

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

| | | |
|-----------------------------------|---|--------------------------|
| IN THE MATTER OF THE DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | |
| | : | FINAL DECISION AND ORDER |
| LEON OLIVER CUMMINGS, D.D.S., | : | 91 DEN 049 |
| RESPONDENT | : | |

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

Leon Oliver Cummings, D.D.S.
2225 Edgewood Drive
Grafton, WI 53024

Wisconsin 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 in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Leon Oliver Cummings (D.O.B. 12/02/36) is duly licensed in the state of Wisconsin as a dentist in the state of Wisconsin (license # 5000027). This license was first granted on June 12, 1964.
2. Respondent's's latest address on file with the Department of Regulation and Licensing is 2225 Edgewood Drive, Grafton, WI 53024.
3. Respondent treated the dental condition of an elderly patient, LK, over an extended period of time ending in April, 1991.
4. Criminal proceedings involving the dentist-patient relationship between Respondent and patient LK are pending in the Sheboygan County Circuit Court in Case 93 CF 12. Respondent therefore, does not contest for purposes of this disciplinary action, but does not admit the following Findings of Fact, numbered 5 through 8.

5. Respondent received \$ 12,750.00 from LK for which no corresponding charge or chargeable service appears in Respondent's records. The records of Respondent indicate the following:

| <u>Check Number</u> | <u>Amount</u> | <u>Date</u> | <u>Patient Record Notation</u> |
|---------------------|---------------|-------------|--------------------------------|
| 1793 | 1875.00 | 6/21/89 | imp, prep, NC, |
| 1794 | 2235.00 | 7/05/89 | cem, cr NC, |
| 1801 | 3645.00 | 7/20/89 | cem, cr NC, |
| 1802 | 1245.00 | 7/26/89 | amxr NC, |
| 1804 | 1235.00 | 8/03/89 | cr NC, |
| 1811 | 1235.00 | 8/21/89 | cem cr NC, |
| 1896 | 1165.00 | 7/12/90 | pt 275, |
| 1931 | 115.00 | 11/30/90 | no entry |

6. On the following dates Respondent's records indicate that "soft tissue management services (STM)" were provided to LK. According to Respondent's dental assistants such services consisted of a prophylaxis and some root planing. Respondent's office fee schedule in effect at the time indicates a charge of \$24.00 for an adult prophylaxis and a charge of \$65.00 per quadrant for root planing. The records indicate that the STM services were provided on seven occasions which according to the fee schedule would result in a total charge of \$ 623.00. Respondent charged LK \$ 6,231.00 as follows:

| <u>Date of service</u> | <u>Charge</u> |
|------------------------|---------------|
| 8/22/89 | 2765.00 |
| 8/23/89 | — |
| 8/30/89 | 477.00 |
| 9/06/89 | 852.00 |
| 9/13/89 | 1550.00 |
| 9/25/89 | — |
| 10/02/89 | 587.00 |

A notation on the patient record of LK for 8/22/89 indicates: "STM, weekly appts. -4 more made-fee includes all 5 appointments, 2765.00".

7. On 3/08/89 Respondent charged LK \$3,400.00 for crown and bridge work on teeth 19, 20, 21 and 22. On 6/15/89 Respondent again charged LK \$3,600.00 for the same crown and bridge work on teeth 19, 20, 21 and 22. Respondent received from LK payments of \$3,269.00 on 3/08/89 and \$3,645.00 on 6/15/89.

8. On 12/27/90 Respondent accomplished a periodontic charting of pocket depths on the teeth of LK. The chart indicates pockets of 3mm on teeth 6, 8, 9, 10, 11 and 27; pockets of 4mm on teeth 7 and 13; and pockets of 5mm on teeth 5, 31, and 30. No pockets are indicated on any other teeth, and no pockets are indicated in the lower left quadrant. Respondent's office fee schedule established a \$45.00 charge per tooth for a gingivectomy. Respondent's record for patient LK indicate the following:

| <u>Date</u> | <u>Service</u> | <u>Charge</u> |
|-------------|---|---------------|
| 12/31/90 | pt gingivectomy(4 teeth)upper right | 478 |
| 1/02/91 | pt gingivectomy(6 teeth)lower right | 688 |
| 1/07/91 | pt perio and polish | 187 |
| 1/31/91 | pt scaling & gingivectomy(3 teeth) lower left quadrant | 797 |

Respondent apparently received from LK \$ 2150.00 for services valued on Respondent's fee schedule at \$ 585.00.

CONCLUSIONS OF LAW

By the conduct described above, Leon Oliver Cummings is subject to disciplinary action against his license to practice as a dentist in the state of Wisconsin, pursuant to Wis. Stats. sec. 447.07(3)(a), (e), (f), (i) and (m), and Wis. Adm. Code secs. DE 5.02(8), (10), (150), (16) and (20).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of the Respondent, Leon Oliver Cummings, shall be SUSPENDED for an INDEFINITE PERIOD of time.

(A) STAY OF SUSPENSION

IT IS FURTHER ORDERED that the SUSPENSION shall be STAYED for a period of three (3) months, conditioned upon compliance with the conditions and limitations outlined in paragraph (b), below.

- i. Respondent may apply for consecutive three (3) month extensions of the stay of suspension, which shall be granted upon acceptable demonstration of compliance with the conditions and limitations imposed upon Respondent's practice during the prior three (3) month period.

ii. If the Board denies the petition by Respondent for an extension, the Board shall afford an opportunity for hearing in accordance with the procedures set forth in Wis. Adm. Code Ch. RL 1 upon timely receipt of a request for hearing.

iii. Upon a showing by Respondent of complete, successful and continuous compliance for a period of five (5) years with the terms of paragraph (b), below, the Board may grant a petition by Respondent for return of full licensure.

(B) CONDITIONS OF STAY

REHABILITATION, MONITORING AND TREATMENT

Training Required

1. Respondent shall, within six (6) months of the date of this Order certify to the Board the successful completion of an approved course of instruction in ethics in the dental practice. Respondent shall within two (2) months of the date of this Order submit to the Board designee for approval an outline of the required training. The outline shall contain the name of the institution providing the instruction, the name of the instructor, and the course content.

Department monitor

2. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions, and requesting additional monitoring and surveillance. The Department Monitor may be reached as follows:

Department Monitor
Department of Regulation Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
FAX (608) 266-2264
TEL. (608) 267-7139

Releases

3. Respondent shall provide and keep on file with his supervising dentist and with the Department Monitor current releases which comply with state and federal laws authorizing release of all of Respondent's employment records and permitting Respondent's supervising dentist to discuss the conduct of Respondent with the Dentistry Examining Board or any member thereof, or with any employee of the Department of Regulation and Licensing acting under the authority of the Dentistry Examining Board. Respondent shall also provide to his probation agent and the Department Monitor a current release authorizing the agent to report and discuss Respondent's compliance with the terms and conditions of any sentence and probation imposed upon Respondent with the Department Monitor or other employee of the Department of Regulation and Licensing acting under the authority of the Dentistry Examining Board. Respondent shall notify the Board Monitor of the name and telephone number of the probation agent assigned to him.

Reporting by respondent

4. Respondent shall be responsible for compliance with all of the terms and conditions of this Final Decision and Order. It is the responsibility of Respondent to promptly notify the Department Monitor, of any suspected violations of any of the terms and conditions of this Order.

SCOPE OF PRACTICE: LIMITATIONS AND CONDITIONS

Disclosure

5. Respondent shall provide any current or prospective supervising dentists with a copy of this Final Decision and Order immediately upon issuance of a stay of suspension under this Order, and upon any change of employment during the time in which a stay of suspension is in effect. In addition, Respondent shall provide his supervising dentist with a copy of any order granting an extension of stay under this Order within five (5) days of Respondent's receipt of an order granting a stay.

Respondent shall immediately provide his supervising dentist with a copy of any denial of an extension of stay under this Order.

Required reporting

- 6 Respondent shall arrange for quarterly reports from his supervising dentist reporting the terms and conditions of his employment and evaluating his work performance. The reports shall be submitted to the Department Monitor in the Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935 on a schedule as directed by the Department Monitor. A supervising dentist shall report **immediately** to the Department Monitor [Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935, FAX (608)266-2264, telephone no. (608)267-7139] any violation or suspected violation of the Dentistry Examining Board's Final Decision and Order.
- 7 Respondent shall report to the Board any change in employment status, change of residence address or phone number, within five (5) days of any such change.

Practice restrictions

- 8 Respondent shall practice only under the general supervision of another licensed dentist, and shall not maintain an independent dentistry practice. Respondent shall not have direct access to any patient accounts, billing records or receipts.

COSTS

- 9 Respondent shall pay to the Department of Regulation and Licensing the costs of investigation and prosecution of this action in the sum of \$ 2,020 before September 30, 1997.

(C) PETITIONS FOR MODIFICATION OF TERMS

Respondent may petition the Board in conjunction with any application for an additional stay to revise or eliminate any of the above conditions. Denial in whole or in part of a petition under this paragraph shall not constitute denial of a license and shall not give rise to a contested case within the meaning of Wis. Stats. §§227.01(3) and 227.42.

(D) SUMMARY SUSPENSION

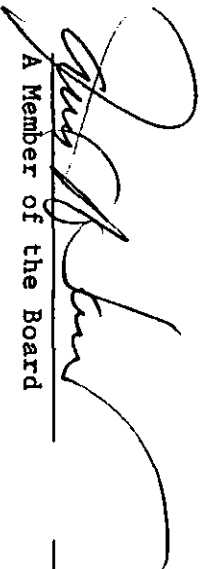
Violation of any of the terms of this Order shall be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license; the Board in its discretion may in the alternative deny an extension of the stay of suspension or impose additional conditions and limitations other additional discipline for a violation of any of the terms of this Order.

(E) EFFECTIVE DATE OF ORDER

This Order shall become effective upon the date of its signing.

WISCONSIN DENTISTRY EXAMINING BOARD

By:



A Member of the Board

1/10/57

Date

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

| | | |
|----------------------------------|---|-------------|
| IN THE MATTER OF | : | |
| DISCIPLINARY PROCEEDINGS AGAINST | : | STIPULATION |
| LEON OLIVER CUMMINGS, D.D.S., | : | 91 DEN 049 |
| RESPONDENT | : | |

It is hereby stipulated between Leon Oliver Cummings, personally on his own behalf and Dean A. Strang, his attorney, and by James W. Harris, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement. Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those 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 behalf and to compel their attendance by subpoena; the right to testify himself; 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 is aware of his right to seek legal representation and has obtained legal advice prior to signing this stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Dentistry Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

REC-1

NO

12/23/96

6. Attached to this Stipulation is the current licensure card of Respondent. If the Board accepts the Stipulation, Respondent's license shall be reissued in accordance with the terms of the attached Final Decision and Order.

7. The parties to this stipulation agree that the attorney for the Division of Enforcement may appear before the Dentistry Examining Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

8. The Division of Enforcement joins Respondent in recommending the Dentistry Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

Leon Oliver Cummings
Leon Oliver Cummings, D.D.S.

1-2-97
Date

Dean A. Strang
Dean A. Strang, Attorney for Respondent

1/2/97
Date

James W. Harris
James W. Harris, Attorney
Division of Enforcement

Jan 3, 1997
Date

State of Wisconsin
 DEPARTMENT OF REGULATION AND LICENSING
 COMMITTED TO EQUAL OPPORTUNITY IN EMPLOYMENT AND LICENSING

Activity
DENTIST

LIMITED LICENSE

NO. 5000027 EXPIRES 10/01/97

SEE ORDER

LEON OLIVER CUMMINGS DDS
 2225 EDGEWOOD DR
 GRAFTON WI 53024

The person whose name appears on this document has complied with the provisions of the Wisconsin Statutes and is hereby authorized to engage in the practice indicated

Department of Regulation & Licensing

State of Wisconsin

P O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On January 10, 1997, the Dentistry Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$2,020.00 Case #: 91 DEN 049

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$ 2,020.00

The costs and/or forfeitures are due: September 30, 1997

NAME: Leon Oliver Cummings LICENSE NUMBER: 5000027

STREET ADDRESS: 2225 Edgewood Drive

CITY: Grafton STATE: WI ZIP CODE: 53024

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

**DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935**

For Receiving Use Only

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
G:\BDLS\FM2145.DOC

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE DENTISTRY EXAMINING BOARD

In the Matter of the Disciplinary Proceedings Against

Leon Oliver Cummings, D.D.S.,

AFFIDAVIT OF MAILING

Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On January 16, 1997, I served the Final Decision and Order dated January 10, 1997, and Guidelines for Payment of Costs and/or Forfeitures upon the Respondent Leon Oliver Cummings, D.D.S.'s attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 201 377 255.


Dean A. Strang, Attorney
222 E. Mason Street
Milwaukee WI 53202-3668



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 16th day of January, 1997.



Notary Public, State of Wisconsin
My commission is permanent.

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN DENTISTRY EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

January 16, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)