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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST:

LISA OLSON,	FINAL DECISION AND ORDER
APPLICANT	LS0201141DEN

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 1st day of May, 2002.

Bruce Barrette, Chairperson
Dentistry Examining Board

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE
APPLICATION FOR A DENTAL LICENSE
OF:

LISA ANN OLSON, DDS	PROPOSED DECISION AND ORDER
	(Class One Hearing)
APPLICANT	LS0201141DEN

Lisa Ann Olson
c/o Edward F. Kautzer
Ruvelsn & Kautzer, Chartered
Suite 510, Spruce Tree Center

1600 University Avenue
St. Paul, MN 55104-3829

Steven M. Gloe

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

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Procedural History

On February 15, 2002, a Class One hearing pursuant to Wis. Admn. Code Chapter RL 1, was held in the matter of the application for a dental license of Lisa Ann Olson. The notice of hearing contained two issues to be adjudicated:

Issue 1. Has the applicant successfully fulfilled all requirements for original licensure in Wisconsin?

Issue 2. Was the Board's denial of licensure to applicant arbitrary or capricious under the facts of this case?

By a stipulation between the parties dated February 6, 2002, Issue 1 was withdrawn. The parties reaffirmed the withdrawal of Issue 1, at the hearing. sdfsd

FINDINGS OF FACT

The following facts were stipulated between the parties at the hearing:

1. On November 14, 2001, the Dentistry Examining Board denied the applicant's application for registration to dentistry in the state of Wisconsin on the following grounds:

A. Beginning in 1991 and continuing on through August of 2001, the applicant engaged in the practice of dentistry in Wisconsin without a Wisconsin license to practice dentistry.

B. At some point during the applicant's work as a dentist in Wisconsin, she falsified a DEA credential for herself. The applicant thereafter wrote prescriptions for controlled substances without a valid DEA number.

C. During the time the applicant worked as a dentist in Wisconsin, she misrepresented to various dental insurers that she was in fact a duly licensed Wisconsin dentist. The applicant fabricated a Wisconsin dental license number in order to receive insurance reimbursements.

2. The applicant (fka Lisa Ann Kammer) graduated from dental school at the University of Detroit – Mercy on 07/02/1987.

3. Prior to moving to Wisconsin, the applicant was licensed to practice dentistry in the state of Michigan. Her Michigan license was issued on 08/11/1988 and expired on 08/31/1989.

4. The applicant has had no malpractice claims filed against her in Wisconsin, nor has the Department of Regulation and Licensing received any complaints regarding her practice.

5. At the beginning of September, 2001, the applicant reported herself to the Department of Regulation and Licensing for her unlicensed practice.

6. The applicant ceased her Wisconsin practice of dentistry in September, 2001 and subsequently consented to issuance of an administrative injunction by the Department.

7. In an attempt to resolve the issuance of her licensure, the applicant signed a stipulation with the Division of Enforcement and proffered a forfeiture of \$10,000 for her unlicensed activity. The stipulation would have resulted in issuance of a license, conditioned upon successful completion of all requirements for original licensure as set forth in Wis. Admin. Code ch. DE 2. The Dentistry Examining Board rejected this stipulation at its November 7, 2001 meeting.

8. The \$10,000 forfeiture has been refunded to the applicant.
9. The applicant has not submitted evidence of successful completion within the past five years of a regional practical examination.
10. According to the Wisconsin Public Health and Health Policy Institute, Wisconsin is currently experiencing a significant problem with access to dental care services for its residents, contributed to in part by a shortage of dentists.
11. The applicant has timely requested a hearing on the Board's November 14, 2001 denial.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction of this matter pursuant to Wis. Stats. § 447.03 and §447.07.
2. By practicing dentistry in Wisconsin without a license, the applicant violated Wis. Stats. § 447.03 (a), (f), (i), (L), (m) and (o).
3. By falsifying a DEA registration number for herself and writing prescriptions for controlled substances without a valid DEA registration number the applicant violated Wis. Stats. § 447.07 (3) (a), (f), (i), (L), (m) and (o); Wis. Stats. § 961.38 (3); 21 CFR § 1306.03 (a) (1), (2) and 21 CFR § 1306.04 (a).
4. By misrepresenting to various dental insurers that she was in fact a duly licensed Wisconsin dentist and fabricating a Wisconsin dental license number in order to receive insurance reimbursements the applicant violated Wis. Stats. § 447.07 (3) (a), (f), (i), (k), (L), (m) and (o) and Wis. Stats. §943.395.
5. The Dentistry Examining Board properly exercised its discretion under Wis. Stats. § 447.07 in denying the applicant a license to practice dentistry.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that the applicant, be DENIED her application for a license to practice dentistry in Wisconsin.

OPINION

By definition, as an unlicensed dentist the applicant is not a "practitioner" as defined in Wis. Stats. §§ 447.03, 450.01(17), and 961.01(19), nor for federal purposes as defined in 21 CFR § 1300.01 (17). Therefore, by committing the conduct herein the applicant initiated a cascade of interlocking violations of both state and federal law. No challenge is presented to the board's conclusions that the applicant violated the law by engaging in unlicensed practice, rather, she draws a narrow issue for this Class One Hearing:

Issue 2. *Was the Board's denial of licensure to applicant arbitrary or capricious under the facts of this case?*

Under the facts of this case the applicant has failed to meet her burden of proof under Wis. Admn. Code § RL 1.08 (4) that the board's November 14, 2001 denial was arbitrary or capricious.

To be an act deemed arbitrary and capricious, the applicant must demonstrate that the board acted without exercising discretion. Put another way, that the board failed to reach, "a conclusion based on logic and founded on proper legal standards." *Shuput v. Lauer*, 109 Wis. 2d 164, 177-178, 325 N.W. 2d 321, 328 (1982). Here, the board utilized the proper legal standards set forth in Wis. Stats. § 447.07 to deny licensure for the acts committed by the applicant. The applicant has produced no new facts at this hearing to warrant recommending any change in the board's decision.

The applicant claims that the board's decision was arbitrary and capricious because, 1) she self reported her unlicensed practice, 2) she practiced as a good dentist and showed competence, and 3) she has never had any malpractice claims filed against her. The applicant also submitted seven well wishing cards and testimonials. (Exh. 1-7)

Set forth is the summary of the applicant's argument that the board's decision was arbitrary and capricious:

Briefly, the -- our position is, is while the rules of dentistry are set up for the protection of the public, it's important to realize that there was in nine years no public protection issues ever brought up. First of all, she voluntarily self-reported herself. Number two, there has never been any evidence regarding her competence or quality of care that she presented as a dentist. There has never been any E and O malpractice claims. There have never been any types of claims to the dental board at all regarding the quality or standard of care presented by Ms. Olson to her patients in those nine years. As the court noted from -- or can note from Exhibit 11 which we'll clarify, that that was that letter that went out

signed by her former dental partners after she disclosed to them that she wasn't licensed. And one of the sentences in there is very telling. It says, there was never any issue regarding the care that was given to the patients. And there -- we'll show that there have been no problems with alcohol, drugs, anything, that she has never been arrested, never been convicted of any type of crime. And we feel that looking at this situation, the tribunal should consider all of these factors which, unfortunately, because of the board meeting, did not get a chance to be developed fully and fairly on behalf of the applicant, and should find that the board was arbitrary and capricious in its decision not to allow Ms. Olson licensure in the State of Wisconsin. Thank you. (R.T. pp. 10-11)

The applicant allowed her Michigan dental license to lapse in 1989, stating,

"I wasn't working at the time, and finances were a big concern. I had a lot of student loans. When I graduated from dental school, I had about \$60,000 worth of student loans to pay. It -- it was a mistake. I know that, looking back on it. But -- I should have renewed the license, but it was kind of either I default on a loan or I pay my license, and I decided to use my money to pay off my school loans and not get in that type of trouble." (R.T. p. 22)

When she began the unlicensed practice of dentistry in Wisconsin in 1992, she didn't apply for licensure because she was afraid to take the required competency examination.

Q. Okay. Did you know at that time that you needed to be licensed in Wisconsin?

A. Yes, I did.

Q. Okay. What was the reason why you didn't make application to license -- be licensed in Wisconsin?

A. It was basically a big fear issue. I was very much afraid of having to take the -- the regional board exam again. It was a different region. I had not been practicing for two years and did not have a current Michigan license at that time. Although I could have applied at any time, I did not.

Q. You mean applied for Michigan?

A. Right. I did not reapply for a Michigan license because I was not using that at the time. And I was very much afraid of having to take the board exam again, having not passed it the two times that I took it. It was a very big fear factor, paralyzing fear. And I -- I didn't look into it. (R.T. p. 24)

The applicant's purported self disclosure of her unlicensed practice occurred as the result of an insurance company noting that two persons in Wisconsin possessed the same credential number:

Q. What led to your disclosure in September of 2001 of your non-licensure?

A. Delta Dental of Wisconsin, which is a carrier, called in the middle of August asking for a copy of my license. The time that they called they just said this was Delta Dental. They did not say which Delta Dental. And our office being so close to the Minnesota border also, there are many, many Minnesota Delta carriers and different types that we did not know who was they -- who was actually asking for the copy of the license, and our office manager was on vacation. They then called the last week against of August and asked again for a copy of my license, which I did not have. They had found that there was another doctor in the state who was issued the same four-digit number and they were trying to verify the license. (R.T. pp. 35-36)

The applicant stated she is attempting to reach a settlement with the approximately seven insurance companies to which she submitted insurance claims:

Q. Do you have any idea of the -- the total of these seven insurance companies, how much they're seeking from you?

A. Right now I don't know if I have it totaled. The lowest -- the -- the smallest are just about \$1,500. The largest that has contacted me was just over \$40,000. They're mostly in the -- the one to \$2,000 range. There's one at \$8,000. And then just two weeks ago we received one for \$40,000, that they had reimbursed. All insurance companies were notified in September by my partners, or former partners in the practice that I had been practicing without a dental license.

Q. Do you have a planned response to these insurance companies?

A. I hope to work with them to come up with some type of satisfactory agreement with them. It's -- a service was performed on the patients and there have been no complaints, so the monies that was also paid to me, a lot of that went to overhead also. I -- I don't have the money to repay all these dental insurance companies, but if some type of agreement can be worked out that I pay

them back out of what I make going back into the dental field, that that's what I'd like to do. (R.T. pp.

None of the applicant's excuses rise to a sufficient level to show that the board acted unreasonably in denying licensure where the applicant exhibited a nine year pattern and practice of deception.

To sanction unlicensed practice under these circumstances would be to approve by bad example the scenario where a person could knowingly flaunt the law yet if they do a "good" job, once discovered in their deception, hold out an expectation to make amends and proceed on.

This type of result, should it ever come to be reasonably expected by persons wishing to engage in unlicensed practice, guts the foundational purpose of the legislature in creating a professional practice act in the first instance. The purpose for such legislation is that the consequences to the public health, safety and welfare are so serious that a potential professional must first demonstrate minimal competence before being granted a license to engage in the profession.

Creating a false license or falsely representing a credential therefore mocks the very purpose for the license in the first instance. The fact that the applicant was a "good" unlicensed dentist and has testimonials is not credited to her account, rather it means merely that some of her patients in this instance were fortunate not to have been harmed.

To affirm deception in licensing is to encourage deception in licensing. The result is danger to the public by encouraging others who may not be quite so "good" to follow the applicant's misguided professional path.

The applicant's fear of examination likewise provides no valid excuse. With every right granted by a license comes responsibility. One cannot except one without the other. The applicant's excuse of fear as a mitigating factor once again opens the door to invite unlicensed practice. The very purpose for requiring minimal competence is to protect the public. The public is therefore protected by competency testing. The failure to submit to competency testing can never be excused by fear. Such an argument lessens the efforts and accomplishments of all those who have gone before and will come after, who while facing fear, accept the challenge to demonstrate minimum competence by examination.

The applicant also miscasts the "self reporting" of her deception after an insurance company noticed a problem with the "license" number she provided. In actuality she engaged in a pattern and practice of deception for nine years and only stopped once she was found out. In that sense the applicant "self reporting" after discovery is akin to a child tossing the cookie back in the cookie jar once caught in the act. The implication is clear in this instance. If not for the insurance company's discovery it could reasonably be assumed the applicant would still be engaging in unlicensed practice to this very day.

Public protection through a professional practice act either has meaning or it doesn't. The legislature through Wis. Stats. § 447.07, specifically grants the board authority to deny issuance of a license based upon the acts committed by the applicant here. The facts are not in dispute and the law is not in dispute. The implications of the applicant's proffered excuses lead to unreasonable results and untenable risks for the public. The board's action was reasonable and per se meets the requirements of Wis. Stats. § 447.07.

Date: March 20, 2002

William Anderson Black