwillingness to practice the dentistry profession in a matter consistent with its principles. It constituted an intentional refusal to recognize and adhere to the regulatory authority of the board.

Furthermore, respondent not only failed to comply with the board's prior order, but he also practiced beyond the scope of his dentistry license in prescribing a medication for a non-dental condition. Adding to the seriousness of this violation is the competency issue raised by the fact that the medication prescribed is not medically effective upon the condition for which it was prescribed.

Other licensees must be strongly deterred from engaging in similar acts of misconduct for which respondent is found to have committed here. From a public perspective, a license to practice dentistry is a representation to the public by the board that the licensee is competent, and may be trusted, to provide professional services consistent with its health, safety and welfare. *Strigenz v. Department of Regulation and Licensing,* 103 Wis. 2d 281, 287 (1981). That representation cannot be made with regard to respondent at this time.

Dated this 12th day of March, 1996.

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

James A. Sievert, D.D.S.
Chairman

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:

STATE OF WISCONSIN DENTISTRY EXAMINING BOARD

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

The Date of Mailing this Decision is:

March 14, 1996

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	:	NOTICE OF FILING PROPOSED DECISION LS9503202DEN
RICHARD O. HEINZELMAN, D.D.S., RESPONDENT.	:	

TO: Gerald P. Boyle, Attorney
1124 W. Wells Street
Suite 2600
Milwaukee, WI 53233
Certified Z 091 396 853

Arthur Thexton, 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, Wayne R. Austin. 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. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. 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 January 8, 1996. 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, the Dentistry Examining Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 18th day of December, 1995.

Wayne R. Austin
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

RICHARD O. HEINZELMAN, D.D.S. LS9503202DEN

Respondent

PROPOSED DECISION

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

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

State of Wisconsin Dentistry Examining Board
1400 East Washington Avenue
P.O. Box 8935
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Based upon the entire record in this case, the administrative law judge recommends that the Dentistry Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Richard O. Heinzelman, D.D.S., 676 North Holden Street, Port Washington, WI 53074 (respondent) is licensed as a dentist in Wisconsin by license #5000527, granted on June 17, 1968. Respondent is also licensed as a pharmacist in Wisconsin.

2. On July 6, 1988, the Dentistry Examining Board issued its Final Decision and Order in a proceeding captioned *In the Matter of Application for a License to Practice Dentistry of Richard O. Heinzelman*. The board's Order, which was the result of a stipulation executed by the parties, ordered in part as follows:

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

3. At no time has the Dentistry Examining Board modified the terms of its July 6, 1988, Final Decision and Order.

4. At various times during 1994 and 1995, respondent treated his mother by immune therapy or oral vaccines in violation of the board's July 6, 1988, Final Decision and Order.

5. The purpose of respondent's treatment of his mother by immune therapy or oral vaccines was in part for the treatment and care of conditions within his mother's oral cavity and therefore constituted the practice of dentistry.

6. Respondent failed to maintain a patient record file documenting dental treatment provided to his mother and his mother's response to the treatment.

7. On November 4, 1994, respondent was employed as a pharmacist at The Pharmacy Station, Port Washington, Wisconsin. On or about that date, respondent prescribed nystatin, an antifungal prescription medication, to Terry Albinger, a coworker, for the treatment of acne. The oral consultation accompanying the prescription was to put a few drops of nystatin into boiling water, make a tent over the head, and permit the vapors to be absorbed into the skin. While the prescription form currently carries the notation "swirl and swallow," the prescription was not provided for treatment of a dental problem. Nystatin has no known effect on acne.

CONCLUSIONS OF LAW

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

2. In treating his mother by immune therapy or oral vaccines at various times during 1994 and 1995, respondent has violated the board's July 6, 1988, Final Decision and Order, in violation of sec. 447.07(3)(a) & (n), Stats., and sec. DE 5.02(17), Code.

3. In failing to maintain a patient record file documenting dental treatment provided to his mother and his mother's response to that treatment, respondent has violated sec. DE 11.10, Code.

4. In preparing a prescription for nystatin for the treatment of acne rather than for the treatment of a dental condition, respondent has practiced beyond the scope of his dentistry license, in violation of sec. DE 5.02(3), Code, and he has thereby engaged in unprofessional conduct in violation of sec. 447.07(3)(a), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Richard O. Heinzelman, D.D.S. to practice dentistry in the State of Wisconsin be, and hereby is, suspended for a period of 90 days, commencing on the date of the board's Final Decision and Order adopting the terms of this Proposed Decision.

IT IS FURTHER ORDERED that pursuant to sec. 440.22, Stats., the costs of this proceeding shall be assessed against Richard O. Heinzelman, D.D.S.

OPINION

Respondent's treatment of Norma Heinzelman

The Complaint filed by the Dentistry Examining Board alleges that the treatment provided by respondent to his mother constituted use of immune therapy or oral vaccines, in violation of that board's previous order dated July 6, 1988. Respondent denies that what he refers to as his "homeopathic treatment" of his mother is the same as that which the dentistry board previously prohibited. The evidence in this record, however, clearly establishes that it is. Paragraph 3 of the Complaint in this matter states in relevant part as follows:

> 3. Respondent has, for some years, believed that autogenous oral vaccination provides certain health benefits. Pursuant to that belief, he has in 1994 and 1995 treated his mother by compounding a mixture of small amounts of her sterilized and filtered saliva, skin, urine and feces, which is then taken orally and applied topically. This is the treatment described as "immunotherapy or oral vaccines" by the board in the Order of July 8, 1988.

Respondent's Answer essentially admits the allegation.

> 2. As to paragraph 3 of said Complaint, this answering Respondent admits that he believes that autogenous oral vaccination provides certain health benefits. In 1994 and 1995 he treated his mother pursuant to this belief, but alleges that this treatment described in said paragraph is not the exact and/or complete procedure by which he treated his mother.

The apparent distinction which respondent is drawing was explained in his testimony as follows:

> Q. (by Ms. Boyle) You were in 1988, I believe, told by the board not to practice immune therapy or oral vaccines, correct?
>
> A. Yes.
>
> Q. That order has not changed?
>
> A. No.
>
> Q. What is immune therapy?
>
> A. Immune therapy is the treatment of a patient through certain steps to improve their immune system.
>
> Q. What are the steps?
>
> A. Elimination of bacteria, pathogenic bacteria, elimination of antigens, which basically come from bacteria. The use of administration of vitamins that support the immune system. Certain vitamins.
>
> Q. What kind of vitamins?
>
> A. Vitamin E is a stimulant of the immune system. The reduction of stress through the normal medical traditional treatment. And normal traditional medical treatment.
>
> Q. Have you practiced immune therapy since 1988?
>
> A. No, I have not.
>
> Q. What are you doing to your mother?
>
> A. I have treated her in a homeopathic way with dilute solutions of the material we were just discussing.
>
> Q. You want to describe what those dilute solutions would be?
>
> A. They are extracts of urine, saliva, skin scrapings and stool.

Respondent thus attempts to distinguish between "homeopathic treatment" and treatment with "immune therapy or oral vaccines" because his definition of immune therapy includes administration of antioxidant vitamins and reduction of stress through traditional medical treatment. Suffice it to say that there is satisfactory evidence in this record that Mrs. Heinzelman was provided with both. See *inter alia*, the testimony of department investigator Sherrie Johnson at pp. 125-126 of the hearing transcript and respondent's testimony at p. 111.

Respondent further attempted to distinguish his treatment of his mother from immune therapy in his September 8, 1995, deposition (Exh. 10):

> Q. (by Mr. Thexton) What I recall you saying was that you did not give your mother an autogenous oral vaccine.
>
> A. Uh uh.
>
> Q. Instead, you gave her a homeopathich treatment.
>
> A. Yes.
>
> Q. Okay. So my questions to you is, what is the difference?
>
> A. Oral autogenous vaccines or autogenous vaccines are generally given in a manner -- you're doubling the dose each time in autogenous vaccines. So you're starting out with a certain amount, and then the next dose you double it, and you keep doubling it. That's generally the way autogenous vaccines are given.
>
> Q. Okay. How are they made?
>
> A. Autogenous vaccines are derived from bacteria from the body and administered -- depends on how they're administered. They can be administered by injection, by oral, probably topical. There's different modes of administration.
>
> Q. Okay. So in this case, you did prepare a liquid from bacteria from your mother's body.
>
> A. Yes.
>
> Q. Okay. And she did take it both orally and topically.
>
> A. Yes. (Deposition, p. 6)

The problem with this attempted distinction related to doubling the dose in immune therapy is that, in his August 12, 1994, letter to Mr. Thexton, respondent described the administration of his "homeopathic remedy" in part as follows:

> The patient is also instructed to take a teaspoonful of the final product and swish in the mouth and then swallow. This is done 3X's a day. The dose is doubled each time starting from the first.

Kathleen A. Kelly, D.D.S., who testified as the state's expert, was Chairperson of the Dentistry Examining Board at the time of the board's July 6, 1988, Order. Dr. Kelly testified that in her professional opinion, the treatment described in respondent's August 12, 1994, letter (Exh 6) and in the transcript of the August 12, 1994, interview of respondent (Exh 8), was the same treatment described in respondent's 1986 and 1987 articles entitled "Immune Therapy" (Exhs. 4 & 5), and

was the same treatment which respondent was prohibited from providing by the board's July 6, 1988, Order.

There is no other reasonable conclusion other than that respondent was treating his mother by immune therapy or oral vaccines in violation of the board's July 6, 1988, Final decision and Order.

Also unavailing is respondent's contention that he was not treating his mother as a dental patient and therefore was not required to maintain dental records on her treatment. First, he was treating her at least in part for a dental condition:

> Q (by Mr. Thexton) You would agree with me that the purpose of the treatment which you described as providing to your mother which you describe as homeopathich treatment, the purpose of it is to eliminate bacteria and their antigens.
>
> A. (by respondent) I wouldn't say that. I would say the treatment is unknown. In a homeopathich sense I don't think anybody really understands how it works.
>
> Q. What is the purpose of the treatment irrespective of how it works?
>
> A. To improve the oral situation. Herpetic lesions in her mouth. (tr., pp. 120-121)

Nor does the fact that Norma Heinzelman is respondent's mother remove her from the status of his patient. In fact, in his letter of August 16, 1994, describing the treatment administered to his mother, respondent consistently refers to her as "the patient."

Complainant alleges a number of violations of the dentistry statutes and rules by respondent's treatment of his mother which have not found their way into the Conclusions of Law. First, it is alleged that he engaged in conduct that indicates a lack of knowledge of, an inability to apply or the negligent application of, principles and skills of dentistry or oral hygiene, in violation of sec. 447.07(3)(h), Stats. There are two aspects to this allegation. First is the testimony of Dr. Kelly that the treatment rendered by respondent to his mother did not conform to the minimum standards of dentistry because there is no record of any examinations or of a health history. Such failure to document is certainly a violation of the record-keeping provisions, but does not necessarily indicate that those interventions were not performed. Respondent testified that he examined his mother's mouth and dentures frequently and his testimony in that regard is credited: Respondent is obviously intensely concerned with his mother's health.

The second aspect of the alleged violation of sec. 447.07(3)(h) relates to the efficacy of the treatment provided to respondent's mother. Dr. Kelly testified that she was not aware of any school of thought in the field of dentistry that accepts the use of immune therapy. That testimony might be sufficient if the treatment was administered exclusively for a dental condition, but the evidence is that the claimed benefits of the treatment are not restricted to the oral cavity but extend to the entire body. It is not necessary to accept respondent's testimony as to the benefits

of immune therapy or autovaccines to require that, before one rejects that testimony out of hand, the testimony of an expert bacteriologist or immunologist be elicited.

Which leads to the allegation that respondent practiced beyond the scope of his license when treating his mother, in violation of sec. 448.03(1), Stats., and sec. DE 5.02(3), Code. There is no question but that respondent was treating more than a dental condition and was therefore practicing beyond the scope of his dental license. He was doing so legally, however. Sec. 448.03(2)(h) of the Medical Practices Act, which states as follows:

> **448.03 License or certificate required to practice; use of titles; civil immunity; practice of Christian Science. (1)** License required to practice. No person may practice medicine and surgery, podiatry or physical therapy, or attempt to do so or make a representation as authorized to do so, without a license granted by the board.
>
> * * * *
>
> (2) Exceptions. Nothing in this chapter shall be construed either to prohibit, or to require a license or certificate under this chapter for any of the following:
>
> * * * *
>
> (h) The gratuitous domestic administration of family remedies.

Treatment of Acne with Nystatin.

In his deposition on September 8, 1995, and in his testimony at hearing, respondent claims that he prescribed nystatin for Terry Albinger, a clerk at The Pharmacy Station, the pharmacy where they were both employed, for a dental condition rather than for acne. That testimony is not credited. At deposition, respondent testified that Ms. Albinger had complained to him of a sore mouth, and that he examined her mouth, finding a white film about the size of a dime or smaller inside the cheek on the left side, indicating a "fungal lesion." Following the testimony of the state's expert, Kathleen Kelly, D.D.S., that nystatin is indicated for the treatment of thrush (tr., p.63), respondent modified his position in his testimony at hearing as follows:

Q. (by Mr. Thexton) And what was the dental purpose for which you suggested that she put a pinch of nystatin in the water and breathe the vapors?

A. I -- It was certainly secondary. And I believe that I did read somewhere in a paper at some point that it was beneficial.

Q. Beneficial to what?

A. To combat thrush fungal infection.

Q. Did you in fact diagnose her as having thrush or some other fungal infection in her mouth?

A. It was -- it was thrush.

Q. You diagnosed her as having thrush?

A. Yes. (Tr., p. 115)

Dr. Kelly described the symptoms of thrush as follows:

Q. (by Mr. Thexton) Dr. Kelly, I wonder if you would describe for us the symptoms of thrush?

A. Generally, you suspect that diagnosis when you see a white coating on the tongue or inside the mouth.

Q. Would round lesions, one or more, indicate thrush at all?

A. Not that I'm aware of.

Respondent did, of course, have considerable motivation to testify that he was providing services for a dental condition suffered by Ms. Albinger. If he wasn't, then his preparation of a prescription for nystatin, and his dispensing of that medication pursuant to that prescription, would constitute unprofessional conduct under both licenses. Ms. Albinger, on the other hand, had no discernible motive for misrepresenting her interactions with the respondent. Excerpts from her testimony include the following:

> Dick [Heinzelman] and I had been talking about health foods. Previously, in his -- one of his other jobs, he had worked in a pharmacy where they had a lot of health foods, a lot of vitamins and things like that. He believed in that. He thought that would be a good concept for our store, for our drug store, to get more of that in because people were more -- becoming more aware of health foods. And natural vitamins and taking better care of themselves. In our conversation I had mentioned to him, gee, I'm in my 40's, I still break out, you know. Why should a person in their 40's still have acne like this. And he mentioned there was nothing really over-the-counter to use, except a prescription that he said would be nystatin. I trusted him as a pharmacist and as a co-worker. He told me he would give me a prescription for it, that I was to boil a kettle of water and put a few drops of this in, to make a tent over it and steam my face. And that would help me. And so I believed him. (tr., pp. 9-10)

> After our conversation, Dick made a prescription up for me. He gave it to me and said to put it in the refrigerator . . . . Dick left his shift. Laura White, the manager pharmacist of the store, had come in to relieve him from his shift. After a while I mentioned it to her that Dick gave me this. And our conversation. And I said to her I felt a little uneasy about it. (tr., p. 11)

Ms. Albinger also testified that respondent did not conduct any examination of any kind, including any examination of her oral cavity, and that he did not discuss her health or dental history with her prior to providing the prescription to her.

Laura White was the managing pharmacist at The Pharmacy Station on the day in question. Her testimony at hearing supported that of Ms. Albinger:

> I came into work and Terry asked me about some nystatin powder that she was told to use. At the time I didn't agree with the use. Thought it was just one person giving advice to another person, and told her to forget about it, and just throw it away, whatever it was. (tr., p. 27)
>
> * * * *
>
> When I came in she brought up the nystatin powder and said that she was told to put some in boiling water and let the steam soak into her pores. I didn't think it made any sense to me as far as what the nystatin powder would do for adult acne is what she told me she was questioning. And that's why I told her forget the thing. (tr., pp. 27-28)

Respondent did admit in his testimony that he may have mentioned to Ms. Albinger the possibility that nystatin might help her acne condition.

> Q. (by Ms. Boyle) Did you mention anything to Terry Albinger -- or did she mention anything about the acne problem at that time?
>
> A. We discussed it, yes.
>
> Q. And what did she say?
>
> A. We discussed it a number of times. And I remember her talking about it. And I said I had heard that that was a possibility it might help it, but that was not the primary motive for my treating her with nystatin because it's just not a legitimate form of treatment for acne.
>
> Q. You just heard that it might?
>
> A. I heard that at one time. (tr., pp. 102-103)

In fact, respondent had not merely "heard" that nystatin might help acne, he was a proponent of its use for that purpose. In a paper he wrote in 1986 and updated in 1987 on the subject of "Immune Therapy" (Exhs. 4 & 5), he presented the following anecdotal testimony:

> I had another patient, a young boy, place nystatin powder in water, boil it, and breathe in the vapors. My rationale was to eliminate the yeast of fungi over as large an area as possible, including the lungs, to attempt to decrease the total stress on the immune organs. An interesting situation occurred. After breathing the vapors, his rather severe acne problem cleared up.
>
> * * * *
>
> I, myself, tried breathing in nystatin vapors right after I developed a severe chest pain. This problem never reoccurred.

After doing this, breathing in nystatin vapors, I noticed the blemishes on my skin disappeared, and the dry areas cleared up. It also improved my dandruff problem. These conditions returned after I discontinued the nystatin vapors.

Based first upon the credible testimony of Terry Albinger and of Laura White as to the circumstances of and purpose for respondent's preparing the prescription for nystatin; second, upon respondent's previous claims as to the benefits of nystatin vapor in treating acne and other skin problems; and third, upon respondent's inconsistent testimony as to the nature of Ms. Albinger's alleged dental condition and his diagnosis thereof; it is concluded that Ms. Albinger sought assistance from respondent exclusively for her acne condition and that respondent's recommended treatment was directed exclusively to that condition. If so, then his attempt to treat Ms. Albinger's acne exceeded the scope of both dentistry and pharmacy, the prescription for nystatin prepared by him was not a valid prescription, and in preparing it, respondent practiced beyond the scope of his dental license.[1]

Discipline

It is well established that the purposes of licensee discipline in Wisconsin are to protect the public, to deter other licensees from engaging in similar conduct, and to promote the rehabilitation of the licensee. *State v. Aldrich,* 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1969). The prosecutor urges that the violations committed in this instance deserve nothing less than revocation of respondent's license to practice dentistry. That result is not consistent with the facts. In the last analysis, the violations found hereby consist first of respondent providing treatment to his own mother utilizing a treatment modality which, though probably ineffective, is also probably harmless. In providing that treatment, respondent undoubtedly violated the 1988 order of the dentistry board, but the violation was minimal. Again, it consisted of the gratuitous administration of a questionable but harmless treatment to his own mother. One must question the appropriateness of state intervention in what is apparently an internal family dispute which has no real relevance to the health, safety and welfare of the citizens of the state of Wisconsin. Unless, of course, it is concluded that such questionable treatment constitutes, in and of itself, evidence of incompetence to practice dentistry. As stated above, however, absent satisfactory expert testimony, conclusions in that regard are not appropriate.

The other principal finding is that respondent exceeded the scope of practice of dentistry in prescribing nystatin to Terry Albinger. In that case, respondent was not ministering to a family member, and this finding is, in the opinion of the ALJ, by far the more serious of the allegations. Running throughout this case is the suggestion that respondent's conduct involving Terry Albinger demonstrates, again in and of itself, incompetence in the practice pharmacy. The efficacy of the use of nystatin vapor as a treatment modality for Ms. Albinger's acne is certainly in question, but there is no expert testimony in this record establishing that it is not.

[1] As stated in the Findings of Fact, the actual prescription document admitted at hearing carries the hand-written notation "swirl & swallow" across one corner of the prescription form. There is no satisfactory evidence in this record as to when that notation was added.

Complainant's expert testified that treatment of acne does not fall within the scope of dentistry and that nystatin is used in dentistry for treatment of thrush; she did not testify as to its possible uses outside the field of dentistry. Ms. White testified that nystatin is "used quite frequently for things like diaper rash, other topical fungal rashes. Things like that. Most commonly. There could be other uses, but that's the -- its real common use." Finally, respondent conceded in his answer that nystatin vapor "has no known effect on acne," and conceded in his testimony that treatment of acne by the use nystatin vapors "is not a legitimate form of treatment for acne." One is tempted to put all that together and conclude that as a licensed dentist, respondent should have known that he was prescribing an ineffective treatment. In the last analysis, however, respondent's prescription of nystatin for Terry Albinger had nothing to do with the practice of dentistry except that he utilized his dentistry license to improperly prescribe for a non-dental condition.

One is also tempted to require that respondent complete continuing education addressing any possible deficits in his understanding of immunologic disease. However, inasmuch as he continues to be prohibited from treating patients by immune therapy or oral vaccines in his practice as a dentist, and inasmuch as such practice as a pharmacist would be prohibited in any event, such an order would presumably serve no purpose. Instead, it is concluded that suspension of respondent's dental license for a period of three months appropriately addresses the violations found.

Dated this 18th day of December 1995.

Respectfully submitted,

Wayne R. Austin
Administrative Law Judge

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FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LS9503202 DEN

RICHARD O. HEINZELMAN, D.D.S.,

Respondent

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
(SEC. 440.22, STATS.)

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Wayne R. Austin, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation & Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter. Unless otherwise noted, all times commence at the start of the first five minute period following actual start of the activity, and terminate at the start of the first five minute period prior to the actual end of the activity. Because the matter before the Dentistry Examining Board and the Pharmacy Examining Board were consolidated for the purposes of hearing, various activities were not and could not be separately documented. The times set forth below are therefore the total time expended for both matters, and the final total cost for each matter represents one-half the total expenditure for both matters.

ADMINISTRATIVE LAW JUDGE EXPENSE

DATE & TIME SPENT	ACTIVITY
4/13/95 10 minutes	Draft Notice of Prehearing Conference
5/10/95 15 minutes	Conduct prehearing conference

5/10/95 15 minutes	Draft Prehearing Memorandum
9/21/95 5 hours, 50 minutes	Conduct Hearing
12/7/95-12/18/95 3 hours, 36 minutes	Prepare Proposed Decision
Total Time Spent	10 hours 6 minutes

Total administrative law judge expense for Wayne R. Austin:
10 hours, 6 minutes @ $43.45, salary and benefits $438.84

REPORTER EXPENSE
Magne-Script

DATE & TIME SPENT	ACTIVITY
9/29/95	Record hearing; prepare transcript

Total billing from Magne-Script reporting service (Invoice #9333, dated 11/12/95) $689.30

TOTAL ASSESSABLE COSTS FOR THE OFFICE OF BOARD LEGAL SERVICES: $1128.14

TOTAL ASSESSABLE COSTS FOR THE OFFICE OF BOARD LEGAL SERVICES ATTRIBUTABLE TO PROCEEDINGS BEFORE THE DENTISTRY EXAMINING BOARD **$564.07**

Wayne R. Austin, Administrative Law Judge

Sworn to and subscribed before me this 1ST day of APRIL, 1996.

Donald R. Rittel
Notary Public, State of Wisconsin
My commission is permanent

WRA:960014.doc

FILE COPY

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	**AFFIDAVIT OF COSTS**
RICHARD O. HENIZELMAN, D.D.S., RESPONDENT.	:	94 DEN 116

STATE OF WISCONSIN)
COUNTY OF DANE)

I, Arthur Thexton, being on affirmation, say:

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 on the attached record are the costs of the proceeding accrued to the Division of Enforcement in this matter, which were not attributed to the companion Pharmacy Examining Board case and billed as costs in that proceeding, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

Arthur Thexton, Prosecuting Attorney

Subscribed to and affirmed before me this May 29, 1996.

Steven M Glos

Notary Public
My Commission is permanent.

akt
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STATE OF WISCONSIN
Department of Regulation & Licensing
Division of Enforcement
1400 East Washington Avenue
Madison, WI 53708-8935

Richard O. Heinzelman
94 DEN 116

			HOURS
01/25/95	INV	Telephone conference with Board Advisor.	.25
03/13/95	AKT	Do complaint, letter to Atty Boyle.	1.50
03/14/95	AKT	Telephone conference with Dr. K. Kelly, ltr to Dr. Kelly with file materials, review witness statements, revise Complaint, letter to Atty Boyle.	3.50
05/11/95	AKT	Letter to Board Advisor Curran.	.50
06/02/95	AKT	Telephone conference with Board Advisor Curran.	.30
06/21/95	AKT	Draft stipulation, send to Atty Boyle.	1.00
08/22/95	INV	Traveled to Antigo, observed respondent's partner, return.	8.00
08/24/95	INV	Traveled to Antigo, interviewed respondent's partner, returned.	10.00
08/28/95	AKT	Leave message for Atty B. Boyle.	.10
08/29/95	INV	Memo re: trips to Antigo.	3.00
08/30/95	AKT	Review file, prepare for meeting with Dr. Kelly, meet with Dr. Kelly.	3.00

		HOURS	
09/12/95			
	AKT Do Amended Complaint, fax to Atty Boyle, telephone conference with Atty B. Boyle.	.50	
12/18/95			
	AKT Received and reviewed correspondence from ALJ (Proposed Decision). Telephone conference with Board Advisor Curran.	.50	
01/08/96			
	AKT Do objections to proposed decision.	1.00	
05/28/96			
	AKT Prepare Statement of Costs.	1.50	
		---	---
	FOR CURRENT SERVICES RENDERED	34.65	974.40
08/22/95	Traveled to Antigo, 340 miles @ .25.		85.00
08/22/95	Traveled to Antigo, 340 miles @ .25.		85.00
10/13/95	Dr. Kathleen Kelly, D.D.S., expert witness bill.		675.00

	TOTAL COSTS		845.00
	BALANCE DUE		$1,819.40
			========

The above records are kept in the ordinary course of business by the Division and are assessable under s.440.22, Wis. Stats. Hourly rates of $41/attorney and $20/investigator are set by DOE policy.