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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE
DISCIPLINARY PROCEEDINGS AGAINST:

LEE KRAHENBUHL, DDS

FINAL DECISION AND ORDER

RESPONDENT

LS0010011DEN

PARTIES

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

Lee Krahenbuhl, D.D.S.

1720 Congress Avenue

Oshkosh, WI 54901

Dentistry Examining Board

P.O. Box 8935

Madison, WI 53708-8935

Department of Regulation sdfsdfand Licensing

Division of Enforcement

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PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on April 12, 2001, before Administrative Law Judge William Anderson Black. The Division of Enforcement appeared by attorney James E. Polewski. Dr. Krahenbuhl appeared in person and by his attorneys Raymond M. Roder and Frank R. Recker.

Based on the entire record in this case, the Dentistry Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Lee R. Krahenbuhl, D.D.S., (dob 6/11/57) is licensed to practice dentistry in the state of Wisconsin pursuant to License #2934. His license was first granted on June 7, 1982. He practices in Oshkosh, Wisconsin.
2. On July 5 and 11, 1994, Dr. Krahenbuhl performed root canal therapy on tooth #18 on his patient, Michael Mosher.
3. On April 29, 1996, Michael Mosher presented at a subsequent treating dentist with complaints of pain localized to Tooth #18.
4. Periapical radiographs taken of Michael Mosher on April 29, 1996, show inadequate filling of the distal canal, decay of the tooth at the top of the distal canal, and extension of the fill more than five (5) mm past the apical end of the distal root.

5. Michael Mosher had no dental treatment between July 11, 1994, and April 29, 1996.
6. During the course of the investigation of Dr. Krahenbuhl's treatment of Michael Mosher, Dr. Krahenbuhl presented a series of radiographs to the Division of Enforcement, representing that the radiographs were of Michael Mosher and accurately depicted the root canal treatment of his Tooth #18.
7. The radiograph that Dr. Krahenbuhl represented to be a July 5, 1994, mid-treatment radiograph prominently depicts a radio-opaque area on the top of the tooth, which Dr. Krahenbuhl represented to be a temporary crown.
8. The radiograph Dr. Krahenbuhl represented to be his post root canal treatment radiograph taken of Michael Mosher's Tooth #18 taken July 11, 1994, prominently depicts a radio-opaque area at the top of the tooth which is of an irregular shape and approximately twice as large as the radio-opaque area on the July 5, 1994 radiograph. Dr. Krahenbuhl represented that the radio-opaque area on the July 5, 1994 radiograph. Dr. Krahenbuhl represented that the radio-opaque area at the top of the tooth was a permanent crown he installed between July 5 and July 11, 1994.
9. The subsequent treating dentist, Dr. LeMaster, provided the Division of Enforcement with a radiograph he certified as a copy of the radiograph he took of Michael Mosher's Tooth #18 before beginning treatment on April 29, 1996.
10. The radiograph provided by Dr. LeMaster prominently depicts a radio-opaque area of the same size and shape as the radio-opaque area at the top of the tooth in the radiograph Dr. Krahenbuhl represented as his mid-treatment radiograph, taken July 5, 1994.
11. The radiograph provided by Dr. LeMaster depicts a radio-opaque line running from the top of the tooth, through the usual location of the distal canal, through the apical end of the distal root of Tooth #18, and continuing in a distally curving line approximately 8 mm into the jaw bone.
12. Dr. Krahenbuhl overfilled the distal canal of Michael Mosher's Tooth #18.
13. During the investigation of this matter, Dr. Krahenbuhl falsely represented the radiograph he provided as his post-treatment radiograph of the root canal treatment he did on Michael Mosher's Tooth #18.
14. During the investigation of this matter, Dr. Krahenbuhl provided the Division with what he represented to be the complete original record of his treatment of every member of Michael Mosher's immediate family.
15. During the investigation of this matter, Dr. Krahenbuhl represented that the reason he had not provided the division with the radiograph he identified as the July 11, 1994, post-treatment radiograph of Michael Mosher Tooth #18 was that the radiograph had been misfiled in Michael Mosher's brother's file.
16. There is no indication in Dr. Krahenbuhl's records for Michael Mosher's brother that the brother ever had a root canal on any tooth.
17. There is no indication in Dr. Krahenbuhl's records for Michael Mosher or any other member of Michael Mosher's immediate family that Dr. Krahenbuhl took a post-treatment radiograph of the root canal treatment on Michael Mosher.
18. Dr. Krahenbuhl's license was previously suspended for a period of thirty days, and he was ordered to complete remedial education in business ethics, pursuant to a disciplinary proceeding Order entered in 1993, in connection with Dr. Krahenbuhl's misdemeanor criminal conviction for false representation in violation of the Wisconsin regulations for the medical assistance program.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction of this matter pursuant to §447.07, Wis. Stats.
2. Dr. Krahenbuhl, by having failed to properly perform the root canal on Michael Mosher and by having failed to properly address the complications of that root canal treatment, engaged in unprofessional conduct in violation of s. DE 5.02 (5), Wis. Admin. Code and s. 447.07 (3)(h), Wis. Stats.
3. By providing false information to the Department of Regulation and Licensing-Division of Enforcement during the investigation of this matter Dr. Krahenbuhl engaged in unprofessional conduct to s. 447.07 (3) (a), Wis. Stats.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of Lee R. Krahenbuhl to practice as a dentist in the State of Wisconsin is **SUSPENDED** for six months beginning on the date this Order is signed.

IT IS FURTHER ORDERED that following the period of suspension Dr. Krahenbuhl may apply for reinstatement of

his dental license, which shall be limited by the following terms and conditions:

(1) Dr. Krahenbuhl shall not perform any endodontic procedures on patients.

(2) Dr. Krahenbuhl shall participate in and satisfactorily complete a course in record keeping within six months of the date on which this Order is signed. Said course shall be approved in advance by Dentistry Examining Board.

(3) Dr. Krahenbuhl's patient records shall be monitored for a period of not less than two (2) years by a Wisconsin licensed dentist approved in advance by the Dentistry Examining Board. The monitor shall submit quarterly reports to the Board based on randomly selected patient records. Dr. Krahenbuhl shall be responsible for any costs associated with the monitor's duties. Said monitor shall be approved in advance by the Dentistry Examining Board.

IT IS FURTHER ORDERED that Lee R. Krahenbuhl be assessed a forfeiture in the amount of \$5,000.00.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Lee R. Krahenbuhl pursuant to §440.22, Wis. Stats.

EXPLANATION OF VARIANCE

The Dentistry Examining Board (Board) has reviewed the testimony of John L. Sadowski, D.D.S., and, contrary to the findings of the administrative law judge (ALJ), find him to be a qualified expert witness upon whose judgment and opinion we rely. In contrast to the ALJ's opinion, we find that Dr. Sadowski did **not** make an error in reaching the conclusion that Dr. Krahenbuhl wrongly substituted one x-ray for another in his treatment of Michael Mosher. Indeed, we find that the bases for his opinions are sound and premised upon the recognized standards of care within the dental profession.

The evidence supporting Dr. Sadowski's position is direct and straightforward. On April 29, 1996, Michael Mosher presented to Dr. LeMaster, a practicing dentist in North Carolina, with pain in Tooth #18. Dr. LeMaster examined Mr. Mosher and took a periapical radiograph of that tooth. Upon examining the x-ray, Dr. LeMaster found the distal canal on Tooth #18 to have been grossly overfilled with gutta percha, and the mesial (two) canals to have been appropriately filled with gutta percha. This is the same tooth on which Dr. Krahenbuhl had previously done a root canal.

Dr. LeMaster's x-ray of April 29, 1996, displays Tooth #18 with a crown and the root canal overfill. When that same x-ray is superimposed upon the July 5, 1994, x-ray of Dr. Krahenbuhl's, the two match. However, if the April 29, 1996, x-ray is superimposed on the July 11, 1994, x-ray of Dr. Krahenbuhl's, which his record indicates is the final root canal fill x-ray of Michael Mosher, the two do not match.

Dr. Sadowski provided further explanation about this discrepancy on direct examination:

Q. (by Mr. Polewski) Doctor, if you'd take a look at Exhibit 9, the radiograph dated -- dated July 11th, 1994. Can you tell us what that is?

A. That is an x-ray of what is supposed to be a completed root canal, and it has on it a -- a temporary restoration -- a temporary crown, excuse me.

Q. You said that it is an x-ray of what is supposed to be a finished root canal. Why did you say supposed to be?

A. Well, perhaps I should not have used that word. If I can comment on the -- quality of the fill, the canals, the two canals that are on the mesial, are extremely short; in other words, they are not down all the way to the apex. The distal canal appears to me to have voids like the canal had not been completely condensed to a real tight fill there. Its length is adequate or just a little bit short. So I think that's what I was referring to.

Q. Dr. Sadowski, in the course of your review of these records and -- well, Dr. Sadowski, in the course of your review of these records, have you had occasion to examine that x-ray -- this group of x-rays on more than one occasion?

A. Yes.

Q. Have you looked at them fairly frequently?

A. Yes.

Q. Why?

A. They are confusing.

Q. Why? Why are they confusing?

A. They seem to be out of sequence. They do not match with the written record adequately, in my opinion. The order in which the -- dentist claims the procedure was done does not seem real logical and -- follow what I would consider to be, you know, your most efficient way, you know, to handle the situation.

Q. What is it about the - well, let me rephrase that. Is there anything about the x-ray that is dated July 11, 1994, which makes you believe that it is not actually an x-ray taken on July 11, 1994?

A. Well, for one thing, it has the temporary crown on it. And there again, trying to refer back to the -- to the written record, you know, it just doesn't jibe. The other thing that, in my opinion, if -- you have to look at Tooth Number 17, which is the wisdom tooth, and on a child or an adolescent of this age, the root canal roots are not completely -- the wisdom tooth roots are not completely formed, and in my opinion, it looks like from an age standpoint, when you compare it, the way the roots look on that, to -- with the x-rays -- at a later time, that they're out of sequence. Hope that was clear for you. (Transcript Pages 87-89)

Q. (By the Administrative Law Judge) Are these all the same tooth, in your opinion, of each of the exhibits, 6 through 9?

A. Yes.

Q. How would you order these exhibits in terms of chronology based upon the wisdom tooth roots?

A. Well, based upon that and also based upon, you know, the written record and the billing record, it would appear to me that the x-ray that's dated 7/11/94 actually should be in front of Exhibit 8, and it would have been a procedure where following the treatment that occurred on 9/5/93, a temporary crown would have been placed there and waiting for the permanent crown. And it is my opinion that what we're looking at there is what I would consider to be the first root canal completed procedure that was done on 9/15/93, and a temporary crown was placed. And then on 9/28/93 the permanent crown was put on. Hope that answers it for you, Your Honor. (Transcript Pages 90-91)

Q. (By Mr. Polewski) In your opinion then, that 7/14/94 x-ray is actually the final x-ray to demonstrate completion of the 9/15/93 root canal?

A. Yes.

Q. Dr. Sadowski, in your review of the records, have you seen any radiograph which, in your opinion, is the final x-ray from the July 1994 retreatment of that endodontic procedure?

A. No, I've not.

Q. Is that important?

A. Yes, it is. As I've already started, I think the root canal procedure should include at its conclusion a final x-ray so that you could sit down and review that with the patient.

Q. Doctor, when you were discussing that, you -- you said that it was important to tell the patient about the risks and the options related to the condition. Using the April '96 x-ray as the final x-ray in a root canal, what would you tell that patient?

Q. Is it possible in the minimally competent of dentistry not to know that you've done the overfill?

A. I do not believe a minimally competent should do a completed root canal without taking a final x-ray. (Transcript Pages 105-107)

Dr. Sadowski's testimony makes it clear that Dr. Krahenbuhl's treatment of Mr. Mosher fell below the minimally acceptable standard of care in two important ways. First, he plainly switched the x-rays of July 11, 1994, with those of July 5, 1994. Otherwise, there is no other reasonable explanation as to why Dr. LeMaster's x-ray of April 29, 1996, matches the one dated July 5, 1994, but not the one dated July 11, 1994. Secondly, no where in the record is there a final x-ray of Mr. Mosher's root canal taken by Dr. Krahenbuhl. Had there been one, the overfill would have been apparent, and Dr. Krahenbuhl could have immediately rectified the situation. The standard of care requires that a minimally competent dentist take a post-treatment radiograph of an endodontic procedure to check that the canals are completely obturated and not overfilled through the apical end of the tooth. Because Dr. Krahenbuhl did not take such an x-ray, he therefore failed to follow the standard of care within the profession.

Moreover, according to Dr. Sadowski, a minimally competent dentist would have taken the following steps to

address an overfill of a root canal:

A. (By Dr. Sadowski) I would have told the patient that we had a major problem, that the root canal filling material was accidentally pushed to an unacceptable length through the apex, and at that point I would suggest to the patient that that be removed right then and there on the spot before the -- before the sealer or the cement that holds that in there would solidify. That would have been my first recommendation. Second recommendation would have been if you don't do anything, future problems could exi -- could arise, infection, irritation, which ultimately would require you to either, as I first suggested, try to remove it, and/or secondly, surgically go through the bone and remove it that way. Or you could possibly end up losing the tooth or having a root amputation.

Q. (By Mr. Polewski) You said that your first option would be to remove the filling right then and there, correct?

A. I believe that would have been what I would have done. It'd have been the best thing for the patient, yes.

Q. In your opinion, is that--

A. That's assuming you knew it.

Q. Assuming you knew it.

A. Assuming I had taken an x-ray and I knew it. (Transcript Pages 106-107)

Unfortunately, there is no indication that Dr. Krahenbuhl ever had a discussion with Mr. Mosher or his mother about any of these potential problems or possible solutions to the problems. Nor does the Board find plausible Dr. Krahenbuhl's assertion that the cause of Mr. Mosher's overfill was either due to reabsorption or the work of an intervening dentist. Instead, because Dr. Krahenbuhl failed to take a final x-ray, he was unable to see that his endodontic treatment had either failed to completely obturate the canal or, in this case, that he had overfilled a canal. As a result, he did not document it. Nor did he notify the patient or observe the tooth to determine whether the patient needed to return to him or be referred to another dentist or oral surgeon.

Failure to correct an overfill through the apical end of a root, as was the case here, presents a risk that the patient may suffer later infection, pain, or loss of the tooth. Under those circumstances, the patient must be informed of those risks and their potential consequences. However, based on Dr. Krahenbuhl's failure to take a final x-ray, he was unable to advise Mr. Mosher of the overfill and therefore could not inform him of the risks associated with it or of the potential consequences. Accordingly, he engaged in unprofessional conduct.

Because the Board has found that Dr. Krahenbuhl substantially departed from the standard of care ordinarily exercised by a dentist, we must now consider what discipline to impose. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *Stat v. Aldrich*, 71 Wis. 2d 206, 209, 237 N.W.2d 689 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485, 164 N.W.2d 235 (1969).

This Board previously disciplined Dr. Krahenbuhl in 1993, following his criminal conviction for false representation with respect to submissions he made to the medical assistance program. In the present case, Dr. Krahenbuhl falsely represented one x-ray for another. Accordingly, when his prior conviction is coupled with the current case, a pattern of fraudulent behavior emerges, thus leading the Board to conclude that a period of revocation, in addition to the imposition of costs and a forfeiture, is necessary, especially given Dr. Krahenbuhl's seemingly recalcitrant behavior.

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceedings against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against a respondent is a discretionary decision on the part of the Dentistry Examining Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Board's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its

operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

In light of the substandard endodontic care that Dr. Krahenbuhl provided and in order to safeguard the public, it is also essential that he be prohibited from performing any future endodontic procedures. Additionally, Dr. Krahenbuhl's recordkeeping in this matter was inadequate. Consequently, it is critical that he take and successfully complete a course in recordkeeping to improve his collection of key patient data and to aid in his rehabilitation. All these measures are necessary not only to protect the public and to aid in Dr. Krahenbuhl's rehabilitation, but also to prevent other licenses from engaging in similar conduct.

Dated this 1st day of May, 2002, in Madison, Wisconsin.

STATE OF WISCONSIN

DENTISTRY EXAMINING BOARD

Bruce J. Barrette, D.D.S.

Chairperson