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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE
APPLICATION OF:

DEBRA ANNE BADOFSKY,
APPLICANT

FINAL DECISION AND ORDER
LS0007261DEN

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

Dated this 3rd day of January, 2001.

Bruce Barrette
A Member of the Board

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF
THE APPLICATION OF

DEBRA ANNE BADOFSKY
Applicant

PROPOSED DECISION
LS0007261DEN

The parties to this proceeding, for the purposes of sec. 227.53, Stats., are:

Debra Anne Badofsky
7126 92nd Avenue

Kenosha, WI 53142

Department of Regulation & Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

State of Wisconsin Dentistry Examining Board

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A Class I hearing was conducted in the above-captioned matter on September 28, 2000, at 1400 East Washington Avenue, Madison, Wisconsin. Applicant Debra Anne Badofsky appeared in person and by Attorney Harry E. Van Camp. The Division of Enforcement appeared by Attorney Steven M. Gloe.

Based upon the entire record in this case, the administrative law judge recommends that the Dentistry Examining Board adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Debra Anne Badofsky, applicant herein (Ms. Badofsky) filed her application for a license to practice dental hygiene by application dated January 16, 2000. Ms. Badofsky provided information with her application establishing that on August 1, 1997, she was convicted on her plea of no contest in the Circuit Court for Racine County of misdemeanor theft of movable property, in violation of sec. 943.20(1)(a), Stats.; and that on September 22, 1997, she was also convicted on her plea of guilty in the Circuit Court for Kenosha County for misdemeanor theft of movable property. Both convictions arose out of the same event.
2. Ms. Badofsky was sentenced to 30 days in jail on the Racine conviction of which all but two days were stayed, was placed on probation, and was required to pay restitution. She was sentenced to 60 days in jail on the Kenosha County conviction, was again placed on probation, and was fined \$500. Ms. Badofsky successfully completed all court ordered conditions, and was successfully discharged from probation in both Racine County and Kenosha County.
3. The transactions leading to the convictions involved Ms. Badofsky's acquisition of a checkbook from a Ms. Tami Jo Wojciechewski, at that time a friend of hers, and utilization of the checks to purchase merchandise while impersonating Ms. Wojciechewski. While Ms. Badofsky, through her attorney, agreed to plead guilty to theft of the purse as part of a plea agreement, there was no purse involved. Rather, Ms. Wojciechewski and Ms. Badofsky had entered into a conspiracy whereby Ms. Wojciechewski gave Ms. Badofsky her checkbook for the purpose of making purchases for them both, with the intent of reporting her purse and checkbook stolen, thereby permitting her to stop payment on the checks cashed by Ms. Badofsky.
4. The circumstances of Ms. Badofsky's convictions for misdemeanor theft are substantially related to the circumstances of the practice of dental hygiene.
5. Ms. Badofsky suffers from a learning disability which was diagnosed when she was in kindergarten. Nonetheless, she was able with considerable difficulty to graduate from high school, and had completed a few college courses at the time of her convictions. Subsequent thereto, Ms. Badofsky pursued returning to school. She contacted the Division of Vocational Rehabilitation in the Department of Workforce Development and, after confirmation of her disability, was accepted for assistance. She attended the Dental Hygiene program at Milwaukee Area Technical College, and successfully completed the program. She is currently licensed as a dental hygienist by the State of Illinois, and is employed as a dental hygienist in that state.
6. Ms. Badofsky committed no criminal acts prior to the convictions, and has committed no criminal acts subsequent thereto, and her conduct and actions since the convictions satisfactorily establish that her rehabilitation is complete.

CONCLUSIONS OF LAW

1. The dentistry Examining Board has jurisdiction in this matter pursuant to secs. 447.02 and 447.04, Stats.
2. The circumstances of Ms. Badofsky's convictions for misdemeanor theft are substantially related to the circumstances of the practice of dental hygiene, within the meaning of sec. 111.335(1)(b), Stats.
3. Ms. Badofsky's actions and conduct since the time of the convictions establish that she may safely and competently practice as a dental hygienist, and that her licensure as a dental hygienist will not constitute a danger to the health, welfare or safety of patients, within the meaning of sec. DE 5.02(1), Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that Debra Anne Badofsky be, and hereby is, granted a license to practice dental hygiene in Wisconsin.

IT IS FURTHER ORDERED that Ms. Badofsky's license shall be limited to require that at such time as she becomes employed as a dental hygienist in Wisconsin, she shall be responsible for submission to the board of quarterly written work reports prepared by her Wisconsin dental employer or employers setting forth Ms. Badofsky's activities and progress in her employment. Ms. Badofsky may petition the board for termination of this limitation on her license after submission of satisfactory reports for a period of one year.

OPINION

The threshold question in this case is a determination whether the circumstances of Ms. Badofsky's convictions are substantially related to the circumstances of the practice of dental hygiene. Applicant argues that the circumstances are not related, and testimony was elicited to the effect that there would be little or no opportunity for her engage in similar illegal conduct in her employment as a hygienist. However, opportunity is but one of the factors to be considered in analyzing whether a conviction is substantially related to a particular licensed activity. In *County of Milwaukee v. LIRC*, 139 Wis.2d 805, 407 N.W.2d 908 (1987), the court set forth the test to be utilized in making that determination:

We reject an interpretation of this test which would require, in all cases, a detailed inquiry into the facts of the offense and the job. Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details related to such things as the hour of the day the offense was committed, the clothes worn during the crime, whether a knife or a gun was used, whether there was one victim or a dozen or whether the robber wanted money to buy drugs or to raise bail money for a friend. All of these could fit a broad interpretation of "circumstances." However, they are entirely irrelevant to the proper "circumstances" inquiry required under the statute. It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.

The full assessment of what may be termed the "fostering" circumstances may, at times, require some factual exposition. For instance, in "disorderly conduct" cases the type of offensive circumstances is not as explicit as it is in sexual assault, armed robbery, theft or embezzlement convictions for example. However, such factual inquiry would have as its purpose ascertaining relevant, general, character-related circumstances of the offense or job. *139 Wis.2d 805 at 823*.

A character trait indicative of a tendency to engage in theft is without question substantially related to employment involving personal contact with sometimes vulnerable dental patients; and

were it concluded that the character traits and character related circumstances demonstrated at the time of Ms. Badofsky's illegal activity are indicative of the nature of her character today, there would be more than adequate basis for affirming the board's earlier decision. The opposite conclusion is reached, however. Ms. Badofsky's testimony was credible and convincing, and satisfactorily establishes that her behavior on this one occasion is not and was not typical of her underlying character as evinced by her testimony and demeanor at hearing. A few excerpts from her testimony may serve to demonstrate the point (Mr. Van Camp's questions omitted).

All I had basically was a high school education, which was a struggle to get. And I had taken

some various college classes. Just general education classes. -- very easy classes, because I have learning disabilities, so school was always a struggle for me. I was diagnosed with learning disabilities in Kindergarten. I have dyslexia and attention deficit, hyperactivity disorder. I was always in remedial classes. I ended up having to, my sophomore year, my parents sent me to a private school in Memphis because school was so difficult. I had to go to a smaller, more structured school in order to get my education.

I have three children, and because I didn't have a degree in anything and I wasn't a professional, I did various waitressing off and on. I ran a licensed daycare out of my home, because this enabled me to stay home with my kids and make some extra money, because when you don't have a profession and you're not making good money, it's very difficult to go outside the home and hire a babysitter for three kids and, you know, all your money goes to babysitting.

It was a real struggle. Me and my husband, we were going -- we were having a lot of problems. Financially, emotionally, things weren't very good. We were seeing a counselor. We were getting food stamps, we were getting WIC. We received WIC. We had medical assistance cards. Things were not very good.

[Tami Jo Wojciechewski] approached me with this idea that we -- that we could write checks, but I would have to be the one to write the checks, because she would report the checkbook stolen and then she would not be held responsible. . . . I guess she had seen it happen before, because working at a bank, you know, I guess customers would either lose their checkbook or they'd have their checkbook stolen and you report it stolen or you tell the bank, and then they're not -- if checks come in, they're not held responsible. . . . Well, we talked about it and I agreed, and she gave me her checkbook and I wrote checks. . . . She gave me like her kids' clothes sizes. She had two boys. And she told me certain things that she wanted. . . . As a result, I got caught. I -- and -- and she-- well, she didn't get caught. She denied everything. But the -- I don't -- however it happened, I got caught.

[My husband and I] were seeing a marriage counselor who mentioned DVR to me, because we kind of discussed going back to school, but I had told her it's going to be impossible. Financially we could not afford it. We couldn't even afford to pay the bills that we had now. And also I had told her how hard school was always for me. She had told me about DVR and I went to them, and they did psychological testing and took -- for evidence that I actually did have learning disabilities, because I think that's one of the qualifications. You have to have some kind of a disability and a need, an income need. And I met both those qualifications and they helped me get through school. Without their help, I would have never been able to do it. They helped me financially. They helped me with note-takers, on time testing -- anything I needed -- with my books, my supplies -- everything.

I did very good. It was very hard. I mean, an average student would like, you know, study two hours and get straight A's, where I'd have to work very hard. I'd study for five hours to maybe get a C, but it was worth it, and I knew that it would be worth it. When -- you know, it was very hard. It was hard on my family because I'd be in school all day, and then I'd come home and I'd

have to study all night, but I knew that if I could get through this it would be well worth it.

[Things have] changed tremendously. Well, like I said, when I was going to school, that was very difficult. But I knew that, you know, at the end it would all be worth it. And I actually am practicing hygiene now; I did receive my license in Illinois, and I've been doing that since July. And I really love what I'm doing, and it's just -- it's been a big relief for our family. I feel like I'm contributing. I have a profession. I have something to be proud of. My family has something to be proud of me for. The income, it's helped us tremendously with the income. It's been a whole -- the whole thing's been a very positive experience.

Well, this is my mom's famous words -- actions speak louder than words. And I think, you know, I've shown through my actions that I've turned my life around and that I don't ever intend to do anything like this again. You know, I've worked too hard, and I would never do anything that stupid again. You know, I could sit here and tell you until I'm blue in the face that I would never do it again, and I won't ever do it again, but, like I said, I guess only time will, you know, tell that. You know, I've shown -- I've worked -- it's been three years or four years with no incidents. I've worked for dentists as assistants; I'm now working as a hygienist, and I would not -- I would never do anything like that again. . . . I -- the only thing I can say is I was in a very bad place, a very bad time in my life. I -- maybe I was in a vulnerable situation, and I let someone talk me into something that I should have never let someone talk me into. I should have been smarter, used better judgment. I made a very stupid mistake.

In the Supreme Court case cited above, the court extensively discusses the policy objectives of the prohibition against discrimination in employment and licensure, and the exceptions thereto for substantially related convictions. That discussion includes the following:

It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

It is highly desirable to reintegrate convicted criminals into the work force, not only so they will not remain or become public charges but to turn them away from criminal activity and hopefully to rehabilitate them. This is a worthy goal and one that society has shown a willingness to assume, as evidenced by the large sums of money expended in various rehabilitative programs. However, the legislature has clearly chosen to not force such attempts at rehabilitation in employment settings where experience has demonstrated the likelihood of repetitive criminal behavior. *139 Wis.2d 805 at 822.*

Were this a situation where the purpose of granting the license would be to promote Ms. Badofsky's rehabilitation, there would be a basis for careful consideration whether the setting in which she practices could create the danger of repetitive criminal behavior. In the opinion of the undersigned, however, that is not the situation here, for there is clear and satisfactory evidence that Ms. Badofsky's rehabilitation has already been accomplished. The State of Wisconsin, through the Department of Workforce Development, has expended considerable resources in reliance on Ms. Badofsky's reformation, and that reliance has quite obviously been well placed. Should the board have some residual concern for ensuring Ms. Badofsky's satisfactory performance as a dental hygienist, it is suggested that she be required to provide quarterly work reports for the first year of her

practice in Wisconsin. But to affirm the denial of her application is clearly not justified based upon the entire record in this case.

Dated this 26th day of October, 2000.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge

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