

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

---

IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

DAVID L. HERBST, D.D.S.,

DECISION  
AND ORDER

Respondent.

---

The complaint having been filed in this matter on November 25, 1980; the respondent, David L. Herbst, D.D.S. (Herbst), by his attorney, Albert H. Beaver, 118 North Lawton Place, Sturgeon Bay, Wisconsin 54235, having filed an answer to the complaint on February 26, 1981, admitting the factual allegations contained in said complaint;

This matter having come on for hearing on February 27, 1981, in Room 179A, 1400 East Washington Avenue, Madison, Wisconsin; Herbst having appeared thereat in person and by his attorney, Albert H. Beaver; the complainant having appeared by Attorney Michael J. Buchanan, Room 183, 1400 East Washington Avenue, Madison, Wisconsin 53702; the hearing examiner, Attorney Donald R. Rittel, having filed his proposed decision and order in this matter on June 23, 1981; the respondent, Herbst, by his attorney, Albert H. Beaver, having filed objections to such proposed decision and order on July 17, 1981; the complainant by its attorney, Michael J. Buchanan, having filed a reply to respondent's objections on July 30, 1981;

The Dentistry Examining Board, having considered the above entitled matter, having reviewed the record and pleadings herein and the proposed decision, findings of fact, conclusions of law and proposed order of Hearing Examiner Donald R. Rittel, dated June 23, 1981, and having considered respondent's objections to said proposed decision and order, and complainant's reply to such objections, makes the following, constituting its decision in this matter:

**FINDINGS OF FACT**

1. David L. Herbst, D.D.S. (Herbst), 430 Bridge Street, Marinette, Wisconsin, was at all times material to these proceedings licensed under the provisions of ch. 447, Stats., to practice as a dentist in the State of Wisconsin under license #5001177 which was granted on May 24, 1973.

2. On August 4, 1980, Herbst was found guilty by jury verdict, and a judgment of conviction thereof was entered on September 30, 1980 by the State of Wisconsin Circuit Court Branch II for Marinette County, on the following criminal felony charges:

a. On or about August 8, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated August 8, 1978, that on May 31, 1977, Herbst had provided services to patient Sharon B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>
00110	Oral Exam
00270	Two Bite Wing X-rays
01100	Prophylaxis
01200	Fluoride Treatment

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

b. On or about November 18, 1977, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the preparation and submission of a claim seeking reimbursement from the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst, with intent to mislead and defraud, did make and cause to be made false statements and representations of material fact, to wit: representations on a Medical Assistance claim form, dated November 18, 1977, that on November 16 and November 21, 1977, Herbst had provided services to patient Sharon B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Date of Service</u>
00110		11/16/77
00270	"(2)"	11/16/77
04120	"Four Quadrants"	11/16/77
01100		11/21/77
01200		11/21/77

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(b) and 49.49(2)(a), Wis. Stats. (ch. 29, Laws of 1977, sec. 594m), (a misdemeanor).

c. On or about July 18, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated July 18, 1978, that on May 12, 1978, Herbst had provided services to patient Britta A., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
07110	Extraction - Single Tooth	27

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

d. On or about July 18, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and misrepresentations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated July 18, 1978, that on July 14, 1978, Herbst had provided services to Britta A., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
07110	Extraction - Single Tooth	22

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b), Wis. Stats.

e. On or about August 15, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated August 15, 1978, that on June 20, 1978, and June 22, 1978, Herbst had provided services to patient Jenice A., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Letter</u>
07110	Single Tooth (uncomplicated)	V
07110	Single Tooth (uncomplicated)	U
07110	Single Tooth (uncomplicated)	L
07110	Single Tooth (uncomplicated)	M

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

f. On or about July 17, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated July 17, 1978, that on April 2, 1978, Herbst had provided services to patient Ruth A., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
07250	Root Recovery (Surgical Removal of Residual Roots)	9

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

3. On August 5, 1980 Herbst was found guilty by jury verdict, and a Judgment of Conviction thereof was entered on September 30, 1980 by the State of Wisconsin Circuit Court Branch II for Marinette County, on the following criminal felony charges:

a. On or about August 15, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated August 15, 1978, that on July 14, 1978, Herbst had provided services to patient Jenice A., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Letter</u>
07110	Single Tooth (uncomplicated)	A
07110	Single Tooth (uncomplicated)	B

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

b. On or about July 27, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of a Medical Assistance claim form, dated July 27, 1978, that on July 16, 1978, Herbst had provided services to patient Robert A., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>
03310	One Canal Root Canal Therapy

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

c. On or about August 22, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated August 22, 1978, that on April 13, 1978, Herbst had provided services to patient Betsy B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
07250	Root Recovery	6

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

d. On or about August 22, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated August 22, 1978, that on April 19, 1978, Herbst had provided services to patient Betsy B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
07250	Root Recovery	11

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

e. On or about November 14, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated November 14, 1978, that on July 11, 1978, Herbst had provided services to patient Jeremy B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>
04120	Sub-gingival Curettage (maxillary left quadrant) (maxillary right quadrant) (mandibular left quadrant) (mandibular right quadrant)

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

f. On or about September 8, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and

reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated September 8, 1978, that on August 28, 1978, Herbst had provided services to patient Bonnie B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
02320	Plastic, Mesial, Incisal Surfaces (permanent teeth)	8
03120	Indirect Pulp Cap	8
02310	Plastic, Lingual Surface (permanent teeth)	8
03120	Indirect Pulp Cap	8

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

g. On or about September 12, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated September 12, 1978, that on August 28, 1978, Herbst had provided services to patient Bonnie B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
02320	Plastic, Distal, Incisal Surfaces (permanent teeth)	9
03120	Indirect Pulp Cap	9
02310	Plastic, Lingual Surfaces (permanent teeth)	9
03120	Indirect Pulp Cap	9

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

h. On or about August 22, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated August 22, 1978, that on May 16, 1978, Herbst had provided services to patient Betsy B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
02310	Plastic, Mesial Surface (permanent teeth)	22
02140	Amalgam, Distal Surface (permanent teeth)	22
02140	Amalgam, Lingual Surface (permanent teeth)	22
02310	Plastic, Buccal Surface (permanent teeth)	22

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

i. On or about August 22, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated August 22, 1978, that on May 16, 1978, Herbst had provided services to patient Betsy B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
02310	Plastic, Mesial Surface (permanent teeth)	27
02140	Amalgam, Distal Surface (permanent teeth)	27
02310	Plastic, Buccal Surface (permanent teeth)	27
02140	Amalgam, Lingual Surface (permanent teeth)	27

when in truth and in fact, as Herbst knew, said statements and representations were not true; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

j. On or about July 19, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated July 19, 1978, that on June 9, 1978, Herbst had provided services to patient Gaspare B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
02140	Amalgam, Lingual Surface (permanent teeth)	24
02140	Amalgam, Lingual Surface (permanent teeth)	23



and that these services were medically necessary, when in truth and in fact, as Herbst knew, said statements and representations were not true in that the restorations were not medically necessary; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

k. On or about July 19, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated July 19, 1978, that on June 6, 1978, Herbst had provided services to patient Gaspare B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
02140	Amalgam, Lingual Surface (permanent teeth)	26
02140	Amalgam, Lingual Surface (permanent teeth)	25

and that these services were medically necessary, when in truth and in fact, as Herbst knew, said statements and representations were not true in that the restorations were not medically necessary; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

l. On or about July 19, 1978, at 430 Bridge Street, in the City of Marinette, County of Marinette, State of Wisconsin, in connection with the State of Wisconsin's Medical Assistance Program created by ch. 49 of the Wisconsin Statutes, Herbst did knowingly and willfully make and cause to be made false statements and representations of material fact in an application for payment and reimbursement of Medical Assistance, to wit: representations on a Medical Assistance claim form, dated July 19, 1978, that on June 6, 1978, Herbst had provided services to patient Gaspare B., described as follows:

<u>Service Code</u>	<u>Description of Alleged Service</u>	<u>Tooth Number</u>
02140	Amalgam, Lingual Surface (permanent teeth)	27

and that this service was medically necessary, when in truth and in fact, as Herbst knew, said statements and representations were not true in that the restoration was not medically necessary; all in violation of secs. 49.49(1)(a)1 and 49.49(1)(b)1, Wis. Stats.

4. The convictions set forth above in paragraphs 2 and 3 involve conduct by Herbst in the course of his practice of dentistry.

5. The payment of the fine imposed by the circuit court has been stayed and Herbst's motion for release on bond pending seeking post conviction relief has been allowed by the Marinette County Circuit Court, both pending Herbst's seeking post conviction relief.

## CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this proceeding pursuant to sec. 447.07, Stats., and Herbst's motion to dismiss the complaint is denied.

2. Herbst, having been convicted of the crimes set forth in paragraphs 2 and 3 of the Findings of Fact, which substantially relate to the practice of dentistry and evince a violation of state law in regard to the making of false statements and representations in the preparation and submission of claims seeking reimbursement from the State of Wisconsin Medical Assistance Program with intent to mislead and defraud, is guilty of unprofessional conduct within the meaning of sec. 447.07(3)(a), Stats., and sec. 447.07(5), Stats., conduct unbecoming a professional person, and he is therefore subject to disciplinary action by the Dentistry Examining Board pursuant to sec. 447.07, Stats.

3. Herbst, having been convicted of the crimes set forth in paragraphs 2 and 3 of the Findings of Fact, has been convicted of crimes involving moral turpitude within the meaning of sec. 447.07(2), Stats., and he is therefore subject to disciplinary action by the Dentistry Examining Board pursuant to sec. 447.07, Stats.

### ORDER

NOW, THEREFORE, IT IS ORDERED, that the license of DAVID L. HERBST to practice dentistry in the State of Wisconsin (#5001177) shall be, and hereby is REVOKED, effective thirty days after the date of this decision and order;

IT IS FURTHER ORDERED that David L. Herbst may not apply for licensure in dentistry for one (1) year from the effective date of his license revocation, and he shall be required to demonstrate qualification to practice by examination, including clinical and laboratory aspects, as prescribed by the Dentistry Examining Board, at the time of application.

Dated this 22nd day of October, 1981.

DENTISTRY EXAMINING BOARD

BY:

Robert C. Weber D.D.S.  
ROBERT C. WEBER, D.D.S.

### MEMO:

This disciplinary proceeding was commenced before the Dentistry Examining Board against David L. Herbst, D.D.S.,

based upon his criminal conviction in Circuit Court for Marinette County, after trial by jury, upon eighteen counts of falsely obtaining state medical assistance reimbursements for patient care. Seventeen of the counts were felonies, one was a misdemeanor. The formal Answer filed in this matter admits that a judgment of conviction was entered against Dr. Herbst by the trial court on September 30, 1980. (See paragraphs 2 and 3 of the Complaint, and paragraph 1 of the Answer.) Dr. Herbst is appealing his conviction to the Wisconsin Court of Appeals.

At the disciplinary hearing Herbst testified as to those matters which he believed to be relevant to the discipline to be imposed, if any, by virtue of his criminal conviction. Herbst also moved that this proceeding be dismissed since his criminal conviction is being appealed.

It is the conviction of Herbst, and not the commission of specific acts, which constitutes the substance of this disciplinary action. Wis. Stats. sec. 447.07(2) provides:

The examining board may reprimand or may limit, suspend or revoke the license of one convicted of a crime involving moral turpitude, of which the record of conviction, or a copy certified by the clerk or judge of the court, shall be conclusive evidence.

Herbst argues that he has not been "convicted" within the meaning of sec. 447.07(2), Stats., so as to give this board authority to impose discipline, since the statute should apply only to "final" convictions; that is, convictions finalized by the ultimate resolution of an appeal. Conversely, complainant takes the position that Herbst is "convicted" within the meaning of sec. 447.07(2), Stats., due to the initial determination of guilt made by the jury at the criminal trial, and that the conviction should be given full force and effect by administrative agencies such as this board. Respondent contends that complainant's interpretation of sec. 447.07(2), Stats., renders the statute unconstitutional as contrary to the guarantee of due process of law.

The issue presented, then, is whether an individual stands "convicted" within the meaning of sec. 447.07(2), Stats., at the time of the initial adjudication of guilt in the court of first instance, or only after the exhaustion of the procedure for appeal.

The primary source for construing the intended application of a statute is the language of the statute itself.

Ellingson v. ILHR Department, 95 Wis. 2d 710, 713, 291 N.W. 2d 649 (1980); Nekoosa-Edwards P. Co. v. Public Serv. Comm., 8 Wis. 3d 582, 591, 99 N.W.2d 821 (1959). Prior to reviewing matters outside the statutory language in order to determine the meaning intended by the legislature, the statute itself must reveal some ambiguity. State v. Kenyon, 85 Wis. 2d 35, 49, 270 N.W.2d 160 (1978). When the statutory language is clear and unambiguous, the intention of the legislature is to be derived by giving the language its plain, ordinary and accepted meaning. State v. Mendoza, 96 Wis. 2d 106, 114, 291 N.W.2d 478 (1980).

The term "convicted", as used in sec. 447.07(2), Stats., is not ambiguous. The statute gives this board authority to impose discipline, in a case such as this, on the basis of the initial adjudication of guilt to criminal charges.

Within the criminal statutes of this state, a "conviction" refers to the initial determination of guilt at the trial level. (See, e.g., sec. 969.01, Stats., right to bail before and after conviction; sec. 972.15, Stats., trial court may order a presentence investigation after conviction; sec. 973.12, Stats., sentencing of a convicted repeater.) When the criminal statutes provide rights or procedures accruing after the initial determination of guilt, the term "conviction" is modified or used in conjunction with other language. (See, e.g., sec. 974.02, Stats., motions for "post-conviction" relief; sec. 974.06, Stats., post-conviction procedure; sec. 972.13, Stats., requirement and form of entry of "judgment of conviction" by trial court after determination of guilt.) Had the legislature intended that an individual not stand "convicted" until after the result of appeal is known, under sec. 447.07(2), Stats., or other statutes, it would have so provided. The plain, ordinary and accepted meaning of the language used in sec. 447.07(2), Stats., does not contemplate the result respondent desires.

This analysis of sec. 447.07(2), Stats., is consistent with the policy of the legislature as expressed in another statute concerning the authority of licensing agencies to take disciplinary actions against licensees with an arrest or conviction record. Section 111.32(5)(h)2.a., Stats., expressly permits those licensing agencies with proper statutory authority, and in appropriate circumstances, to

refuse to employ or license, or to bar or terminate from employment or licensing, any person who is subject to a pending criminal charge if the circumstances of the charge

substantially relate to the circumstances of the particular job or licensing activity.

It would not be logical to suggest the legislature intended that disciplinary proceedings may result from a mere arrest, but not after a finding of guilt beyond a reasonable doubt upon the charges. Statutes should not be construed to reach such unreasonable results. Larson v. ILHR Department, 76 Wis. 2d 595, 609, 252 N.W.2d 33 (1977).

Finally, it must be recognized that the record of conviction is conclusive proof under sec. 447.07(2), Stats., that a licensee has been "convicted", so as to authorize this board to take disciplinary action. In this case, respondent concedes that a judgment of conviction was entered by the court in the criminal proceedings. The judgment of conviction indicates that Herbst has been "convicted." See secs. 967.02(8) and 972.13, Stats. Although neither the statutes nor rules of this board specifically define the phrase "record of conviction" contained in sec. 447.07(2), Stats., sec. 111.32(5)(h), Stats., provides, in part:

The term "conviction record" includes, but is not limited to, information indicating that a person has been convicted of any felony, misdemeanor or other offense, placed on probation, fined or paroled pursuant to any law enforcement or military authority.

A "judgment of conviction", then, constitutes conclusive information indicating that Herbst presently stands "convicted" within the meaning of sec. 447.07(2), Stats., given the current state of his conviction record.

Respondent contends that sec. 447.07(2), Stats., as construed, is unconstitutional. It is well established that an administrative agency, such as this board, may not question the constitutionality of statutes which the legislature has mandated the agency to enforce. Omernick v. Department of Natural Resources, 100 Wis. 2d 234, 247, 301 N.W.2d 437 (1981); Warshafsky v. The Journal Co., 63 Wis. 2d 130, 147, 216 N.W.2d 197 (1974); Wendlandt v. Industrial Comm., 256 Wis. 62, 67, 39 N.W.2d 854 (1949). Accordingly, respondent's constitutional argument should not be considered by this board.

However, it should be noted that all statutes are presumed to be constitutional and the party challenging a statute has the burden of proving its unconstitutionality beyond a reasonable doubt. Moedern v. McGinnis, 70 Wis. 2d

1056, 1068, 236 N.W.2d 240 (1975). Respondent's authority for his position is the recent United States Supreme Court case, Allen v. McCurry, \_\_\_ U.S. \_\_\_, 101 S. Ct. 411. Generally stated, Allen held that a determination in a state court that an individual had not been subject to an unconstitutional search and seizure by police, was binding upon a federal court in considering a subsequent action brought by the individual under the civil rights statutes, based upon the doctrine of collateral estoppel. This is not the issue presented in this proceeding.

The crimes of which Herbst was convicted contain inherent elements of moral turpitude. Lee v. State Board of Dental Examiners, 29 Wis. 2d 330, 335, 139 N.W.2d 61 (1966). Respondent admits that the crimes were committed in the course of his practice of dentistry and substantially relate to dental practice. See, sec. 111.32(5)(h)2.b., Stats., and paragraphs 4 and 5 of the Complaint and paragraph 1 of the Answer. The primary issue before this board, then, is the appropriate discipline, if any, to be imposed.

The interrelated purposes for imposing discipline in a case such as this are 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to deter other licensees from engaging in similar conduct. State v. Aldrich, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481, 164 N.W.2d 235, (1969).

It is determined that Herbst's license to practice dentistry be revoked and that he may not reapply for such license for one year, based upon the following considerations:

1. The conviction of Herbst evinces conduct which is extremely serious and repetitive. The actions of Herbst were not isolated incidents, but rather spanned several months and involved numerous patients.

2. The misconduct was intentional, and is such as to bring disrepute upon the dentistry profession as a whole.

3. This board must emphasize to its licensees the serious nature of filing false claims for reimbursement from the State Medical Assistance program, and render disciplinary measures coextensive with an effective public disapproval of such conduct.

4. There has been no credible showing of the presence of mitigating circumstances surrounding the conviction which substantially offsets the discipline determined.

5. Nothing short of license revocation in this case would offer sufficient recognition of the unprofessional conduct involved, or adequately protect the public from similar conduct by others. Demonstration of qualification to practice dentistry after a one-year hiatus is necessary to protect the interests of the public.

DENTISTRY EXAMINING BOARD