

# 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)

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

FILE COPY

---

IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST :  
JAMES SCOTT MARKENSON, D.D.S., : FINAL DECISION AND ORDER  
RESPONDENT :

---

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

James Scott Markenson, D.D.S.  
8909 Port Washington Road #204  
Milwaukee, Wi. 53217

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

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, Wi. 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the Final Decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. James Scott Markenson, D.D.S., Respondent herein, is duly licensed to practice dentistry in the State of Wisconsin. His license bears number 3132 and was granted June 24, 1983.
2. On an unspecified number of occasions between June 24, 1983 and September 17, 1987, Respondent prescribed percodan or percocet for patients, instructing the patient to fill the prescription and return to Respondent's office.
3. On an unspecified number of occasions, Respondent indicated to the

patient that he needed to check the medications to be sure the correct medications were dispensed. Respondent then removed the percodan or percocet and replaced it with acetaminophen.

4. Respondent ingested the percodan or percocet which he had removed from the patient's medicine containers.

#### CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction of this matter pursuant to Wis. Stats. sec. 447.07.

2. By taking percodan or percocet from patients for whom it was prescribed and using it personally, Respondent violated provisions of Chapter 161, Wisconsin Statutes, and is subject to discipline pursuant to Wis. Stats. sec. 447.07 (3)(L).

3. By violating Chapter 161, Respondent violated a statute which substantially relates to the practice of dentistry.

4. By violating a statute which substantially relates to the practice of dentistry, Respondent engaged in unprofessional conduct as defined by Wis. Admin. Code sec. DE 5.02 (20).

5. By taking percodan or percocet from patients for whom it was prescribed and using it personally, Respondent obtained controlled substances other than in the course of legitimate practice, thereby engaging in unprofessional conduct as defined by Wis. Admin. Code sec. 5.02 (6).

6. By engaging in unprofessional conduct as defined by Wis. Admin. Code sec. DE 5.02 (20), Respondent is subject to discipline pursuant to Wis. Stats. sec. 447.07 (3)(a)&(f).

#### ORDER

NOW, THEREFORE, IT IS ORDERED that the stipulation of the parties is approved.

IT IS FURTHER ORDERED that James Scott Markenson's license to practice dentistry in the State of Wisconsin is suspended for a period of 90 days, effective October 1, 1990.

IT IS FURTHER ORDERED that following the 90 day suspension, Dr. Markenson shall be issued a limited license to practice dentistry, subject to the following terms and conditions:

a. The limitations set forth herein shall remain in full force and effect for a period of five (5) years from the date of issuance of the limited license, or until the Dentistry Examining Board issues an order modifying this final decision and order.

b. Dr. Markenson shall enter and remain in a program acceptable to the Board for the treatment of alcohol and chemical dependency. To be acceptable, the program must include a physician or therapist who shall be considered Dr. Markenson's supervising physician or therapist. As a part of treatment, Dr. Markenson must attend therapy on a schedule as recommended by his supervising physician or therapist. In addition, Dr. Markenson must attend Alcoholics or Narcotics Anonymous at least two (2) times per week.

c. Dr. Markenson shall provide and keep on file with his supervising physician or therapist and all treatment facilities current releases which comply with state and federal laws authorizing release of all his medical, counselling and treatment records and reports to the Dentistry Examining Board and permitting his supervising physician or therapist to disclose and discuss the progress of his treatment and rehabilitation with the Dentistry Examining Board. Copies of such releases shall be filed simultaneously with the Dentistry Examining Board.

d. Dr. Markenson shall remain free of alcohol, prescription drugs and controlled substances not prescribed for valid medical purposes during the period of limitation.

e. Dr. Markenson shall participate in a program of random witnessed monitoring for controlled substances and alcohol in blood and/or urine on a frequency of not less than four (4) times per month. If Dr. Markenson's supervising physician or therapist deems that additional blood or urine screens are warranted, Dr. Markenson shall submit to such additional screens.

Dr. Markenson shall be responsible for obtaining a monitoring facility and reporting system acceptable to the Board, as well as for all costs incurred in conjunction with the monitoring and reporting required.

To be an acceptable program, the monitoring facility must agree to provide random and witnessed gatherings of specimens for evaluation. It must further agree to file an immediate report directly with the Dentistry Examining Board upon request; or if a drug or alcohol screen proves positive; or if Dr. Markenson refuses to give a specimen for analysis upon a request authorized under the terms of this order.

If any urine or blood specimen is positive or suspected positive for any controlled substance or alcohol, Dr. Markenson shall promptly submit to additional tests and examinations as the supervising physician or therapist or his designee shall determine to be appropriate to clarify or confirm the positive or suspected positive urine or blood test results.

f. The supervising physician or therapist shall submit formal written reports to the Dentistry Examining Board every ninety (90) days commencing ninety (90) days after the date the limited license is issued. The report shall assess Dr. Markenson's progress in his rehabilitation program and set forth the results of the random urine and/or blood screens. Dr. Markenson shall be responsible for the timely filing of these reports. The supervising physician or therapist and Dr. Markenson shall report immediately to the Dentistry Examining Board any suspected violations of this Order, including, but not limited to any positive or suspected positive blood or urine screens.

g. Dr. Markenson shall report all medications and drugs, over-the-counter or prescription, taken by him to his supervising physician within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs for him. The terms of this subparagraph shall not be deemed to modify or negate Dr. Markenson's obligations as set forth in subparagraph (d) of this order.

h. After two (2) years of successful compliance with the terms of the limited license, Dr. Markenson may petition the Dentistry Examining Board for modification of the terms of his limited license. Denial of such a petition in whole or in part shall not be deemed a denial of a license within the meaning of Wis. Stats. sec. 227.01(3)(a) and Dr. Markenson shall not have a right to any further hearings or proceedings on any denial in whole or in part of any petition for modification of the limited license.

i. Any violation of this Order shall be construed as conduct such that the public health, safety or welfare imperatively requires emergency suspension of Dr. Markenson's license, and may form the basis of a summary suspension of Dr. Markenson's license to practice dentistry in the State of Wisconsin, or may form the basis for additional disciplinary action.

Dated at Madison, Wisconsin, this 5 day of September, 1990.

DENTISTRY EXAMINING BOARD

by: Eric O'Fallon  
A member of the Board

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

---

IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST :  
 : STIPULATION  
 JAMES SCOTT MARKENSON, D.D.S., :  
 RESPONDENT :

---

It is hereby stipulated between James Scott Markenson, D.D.S., Respondent, Dennis P. Coffey, Attorney for the Respondent and Ruth E. Heike, Attorney for Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This stipulation is entered into as a result of a pending investigation of Respondent's practice of dentistry (87 Den 068). The parties agree to the resolution of this investigation by this stipulation and without the issuance of a formal disciplinary complaint and hearing.

2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights in this matter, including the right to have a formal disciplinary complaint filed, the right to a hearing on the allegations against him at which the State has the burden of proving the allegations by a preponderance of the evidence, the right to confront and cross-examine the witnesses against him, the right to call witnesses on his own behalf, the right to file objections to any Proposed Decision, and to present briefs or oral arguments to the officials who are to render the final decision, the right to petition for rehearing, and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Respondent understands that if the Board accepts this stipulation and issues the attached order, this will constitute discipline against his license and will be published pursuant to the Department of Regulation and Licensing's policy on publication of disciplinary actions.

4. The Dentistry Examining Board has jurisdiction of this matter pursuant to Wis. Stats. sec. 447.07.

5. This stipulation may be submitted directly to the Wisconsin Dentistry Examining Board without further notice to either party.

6. The attached final decision and order may be made and entered without prior notice to any party.

7. In the event any portion of this stipulation or the attached final decision and order is not accepted by the Wisconsin Dentistry Examining Board, the entire stipulation and final decision and order shall be void and have no effect.


8. All parties agree that Respondent's Attorney and Counsel for the Department of Regulation and Licensing, Division of Enforcement may appear before the Dentistry Examining Board to argue in favor of acceptance of this stipulation and the entry of the attached findings of fact, conclusions of law, final decision and order.

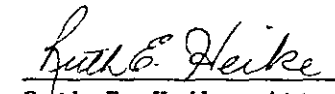
7-12-90  
Date

7/11/90  
Date

8/15/90  
Date

  
James Scott Markenson, D.D.S.

  
Dennis P. Coffey, Attorney  
Coffey, Coffey & Geraghty  
3127 W. Wisconsin Avenue  
Milwaukee, Wi. 53208

  
Ruth E. Heike, Attorney  
Department of Regulation and Licensing  
Division of Enforcement

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Dentistry Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Dentistry Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Dentistry Examining Board.

The date of mailing of this decision is September 10, 1990.

WLD:dms  
886-490



227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.