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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

WOODROW A. DeSMIDT, D.D.S.,
RESPONDENT.

FINAL DECISION
AND ORDER

The parties in this matter having agreed to the terms and conditions of the attached Stipulation, subject to the approval of the Board, and the Board having reviewed the Stipulation and considering it acceptable, the Board adopts the Stipulation and makes the following:

FINDINGS OF FACT

1. Woodrow A. DeSmidt, D.D.S., Respondent, date of birth: May 20, 1940, is a dentist currently licensed and registered to practice dentistry in the State of Wisconsin; that his license which bears number 5000287 was granted June 15, 1966; that his last address reported to the Wisconsin Department of Regulation and Licensing, Division of Enforcement, is 1515 6th Street, Green Bay, WI 54304.

2. The Wisconsin Department of Regulation and Licensing, Division of Enforcement, has an open investigative file, 90 DEN 97 concerning Respondent. The investigative file contains allegations that Respondent has been charged with 9 counts of committing medical assistance fraud while practicing dentistry in the State of Wisconsin.

3. In September of 1985, agents of the Wisconsin Department of Justice, Legal Services Division, Medicaid Fraud Control Unit, seized Respondent's office records for the period of September 12, 1979 through September 23, 1985.

4. The agents' review of the seized records disclosed that Respondent had fraudulently obtained \$7,014.95 by means of false claims over that six year period. The claims were as follows:

a. From August 4, 1982 through September 23, 1985, Respondent submitted 595 claims which falsely stated that periapical x-rays had been taken of patients when, in fact, bitewing x-rays had been taken. (Bitewing x-rays ceased to be a covered service under medical assistance effective August 1, 1982.) Respondent fraudulently obtained \$5,436.05 with these claims.

b. From May 12, 1980 through September 16, 1985, Respondent submitted 35 claims which falsely identified the date upon which service was provided to patients. In each of these cases, the patient was not Medicaid eligible on the true date of service, or the claim was not payable on the true date of service due to limitations regarding the

frequency of service, or dates were falsified to show services were provided after required prior authorization was granted when, in fact, the services were provided before the required prior authorization was granted. Respondent fraudulently obtained \$1,536.90 with these false claims.

c. From September 13, 1979 through November 18, 1981, Respondent submitted 3 claims which falsely identified the patient to whom the service was rendered. The persons identified were medical assistance recipients, but the true recipients of the service were not medical assistance recipients. Respondent fraudulently obtained \$42.00 with these false claims.

5. That the criminal charges of medical assistance fraud currently pending in Brown County, Wisconsin. Circuit Court Case No. 86 CF 656 consist of some of the false claims discovered by the review done by the Medicaid Fraud Control Unit agents, set out in Finding of Fact 4.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction over this matter pursuant to Wis. Stats. sec. 447.07(3).

2. The Wisconsin Dentistry Examining Board has authority to enter into this Stipulation pursuant to Wis. Stats. sec. 227.44(5).

3. That Respondent's conduct in submitting the false claims to the Medical Assistance Program, which are set out in paragraph 4 above, was the obtaining of a fee by fraud or deceit and constitutes grounds for discipline pursuant to secs. 447.07(5), Wis. Stats. (1979) and 447.07(3)(i), Wis. Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Woodrow A. DeSmidt's license to practice dentistry in the State of Wisconsin is hereby suspended for sixty days, effective immediately.

IT IS FURTHER ORDERED that during the sixty day suspension of Woodrow A. DeSmidt's license to practice dentistry that Woodrow A. DeSmidt is granted the right to practice dentistry at the Nicolet Medical and Dental Clinic located in Lakewood, Wisconsin, provided that Woodrow A. DeSmidt receives no compensation of any nature from any person or entity for providing dental services at that clinic.

Dated at Madison, Wisconsin this 6th day of March, 1991.



Eva Dahl, D.D.S., Chairperson
Wisconsin Dentistry Examining Board

JRZ:vec
ATY-1049

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
WOODROW A. DeSMIDT, D.D.S.,	:	
RESPONDENT.	:	

It is hereby agreed and stipulated, by and between, Woodrow A. DeSmidt, D.D.S., Respondent; Donald R. Zuidmulder of Zuidmulder, Apple & Gammeltoft, S.T., attorneys for Respondent; John R. Zwieg, attorney for the Department of Regulation and Licensing, Division of Enforcement; and, the Wisconsin Dentistry Examining Board, as follows:

1. Woodrow A. DeSmidt, D.D.S., Respondent, date of birth: May 20, 1940, is a dentist currently licensed and registered to practice dentistry in the State of Wisconsin; that his license, which bears number 5000287, was granted June 15, 1966; that his last address reported to the Wisconsin Department of Regulation and Licensing is 1515 6th St., Green Bay, WI 54304.

2. The Wisconsin Department of Regulation and Licensing, Division of Enforcement, has an open investigative file, 90 DEN 97 concerning Respondent. The investigative file contains allegations Respondent has been charged in Brown County, Wisconsin, Circuit Court with 9 counts of violating sec. 49.49(1)(a)1., Wis. Stats., Medical Assistance Fraud, while practicing dentistry in the State of Wisconsin.

3. It is the intention of the parties that this agreement will resolve all issues regarding licensure concerning the charges currently pending, no matter what the ultimate resolution of the criminal charges may be.

4. Respondent neither admits nor denies the allegations contained in investigative file 90 DEN 97, but Respondent agrees that there is evidence from which the Board could find that the allegations are true and further agrees that the attached Findings of Fact, Conclusions of Law, and Order may be made and entered without further notice to any party.

5. The attorneys for the parties may appear before the Wisconsin Dentistry Examining Board to argue in favor of acceptance of this Stipulation and the entry of the attached Final Decision and Order.

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 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 employee 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.