

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF THE REQUEST FOR :  
REINSTATEMENT OF THE LICENSE TO : DENIAL OF  
PRACTICE DENTAL HYGIENE OF : REQUEST FOR REINSTATEMENT  
:  
BARBARA McCLINTOCK :

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To: Barbara McClintock  
953 South 57th Street Lower  
West Allis, WI 53214

The license of Barbara McClintock to practice as a dental hygienist was revoked by the Dentistry Examining Board pursuant to a *Final Decision and Order* dated July 10, 1996. Ms. McClintock made a written request for reinstatement of her license on October 22, 1997. She also appeared before the board at its meeting on November 5, 1997. The board reviewed Ms. McClintock's request following her appearance, and considered the statements made during her presentation and the documentation submitted on her behalf. The board also considered Ms. McClintock's disciplinary history, as well as her recent personal history as described by Ms. McClintock. Based upon its review, the decision of the board is that the request be denied.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the request of Barbara McClintock for reinstatement of her license to practice as a dental hygienist in the State of Wisconsin is denied.

FURTHERMORE, IT IS ORDERED that the Dentistry Examining Board will not consider any future request by Barbara McClintock for the reinstatement of her license to practice as a dental hygienist in the State of Wisconsin prior to one (1) year from the date of this Order.

REASONS FOR DENIAL

On May 1, 1991, the board suspended Ms. McClintock's dental hygiene license for a period of three years, following her conviction on August 20, 1990 for medical assistance fraud related to her practice. However, the suspension was stayed on the condition that she comply with the terms of her court-ordered 5 year probation resulting from the criminal conviction. The conditions of probation required her to pay \$30,126.73 in restitution and perform 400 hours of community service. The thrust of the board's order was clearly rehabilitative in nature, as it permitted Ms. McClintock to continue practice as long as she met the court's probationary requirements. The board's order further provided that Ms. McClintock's unrestricted right to practice would be returned to her on August 22, 1995, if she complied with the order.

However, Ms. McClintock did not comply with the order. In September 1994, the board reviewed documentation establishing that her probation agent had reported that Ms. McClintock on "numerous occasions" failed to make her monthly restitution pays and failed to meet her community service requirements. In the four years Ms. McClintock had been on probation, she had paid a little more than \$2,000.00 in restitution and had performed only 10 of the required 400 hours of community service. Based on the information received, on September 8, 1994 the board issued an *Order Rescinding Stay of Suspension and Reinstating Suspension*. The order served to impose the previously stayed three year suspension of Ms. McClintock's dental hygienist license, effective September 18, 1994.

Had Ms. McClintock complied with the suspension order, she would have received a return of her license on September 18, 1997, a couple of months ago. However, that did not happen either, as she again violated a board order. During September, October and November of 1995, Ms. McClintock resumed the practice of dental hygiene in a dental clinic, despite her license to do so being suspended. Following a disciplinary hearing, the administrative law judge recommended that Ms. McClintock's license be revoked, stating in part:

"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. . . . 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."<sup>1</sup>

On July 10, 1996, the board accepted the recommendation of the administrative law judge and issued a *Final Decision and Order* revoking Ms. McClintock's license to practice as a dental hygienist.

Ms. McClintock has petitioned the board for reinstatement of her license. She indicates that she has now completed the community service requirement under her probation order, and has set up a wage assignment to make periodic payments on the restitution order. Ms. McClintock expresses a desire to return to the practice of dental hygiene in order to earn a better wage and thereby increase her restitution payments. She states she is remorseful for her past conduct.

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<sup>1</sup> In the Matter of Disciplinary Proceedings Against Barbara McClintock, R.D.H., Case No. LS-9602021-DEN, *Proposed Decision*, p. 4, dated May 6, 1996.

Letters of support have also been submitted by former dentist employers that expressed their belief in her past professionalism and skills as a dental hygienist.

In reviewing Ms. McClintock's request, it must be noted that there is no set time that the board is required to reinstate her license to practice after revocation. The return of licensure, if granted, may also be accompanied by appropriate limitations. In this regard, sec. 447.07 (5), Stats., provides:

The (dentistry) examining board may reinstate a license that has been . . . revoked on terms and conditions that it considers appropriate.

The determination of the reinstatement request of Ms. McClintock is a matter addressed to the sound discretion of the board. It is appropriate to refer for guidance to the legal standards for initially imposing discipline. These standards are rehabilitation, deterrence of other licensees and protection of the public. It is the board's opinion that, at this time, McClintock has not established to the satisfaction of the board that any of these factors warrant her being permitted to return to practice.

As described earlier, subsequent to Ms. McClintock's conviction the board ordered a three year suspension in May 1991, but stayed its imposition upon her complying with the terms of her probation. This was a determination which permitted her to continue, uninterrupted, in the practice of dental hygiene. The stayed suspension was a determination by the board to emphasize the rehabilitation function of discipline and, in effect, assist Ms. McClintock in the rehabilitation process by permitting her to continue in practice, thereby aiding her both economically and professionally in repaying her debt to society through compliance with the terms of probation.

The trust of the board in Ms. McClintock's desire for rehabilitation was initially broken when she essentially ignored her probationary restitution and community service requirements over a period of four years. Consequently, in September 1994 the board was constrained to withdraw its stay and formally impose the three year suspension. Had Ms. McClintock obeyed the suspension order, her license could have been returned to her in September of this year. However, a year into the suspension she chose to ignore it and returned to practice for a three month period. Upon discovery of her unlicensed practice (such unlicensed practice, itself, constituting grounds for criminal charges under sec. 447.09, Stats.) the board was provided with no option other than to revoke her license. In a practical sense, the revocation "withdrew" the prior order providing for the return of her license in September 1997.

To grant Ms. McClintock's request at this time would not serve to impress upon her, or other licensees, the necessity for complying with disciplinary orders of the board. In fact, a return of her license now would permit Ms. McClintock to return to practice earlier in time than could have been expected had the board, for whatever reason, chosen not to revoke her license in 1996 upon the discovery of her three months of unlicensed practice; but rather, merely extend her suspension. Rather than revoking her license in 1996, had the board charitably only added one

month of suspension for each of the three months of unlicensed practice, her suspension would still have been extended to December of 1997. Simply stated, to grant a license to Ms. McClintock at this time would not only essentially ignore the fact of her having been revoked, but would permit her to return to practice at a time earlier than could reasonably have been expected, even under an extended suspension order. Such an absurd result would not garner the respect of either Ms. McClintock, the profession or the public in the integrity of board orders. To grant Ms. McClintock's request for reinstatement at this time would serve to essentially render the revocation a nullity, and in fact, actually reduce her previously ordered three year suspension period.

Even with the concern for supporting the integrity of board orders for deterrence purposes aside, Ms. McClintock has not adequately established her rehabilitation and fitness to again be permitted the privilege of providing dental hygiene services to the public. Determining whether an individual is sufficiently rehabilitated to again be granted the public trust is obviously a subjective task. The quality or quantity of rehabilitation which needs to be shown is also dependent upon the nature of the misconduct involved. The more serious and repetitive the misconduct, the more proof of actual rehabilitation that is necessary.

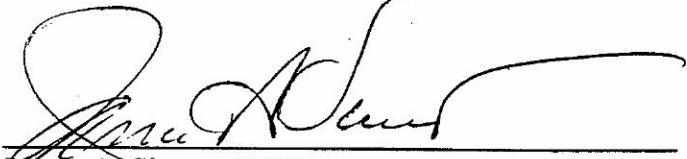
Strong proof of rehabilitation is necessary in this case. Ms. McClintock's conviction involved her utilizing her professional license and standing for personal financial gain at the expense of a program providing for those less economically fortunate than herself. She was then provided with the opportunity to repay her debt to society through satisfying court-order probation, and was provided assistance by the board in having the means to do so through permitting her continuation in professional practice. Despite the rehabilitative assistance offered by both the court and this board through their orders, she complied with neither. Then, when ordered to cease practice through the suspension of her license, she again ignored and disregarded this board's authority and the law.

Under circumstances consisting of multiple instances of misconduct evidencing a disregard for the law, the board and the public, as is the case here, strong evidence of rehabilitation is necessary for reinstatement to practice. A license to practice as a dental hygienist 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 confidence by this board with regard to Ms. McClintock at this time.

The foregoing discussion is for the purpose of providing the basis for the board's determination that Ms. McClintock's license will not be reinstated at this time. It is not intended to suggest, nor should it necessarily be implied, that the board will not consider or grant a future request for reinstatement. She may reapply in one year. Upon such application, the board will review her probationary compliance status, and any other information or factors which Ms. McClintock desires to bring before the board to demonstrate that she is, in fact, rehabilitated and unlikely to again engage in misconduct in the future.

Dated this 10<sup>th</sup> day of November, 1997.

STATE OF WISCONSIN  
DENTISTRY EXAMINING BOARD



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

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