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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
BARBARA McCLINTOCK, R.D.H.,	:	LS9602021DEN
RESPONDENT.	:	

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

ORDER


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

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs, and mail a copy thereof to respondent or his or her representative, within 15 days of this decision.

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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

Dated this 10 day of July 1996.



**STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST**

PROPOSED DECISION
Case No. LS-9602021-DEN

**BARBARA McCLINTOCK, R.D.H.,
RESPONDENT.**

PARTIES

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

Barbara McClintock, R.D.H.
1750 North 56th Street
Milwaukee, Wisconsin 53208

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

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

This matter was commenced by the filing of a Notice of Hearing and Complaint on February 2, 1996. A hearing was held on March 21, 1996. Atty. James E. Polewski appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Ms. McClintock appeared by telephone without legal counsel.

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

FINDINGS OF FACT

1. Barbara C. McClintock, (D.O.B. 5/09/62), is licensed to practice dental hygiene in the state of Wisconsin, license #3857, first granted on October 15, 1986. Respondent's most recent address on file with the Department of Regulation and Licensing is 1750 North 56th Street, Milwaukee, WI 53208.

2. On May 1, 1991, the Dentistry Examining Board issued an Order suspending respondent's dental hygiene license for a period of three years, as a result of her conviction for medical assistance fraud. The suspension was stayed on the condition that respondent comply with the terms of her probation on the criminal conviction.

3. On September 8, 1994, the Dentistry Examining Board rescinded the stay of suspension granted in the May 1, 1991, Order based upon respondent's failure to comply with the terms of her probation on the criminal conviction.

4. Ms. McClintock requested a hearing on the Board's order rescinding the stay of suspension, but withdrew that request before the hearing was held.

5. Ms. McClintock's dental hygiene license was suspended from and after September 8, 1994.

6. Ms. McClintock practiced dental hygiene in a dental clinic in September, October and November of 1995.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to s. 447.07 (3), Wis. Stats.

2. Respondent's conduct, as described herein in Findings of Fact #6, constitutes a violation of s. 447.07 (3), Wis. Stats., and s. DE 5.02 (16) and (17), Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of, Barbara C. McClintock, to practice dental hygiene, be and hereby is, **REVOKED**.

IT IS FURTHER ORDERED THAT:

Pursuant to s. 440.22, Stats., the cost of this proceeding shall be and hereby is assessed against respondent.

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

OPINION

This proceeding is a disciplinary matter which relates to the sole issue of whether Ms. McClintock practiced while her license was suspended. This proceeding does not involve a reconsideration of the Board's September 8, 1994, Order in which it rescinded the stay of suspension of Ms. McClintock's license. Ms. McClintock was provided with an opportunity to appeal the Board's order but elected not to do so. Therefore, the suspension of Ms. McClintock's license by the Board for three years, from September, 1994 to September, 1997, remains in effect and is not affected by this proceeding.

The Complainant alleges that by practicing dental hygiene while her license was suspended, in violation of a Board Order, Ms. McClintock violated s. 447.07 (3), Stats., and ss. DE 5.02 (16) and (17), Wis. Adm. Code.

The evidence presented establishes that Ms. McClintock violated the statutes and rules relating to the practice of dental hygiene as alleged by the Complainant in its Complaint.

On May 1, 1991, the Dentistry Examining Board suspended Ms. McClintock's dental hygiene license for a period of three years, following her conviction for medical assistance fraud. The suspension was stayed on the condition that she comply with the terms of her probation on the criminal conviction. On September 8, 1994, the Board rescinded the stay of suspension granted in its May 1, 1991, Order; thereby, suspending Ms. McClintock's license to practice dental hygiene for a period of three years thereafter. The Board's Order was based upon Ms. McClintock's failure to comply with the terms of her probation on the criminal conviction. She requested a hearing on the rescission of the stay, but withdrew that request before the hearing was held.

In September, October and November of 1995, Ms. McClintock practiced dental hygiene in a dental clinic in Wisconsin. She admitted in her Answer to the Complaint that she did in fact practice dental hygiene during the time period in question. *Answer, p. 1.*

Having found that Ms. McClintock violated statutes and regulations relating to the practice of dental hygiene, a determination must be made regarding what type of discipline, if any, should be imposed.

The Dentistry Examining Board is authorized under s. 447.07 (3), Stats., to reprimand a licensee or limit, suspend or revoke the license of any licensee if it finds that the licensee has engaged in conduct described under that section.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W. 2d 689 (1976). Punishment of the licensee is not a proper consideration. *State v. McIntyre*, 41 Wis. 2d 481, 164 N.W. 2d 235 (1969).

The Complainant recommends that Ms. McClintock's license be revoked. Ms. McClintock is requesting that she be permitted to resume practice, in part, so that she can make restitution payments in order to comply with the conditions of her probation which was imposed as a result of her criminal conviction. She also indicates that she is willing to repay the wages she received from the dentist whose clinic she worked in while practicing during the suspension period. Finally, she states that her misconduct stems, in part, from a gambling addiction, which she contends is a disability under the Americans With Disabilities Act of 1990 ("ADA").

The Administrative Law Judge recommends that Ms. McClintock's license be revoked. This measure is designed to assure protection of the public and to deter other licensees from engaging in similar misconduct.

First, Ms. McClintock knew at the time she resumed practicing dental hygiene that her license had been suspended by the Board. She was provided with an opportunity to appeal the Board's decision rescinding the stay of suspension, but elected not to do so. Instead, she ignored the Board's order and resumed practice. The reasons that she gave for resuming practice were that she had to "pay rent and other bills", and that she has a gambling addiction. *Answer, p. 1.* Ms. McClintock's resumption of practice without a license reflects a total disregard of the Board's authority and confirms that suspension of her license as a form of discipline is not an effective mechanism.

Second, it can be reasonably inferred from the evidence that Ms. McClintock failed to inform her employer, at the clinic where she worked during the time of her suspension, that her license had been suspended. This conduct reflects that she is dishonest and untrustworthy.

Third, at the time Ms. McClintock resumed practice without a license in September 1995, her license had been suspended for at least a year. During that one year period while she was not practicing, the field of dental hygiene, like most other health care fields, continued to develop. Providing patient care without sufficient knowledge of current practices and procedures could have resulted in harm to the patients.

Fourth, revocation of Ms. McClintock's license is the only form of discipline which will deter other licensees from engaging in similar misconduct. Other licensees in similar situations will be on notice that practicing under such circumstances will not be tolerated.

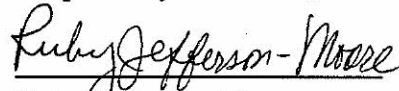
Finally, in reference to Ms. McClintock's alleged gambling addiction, there is no evidence in the record which establishes that she has such an addiction. In addition, compulsive gambling is not a covered disability under the ADA. *See, Americans With Disabilities Act of 1990, Sec. 511 (b) (2); 42 U.S.C. 12101 et seq.; 28 C.F.R. Part 35.*

Revocation of Ms. McClintock's license at this time does not preclude her from seeking reinstatement of her license in the future; provided, she submits satisfactory evidence to the Board that she is capable of practicing in a manner which safeguards the interest of the public.

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

Dated at Madison, Wisconsin this 6th day of May, 1996.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ruby Jefferson-Moore". The signature is written in dark ink and is positioned above the printed name.

Ruby Jefferson-Moore
Administrative Law Judge