

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF A PETITION FOR :  
ADMINISTRATIVE INJUNCTION INVOLVING : FINAL DECISION  
: AND ORDER  
DENNIS SCHOTT, D.C., : LS0309232CHI  
RESPONDENT. :

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The State of Wisconsin, Department of Regulation and Licensing, 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, Department of Regulation and Licensing.

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 19<sup>th</sup> day of November, 2003.

Donsia Strong Hill  
Department Secretary

STATE OF WISCONSIN

BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF A PETITION FOR  
ADMINISTRATIVE INJUNCTION INVOLVING

LS0309232CHI

DENNIS SCHOTT, D.C.

Respondent

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PROPOSED DECISION

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

Dennis Schott, D.C.

720 North Rochester Street

Mukwonago, WI 53149

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 53708

Division of Enforcement

Department of Regulation and Licensing

P.O. Box 8935

Madison, WI 53708

A Class I hearing was held in the above-captioned matter on October 14, 2003. The Division of Enforcement appeared by attorney James E. Polewski. The Respondent, Dennis Schott, D.C., appeared in person and without legal counsel.

On the basis of the entire record in this proceeding, the Administrative Law Judge recommends that the Department of Regulation & Licensing adopt as its Final Decision and Order in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Dennis Schott, D.C., was born on December 19, 1952, and was previously licensed to practice chiropractic in the state of Wisconsin, pursuant to license number 1703, granted on November 12, 1981.

2. Dr. Schott applied for renewal his license to practice chiropractic in December, 1996, and tendered his check for \$151 at that time for that purpose. The Wisconsin Department of Revenue formally notified the Department of Regulation & Licensing (Department) on February 19, 1997, that Dr. Schott was liable for taxes. Consequently, and pursuant to § 440.08(4)(b)1., Wis. Stats., Dr. Schott's renewal application was denied, and his check for the renewal fee was refunded to him.

3. On May 28, 1997, the Department of Revenue notified Dr. Schott and the Department that Dr. Schott was no longer liable for delinquent taxes, and that he had satisfied the requirement for renewal of his license. Dr. Schott failed to file a new application for renewal of his license at that time and failed to apply for renewal at any time up to the date of the hearing herein.

4. Dr. Schott continued to practice chiropractic at a location called "Family Chiropractic Office" at 1011 South Main Street, Mukwonago, Wisconsin, and, after December 2001, at "Family Chiropractic Office" at 720 N. Rochester Street, Mukwonago, Wisconsin.

5. On July 29, 2003, Respondent was personally contacted at his office by an investigator for the Division of Enforcement, and personally advised that he did not have a license to practice.

6. On August 13, 2003, Respondent was again contacted by an investigator for the Division, and Respondent reported that he was still accepting new patients. The investigator advised him that he could not legally see patients without a current, valid license to practice chiropractic in the state of Wisconsin.

7. On August 19, 2003, Respondent was again contacted by the investigator, and he informed the investigator that he intended to continue practicing chiropractic without a license.

8. Dr. Schott desisted from the practice of chiropractic from early October, 2003, until the time of the hearing herein.

#### CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to § 440.21, Stats.

2. Respondent's right to renew his registration to practice chiropractic in the state of Wisconsin expired on December 31, 2001, by operation of § 440.08(3)(b), Wis. Stats., and § Chir 3.02(2) and (3), Wis. Admin. Code.

3. Respondent's continuing practice of chiropractic without a current credential from the Wisconsin Chiropractic Examining Board constitutes a violation of § 446.02, Wis. Stats.

#### ORDER

NOW, THEREFORE, IT IS ORDERED that Dennis Schott, D.C., is hereby enjoined from practicing chiropractic in the state of Wisconsin until such time as he is granted a current credential by the Wisconsin Chiropractic Examining Board under § 446.02, Wis. Stats.

#### OPINION

The Chiropractic Examining Board does not have jurisdiction in this matter because Dr. Schott does not have a license to practice chiropractic

in Wisconsin, and no longer has the privilege of renewal as of right. Because his registration has been expired for more than five years, he may under § Chir 3.02(3), Wis. Admin. Code, be required by the board to complete an examination before he is granted reinstatement of his license.<sup>[1]</sup> In the meantime, the consensus is that the Department rather than the board has jurisdiction to address Dr. Schott's having continued to practice without a current registration.

Dr. Schott was licensed to practice chiropractic in the state of Wisconsin, and was duly registered to do so, until April 17, 1997. He made timely application for renewal of his credentials in December 1996, but, because of a tax delinquency, his application was denied. He actually received notice of the denial of his renewal application on March 17, 1997, and did not request a hearing on that denial within the thirty days permitted for filing an appeal. By operation of § 227.51, Stats., his license was considered current until April 17, 1997.<sup>[2]</sup> On May 28, 1997, the Department of Revenue lifted the tax delinquency hold on Dr. Schott's ability to renew his credentials, but Dr. Schott did not make application for renewal at any time following May 28, 1997.

Dr. Schott was personally informed on several occasions that he is no longer licensed to practice chiropractic in Wisconsin. Nonetheless, he continued to practice until early October, 2003, at which time he testified that he stopped practicing on the advice of his attorney. Sherrie Johnson, Consumer Protection Investigator with the Department's Division of Enforcement testified that she spoke personally to Dr. Schott on three occasions, twice in person and once by telephone. The first visit was on July 29, 2003, at which time Dr. Schott denied knowledge that his license was expired and stated that he was currently practicing. Ms. Johnson informed Dr. Schott that it was necessary to have a current registration to practice and gave him the name of the Chiropractic Examining Board's legal counsel as a contact in reinstating his registration. Dr. Schott testified that he attempted to reach the board's counsel by telephone but was unable to establish contact.

On August 13, 2003, Ms. Johnson again contacted Dr. Schott, this time by telephone, at which time Dr. Schott indicated that he was still seeing patients. Ms. Johnson at that time iterated that Dr. Schott should not see patients without a current registration.

Ms. Johnson again visited Dr. Schott at his office on August 19, 2003. At that time, Dr. Schott again conceded that he was still seeing patients even though he knew he did not have a current registration, and indicated that it was his intent to continue to see patients.

At hearing, Dr. Schott testified that all three of his conversations with Ms. Johnson, including that occurring on August 13, 2003, were in person, and that it was during the August 13 visit rather than the July 29 visit that Ms. Johnson referred him to the board's legal counsel. Other than those two details, Dr. Schott did not dispute Ms. Johnson's testimony.

Unresolved in this record is why Dr. Schott did not attempt to renew his license when first notified that he was practicing without a current registration. His testimony in that regard was as follows:

Q. (by the ALJ) Have you tried to renew your license since you became aware of the situation?

A. No, because I just became aware of the situation just recently.

Q. No. I think there was testimony that there were two in person visits and one telephone. Your recollection is it was three in person visits.

A. Right.

Q. I believe the testimony is that you were notified on each of those occasions that you were not licensed. Did you at that point attempt to take any action to renew your license?

A. No. I did by calling that Jacquelynn Rothstein which Ms. Johnson told me to call, and when I contacted her office, I -- she was not in. I had a voice mail stating that she was on vacation. So I left a message for her to get back to me. She never got back to me. (Tr., p.18)

Ms. Johnson testified that at the time of her third visit to Dr. Schott's clinic, she interviewed one of his patients as the patient was leaving the clinic, and that the patient indicated that "Dr. Schott was her chiropractor, and she had just had an adjustment, and she said she liked him as a chiropractor. And she recommended him to me, if I was interested in going to see a chiropractor." There is nothing else in this record to indicate that Dr. Schott practiced in anything other than a competent manner during the period when his license was lapsed. If for no reason other than that, it is to be hoped that Dr. Schott now follows through and takes the necessary actions required by the Chiropractic Examining

Board for reinstatement of his license, and that the board takes this factor into consideration when it deliberates on his application. In the meantime, however, it is probably necessary to impose the administrative injunction to ensure that Dr. Schott does not resume his practice unless and until his license is reinstated.

Dated this 28<sup>th</sup> day of October, 2003.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge

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[\[1\]](#) **Chir 3.02 Biennial registration. . . . (2) REQUIREMENTS FOR LATE RENEWAL.** A licensee who fails to meet the requirements in sub. (1) by the renewal date shall cease and desist from practice as a chiropractor. Within 5 years following the renewal date, a licensee may renew and obtain a new certificate of registration by filing with the department the materials specified in sub. (1) and a late renewal fee specified in s. 440.08 (3) (a), Stats.

**(3) REQUIREMENTS FOR REINSTATEMENT.** (a) Reinstatement following failure to renew. A licensee who fails to renew within 5 years of the renewal date may be reinstated by meeting requirements in sub. (2), and may be required to take an examination prescribed by the board.

[\[2\]](#) 227.51 Licenses. . . . (2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally acted upon by the agency, and, if the application is denied or the terms of the new license are limited, until the last day for seeking review of the agency decision or a later date fixed by order of the reviewing court.