

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

FRED T. TENUTA, D.D.S.,
RESPONDENT.

FINAL DECISION AND ORDER

97 DEN 85

LS 9711053 DEN

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

Fred T. Tenuta, DDS
1225 75th St.
Kenosha, WI 53143

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. Respondent Fred T. Tenuta (dob 6/13/54) is and was at all times relevant to the facts set forth herein a dentist licensed in the State of Wisconsin pursuant to license #2746, first granted on 6/19/81. Respondent is a general dentist.

2. Respondent did, on 10/25/94, begin treating R.P., born in 1962. His first chart entry reads, in its entirety: "Ex #9. Sore canal calcified after trip. Rx 40 V-cillin K250mg, 1 qid, ac & hs. 30 Vicodin ES, 1 q4h, prn." There is a note that this prescription was telephoned to Kreutzer Pharmacy. On 11/19/94, Respondent's chart has an entry: "Refill both Rx's." On 11/28/94, Respondent's chart entry reads: "DDS in ME opened, got somewhere, left to drain. 40 V-cillin K 250 mg, 1 qid, ac & hs, 40 Tylenol III, 1 q4h, prn pain." On 12/29/94, respondent refilled the V-cillin prescription and gave the patient another prescription for 40 Vicodin. On 1/8/95, the Vicodin prescription was refilled, with a chart note reading: "dropped in toilet." On 1/30/95, 2/6/95, and 2/20/95, respondent refilled the Vicodin prescription. On 2/23/95, Respondent's chart note reads: "Repl 9 temp." On 2/27/95 and 3/13/95, Respondent refilled the Vicodin prescription. On 3/27/95, Respondent's chart note reads: "ck 'gum boil' lingual of 3. No good reason. Got a little drainage." Respondent refilled the Vicodin prescription on that day, and again on 4/6/95, 4/13/95 (when the pharmacy was changed to McCulloughs) and 4/14/95. On 5/22/95, Respondent's chart reflects that he prescribed Anaprox for the patient.

3. Respondent next saw this patient on July 11, 1995, where his chart entry reads: "Ext 16 under 1 carpule mepivacaine HCl 3%. Rx Vicodin ES #20 Sig: 1 tab q 4 h, prn." On 7/14/95, Respondent's chart note reads: "packed 16 with Alvogyl. Anaprox DS 500 mg, Tylenol III #15, 1 q 4 h, prn." On 7/25/95, Respondent's chart note reads: "Ck trauma 8 & 9. Gums sore, no mobility, wait & see. Rx 20 Tylenol III." On 9/19/95, Respondent's chart note reads: "17 sore. Walmart 15 Tylenol III." On 9/21/95, the chart reads: "Ext 17 under 1 carpule mepivacain HCl 3%. Rx: 15 more Tylenol III."

4. Respondent saw the patient for routine prophylaxis on 12/4/95, and advised him to try Sensodyne for receded areas. On 2/24/96, Respondent's chart note reads: "lower gums sore again Rx: 40 Pen Vee K 250 mg, 20 Tylenol III." On 2/28/96, the chart note reads: Ex. 1 pa, #9 sore, may be cracked, so ext after FL trip. Refill 45 PVK 250 mg, 25 Vicodin ES 1 q 4 h prn." On 3/10/96, the chart note reads: "ca for tomorrow, laid off, refill Vicodin @ Shopko." On 3/14/97, the chart note reads: "OK to refill 30 Vicodin ES at Shopko Racine." On 3/20/97, the chart not reads: "decided to wait but gave Rx 40 PVK 250 mg, 15 Vicodin reg, 1q 4 h." Subsequent chart notes state that no treatment was afforded, but the Vicodin was refilled with 20 each on 4/4/97 and 4/18/97, when the patient was referred to an endodontist. The patient was given additional prescriptions for PVK and 20 Vicodin on 4/24/97, and the Vicodin was refilled on 5/1/97, 5/4/97, 5/8/97, 5/10/97 (when the pharmacy was changed to Walgreen), 5/15/97, 5/18/97, 5/22/97, 5/23/97 (with a note that this was for an upcoming weekend, and that it was to a Shopko pharmacy), 5/29/97, 5/31/97, 6/5/97 (with a note that a pharmacist called "re: past problems"), and 6/9/97 (with a note that the pharmacy was changed to Shopko, and "Will not do again").

5. At no time did Respondent initiate a discussion with any of the pharmacies to which prescriptions were telephoned regarding this patient's use of narcotics, including any inquiry whether the patient was receiving narcotics from other practitioners. Respondent also saw patients R.L.E., K.M.B., M.M.F., B.P., and D.R.A. during this time period, and all of their charts show similar prescription patterns.

CONCLUSIONS OF LAW

A. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter pursuant to §447.07(3), Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in paragraphs 2-6, above, violated §447.07(3)(h), Wis. Stats., and §§ DE 5.02(1) and (5) Wis. Adm. Code. The excessive prescribing of controlled substances is unacceptable practice. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license of respondent Fred T. Tenuta, D.D.S., is LIMITED in the following respect: respondent shall, by December 31, 1997, take and successfully pass a 40 (or more) hour continuing education course in appropriate prescribing of controlled substances acceptable to the Board, such as those offered through Forensic and Educational Consultants (New Jersey), Mercer University (Atlanta), or Case Western Reserve University (Cleveland). Respondent shall arrange for the course sponsors to report his attendance and performance directly to the Board, and authorize the Board and its agents to discuss his attendance and performance with the course sponsors. Respondent shall communicate with the Board before taking any course to determine if the course is acceptable to the Board, and is responsible for all expenses associated with compliance.

IT IS FURTHER ORDERED, that respondent's license is LIMITED in the following respect: respondent shall take and pass a course in appropriate dental recordkeeping under the direction of a course sponsor acceptable to the Board, by December 31, 1997. Respondent shall pay all fees when due, shall permit the Board and its agents to communicate with the sponsor concerning all aspects of respondent's attendance and performance in the course, and is responsible for all expenses associated with compliance.

IT IS FURTHER ORDERED, that respondent's license is LIMITED in the following respect: respondent shall maintain a log of all legend drugs and controlled substances prescribed, administered or dispensed by him. The log shall be a separate document from the individual patient records, and shall list in chronological order the following:

1. patient name;
2. date of prescription, dispensing, or administration;
3. drug name, strength and dosage;
4. refills authorized; and
5. condition(s) for which patient is being treated, and for which drug is being used.

Each month following the date of this Order, respondent shall submit an accurate copy of the log for the preceding month to the Board for review. Respondent shall also maintain the log available for review at his office for review by any agent of the Board or department during regular business hours.

IT IS FURTHER ORDERED, that the license of respondent is LIMITED in the following respect: respondent shall obtain, at his own expense, an experienced and well qualified general dentist acceptable to the board (which acceptance shall not be unreasonably withheld) to monitor his practice. This monitoring shall include on-site review of all patient charts at least twice per month (or more often, as determined by the monitoring dentist). The monitoring dentist may observe respondent's practice at any time, including in the presence of patients, and may examine any patient of respondent. The monitoring dentist shall report to the board quarterly on respondent's practice, including respondent's diagnostic skills, technique, documentation, treatment planning, and other issues which, in the monitoring dentist's judgment, may affect the health, safety or welfare of patient or public. The monitoring dentist shall agree to report any situation or conduct which may be a danger to the health, safety or welfare of patient or public, or which may constitute unprofessional conduct or negligence, to the board. The monitoring dentist may recommend to the board any changes in the conditions and terms of the monitoring that he or she deems appropriate, but such changes shall not be implemented without board approval. The monitoring dentist owes no duty to any patient, and his or her monitoring obligations are solely to the board and for its exclusive benefit.


IT IS FURTHER ORDERED, that respondent may petition the board in writing to modify any or all of the limitations set forth herein, once in any calendar year. The board may require respondent to meet with it in connection with any such petition. It is totally within the discretion of the board to grant in whole or in part or to deny any such petition. The denial of any part of such a petition is not a denial of licensure and does not entitle respondent to a hearing.

IT IS FURTHER ORDERED, that respondent shall pay the costs of investigating and prosecuting this matter in the amount of \$300, within 30 days of this order.

IT IS FURTHER ORDERED, that pursuant to §448.02(4), Wis. Stats., if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license and registration of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 5th day of Nov., 1997.

WISCONSIN DENTISTRY EXAMINING BOARD, by:

by: 
a member of the Board

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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FRED T. TENUTA, D.D.S.,
RESPONDENT.

STIPULATION
97 DEN 85

It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:

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

2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; 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 respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Board. The parties 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 or the proposed Final Decision and Order, 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.

6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.

7. The Case Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and view of the case acquired during the investigation.

8. This stipulation is subject to approval by the Division of Enforcement's attorney-supervisor. If approved by the supervisor, the Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the Board's final decision and order is a public record and will be published in the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent.

Fred T. Tenuta 10.15.97
Respondent Date

Frank J. Parise 10/15/97
Frank J. Parise, Attorney for Respondent Date

Carlton Thexton 10/16/97
Prosecuting Attorney Date
Division of Enforcement

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 November 5, 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: \$300.00 Case #: LS9711053DEN

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$ 300.00

The costs and/or forfeitures are due: December 5, 1997

NAME: Fred T. Tenuta LICENSE NUMBER: 2746

STREET ADDRESS: 1225 75th Street

CITY: Kenosha STATE: WI ZIP CODE: 53143

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 Receipting Use Only

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Ch. 440.22, Stats.

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

In the Matter of Disciplinary Proceedings Against

Fred T. Tenuta, 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 November 7, 1997, I served the Final Decision and Order dated November 5, 1997, and Guidelines for Payment of Costs and/or Forfeitures, LS9711053DEN, upon the Respondent Fred T. Tenuta's attorney by enclosing true and accurate copies of the above-described documents 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 221 159 625.

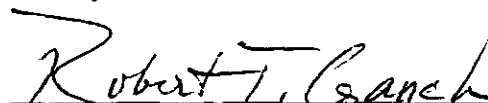
Frank J. Parise, Attorney
1000 55th Street, Room 223
Kenosha WI 53140-3749



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 14 day of Nov, 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:

November 7, 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.)