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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

	:	
	:	
IN THE MATTER OF THE	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	LS0208121DEN
LEE R. KRAHENBUHL, D.D.S.,	:	
Respondent.	:	

FINAL DECISION AND ORDER

PARTIES

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

Lee R. Krahenbuhl, D.D.S.
1720 Congress Avenue
Oshkosh, WI 54901

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

PROCEDURAL HISTORY

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on August 12, 2002. A hearing was held on April 3, April 25, and May 2, 2003, before Administrative Law Judge Ruby Jefferson-Moore. Attorney James E. Polewski appeared on behalf of the Department of Regulation and Licensing. 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 Wisconsin (License # 2934). His license was first granted on June 7, 1982.
2. On April 23, 2001, Kenneth Rodgers presented to Dr. Krahenbuhl for an initial dental examination, necessary dental x-rays, and a consultation. Dr. Krahenbuhl delegated the consultation to Janet Krahenbuhl, his spouse, office manager, and dental hygienist.
3. Through the consultation with Janet Krahenbuhl, Dr. Krahenbuhl informed Mr. Rodgers that he had thirteen cavities requiring immediate treatment, at an estimated cost of \$1,500.00.
4. On July 25, 2001, Mr. Rodgers went to see David Ehlert, D.D.S., for a second opinion. Dr. Ehlert's examination

disclosed that Mr. Rodgers had no active caries and that his existing restorations continued to be serviceable.

5. Mr. Rodgers sought a third opinion from James J. McGrane, D.D.S., on August 8, 2001. Dr. McGrane's examination disclosed that Mr. Rodgers had no active caries and that his existing restorations continued to be serviceable.
6. On January 28, 2002, Mr. Rodgers submitted to another dental examination by Christopher Laws, D.D.S. Dr. Laws' examination disclosed that Mr. Rodgers had no active caries and that his existing restorations continued to be serviceable.
7. Dr. Krahenbuhl's diagnosis was based on the use of caries detection dye and magnification during clinical examination. None of the other examining dentists used caries detection dye or magnification during their clinical examinations of Mr. Rodgers.
8. The use of a mirror, explorer, and radiographs were the accepted standard of care for detecting occlusal caries in April 2001.
9. Caries detection dye is not specific for identifying caries in enamel.
10. Mr. Rodgers had no caries requiring restoration at the time of his examination by Dr. Krahenbuhl.
11. Dr. Krahenbuhl's representations that Mr. Rodgers had multiple cavities requiring treatment were false.
12. In connection with Dr. Krahenbuhl's misdemeanor criminal conviction for false representation in violation of Wisconsin's medical assistance program, 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.
13. By a Dentistry Board Order entered in May 2002, Dr. Krahenbuhl was disciplined in connection with his performance of a multi-millimeter apical overfill and false representation of records related thereto. Dr. Krahenbuhl petitioned for judicial review of the May 2002 disciplinary order.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction over this matter pursuant to § 447.07, Wis. Stats.
2. Dr. Krahenbuhl, by falsely informing Kenneth Rodgers that he had thirteen caries that needed treatment, engaged in unprofessional conduct contrary to §§ 447.07 (3) (a) and (i), Wis. Stats.
3. Dr. Krahenbuhl, by delegating the treatment consultation concerning Kenneth Rodgers to Janet Krahenbuhl, was responsible for that delegated act pursuant to § 447.065 (3), Wis. Stats.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that the license of Lee R. Krahenbuhl to practice dentistry in the State of Wisconsin shall be **REVOKED**, beginning the date on which this Order is signed.

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

OPINION AND EXPLANATION OF VARIANCE

Factual Background

In response to an advertisement that he received from Lee R. Krahenbuhl, D.D.S., in the mail, Kenneth Rodgers made an appointment for a dental examination on April 23, 2001. During the course of that visit, Dr. Krahenbuhl used a caries detection dye on Mr. Rodgers and maintains that he found thirteen carious lesions through that process. Later that same

day, Mr. Rodgers met with Janet Krahenbuhl for a consultation. Janet Krahenbuhl is Dr. Krahenbuhl's spouse, his office manager, and occasionally acted as his dental hygienist at the time of Mr. Rodger's April visit. She informed Mr. Rodgers that he had thirteen cavities which needed to be filled immediately.

Mr. Rodgers left his meeting with Mrs. Krahenbuhl in surprise. He was not certain what to do next as his testimony indicates: "I didn't know what to do because I felt, I just felt so uncomfortable with it. Like I said, it didn't seem right. I didn't think I had a real dental problem that needed to be addressed right away or that I had all these cavities. I did talk to a lawyer about it." The lawyer with whom he spoke suggested that he (Mr. Rodgers) obtain a second opinion, which he did.

On July 25, 2001, Mr. Rodgers went to see David Ehlert, D.D.S., for a second opinion concerning his alleged cavities. Dr. Ehlert had been Mr. Rodgers' dentist since 1995, and had previously examined his teeth on several other occasions. However, Mr. Rodgers did not inform Dr. Ehlert of the purpose behind his appointment in July of 2001, nor did Dr. Ehlert inquire as to why Mr. Rodgers had scheduled a visit. After examining Mr. Rodgers, Dr. Ehlert concluded that he did not have any caries that required restoration. In his opinion, Mr. Rodgers' current restorations were adequate and no new cavities were apparent at the time of the examination. While Dr. Ehlert did notice stained pits and fissures in Mr. Rodgers' teeth, they did not have any decay that warranted intervention.

Mr. Rodgers also went to see James J. McGrane, D.D.S., on August 8, 2001, to obtain yet another opinion. Mr. Rodgers did not inform Dr. McGrane of the purpose behind his appointment, nor did Dr. McGrane inquire as to why Mr. Rodgers had scheduled a visit. Following his examination of Mr. Rodgers, which included a dental cleaning, Dr. McGrane concluded that he did not have any dental caries, that is, nothing that required any type of treatment.

At the request of the Complainant, Mr. Rodgers went to see Christopher Laws, D.D.S., on January 28, 2002. Dr. Laws has practiced dentistry for over twenty-seven years as a private practitioner in Green Bay, Wisconsin. After conducting an examination of Mr. Rodgers, he too concluded that Mr. Rodgers did not have any cavities and as such did not need any treatment.

Consultation with the Administrative Law Judge

At its meeting on June 24, 2004, the Wisconsin Dentistry Examining Board consulted with the Administrative Law Judge (ALJ) concerning her conclusions with respect to the testimony of Dr. and Mrs. Krahenbuhl versus that of Mr. Rodgers. The Board also consulted with the ALJ concerning the expert witnesses, Drs. Laws and Rainey.

The ALJ indicated that she had found the testimony of Dr. and Mrs. Krahenbuhl to be credible. She also indicated that she had found Mr. Rodgers testimony to be credible; however, she ultimately chose to place more weight upon the Krahenbuhls' testimony than that of Mr. Rodgers'.

During the consultation, the ALJ also stated that she had found the testimony of both Dr. Laws and Dr. Rainey to be credible, but nevertheless concluded that the use of cavity detection dye and visual magnification for detecting pit and fissure caries was the standard of care in the dental profession, rather than the use of a mirror and explorer, or a combination of the two.

Basis for Rejecting Dr. Rainey's Testimony in Favor of Dr. Laws' Testimony

In a contested administrative hearing, initial determinations of a hearing examiner on witness credibility are subject to the agency's independent review. Ultimate responsibility for credibility determinations rests with the administrative agency, not with the hearing examiner. *Hakes v. LIRC*, 187 Wis. 2d 582, 589, 523 N.W.2d 155, 158 (Ct. App. 1994).

Dr. Laws, in addition to examining Mr. Rodgers, provided expert testimony in this matter. Dr. Laws typically uses a mirror and explorer to aid him in determining whether a patient has caries and did so in Mr. Rodgers case. (Tr. at 154). Although he has used a caries detecting dye in his office in the past, he does not currently use it. Asked why he chose not to utilize it, he responded that while he had "used it a couple of times in the past couple of years" he did not find it to be anything special and that it frequently led to a finding of "false positives." (Tr. at 156-57). In other words, the dye suggested that caries were present when, in fact, they were not.

According to Dr. Laws, he tried giving Dr. Krahenbuhl the benefit of the doubt in terms of his caries diagnoses, but ultimately determined that he did not see “any reason to fill any of those teeth” that Dr. Krahenbuhl claimed were decayed. (Tr. at 157-58). Not surprisingly, therefore, he also concluded that the teeth in question needed no immediate attention. (Tr. at 166). He also testified that taking a conservative approach to the treatment of caries is preferable because filling a cavity can jeopardize a tooth. (Tr. at 161; 168).

For approximately the past eight years, Dr. Laws has also been a clinic floor examiner for the Central Regional Dental Testing Service (CRDTS). (Tr. at 151-52). The CRDTS examination is given to senior dental students in order to determine whether they are minimally competent in the practice of dentistry and also to make them eligible for licensure in Wisconsin and other states. In his capacity as an examiner, Dr. Laws observes the students, answers any questions they may have, and ensures that the examination procedures are correctly followed. Dr. Laws indicated, however, that in the time he has acted as an examiner, he has not observed any student using a caries detection dye. (Tr. at 175). Nevertheless, even given the utilization of that diagnostic option, Dr. Laws remained consistent in his opinion that Mr. Rodgers’ teeth did not require any type of immediate treatment or even treatment in the near future.

Dr. Laws testimony is also supported by scientific literature. For instance, an article published in the *Journal of the American Dental Association*, noted that most general dentists do not commonly utilize caries detecting dyes. James Hamilton et al. *Early Treatment of Incipient Carious Lesions A Two-year Clinical Evaluation*, 133 JADA 1643, 1651 (2002) (Ex. 45). The dental literature also indicates that a diagnostic aid should show a very low level of false positives to avoid unnecessary treatment. Dorothy McComb *Caries-Detector Dyes—How Accurate and Useful Are They?*, 66 JOURNAL OF THE CANADIAN DENTAL ASSOCIATION 195, 196 (2000) (Ex. 43). According to Dr. McComb, there is a lack of substantive scientific literature supporting the use of dyes on defective or sound occlusal fissures to diagnose infected carious enamel or dentin. *Id.* Instead, a combination of careful visual inspection and radiographic diagnosis would appear to best fulfill the diagnostic requirements for occlusal caries. *Id.* at 197. Furthermore, because none of the caries-detection dyes is caries specific, their routine use may lead to a profound degree of overtreatment. The dyes will stain food debris, enamel pellicle, and any other organic matter trapped in substantial amounts. As a result, false positives are a significant concern. *Id.* Dr. McComb therefore suggests that the best way in which to address fissure defects that are without cavitation or dentinal involvement is through the use of sealants. *Id.* Conservative treatment is preferred because the unnecessary initiation of operative intervention condemns teeth to a lifetime of restorative care through the re-restoration cycle, with concomitant economic costs and a greater likelihood of premature tooth loss. *Id.*

J. Tim Rainey, D.D.S., testified on behalf of Dr. Krahenbuhl. He reached a decidedly different conclusion concerning Mr. Rodgers. Dr. Rainey concluded that, based upon the intraoral photographs of Mr. Rodgers teeth, he did have pit and fissure caries such that “Ray Charles could probably have found them.” (Tr. at 341). However, later in his testimony he conceded that more than a mere photograph of a tooth would be required to make a diagnosis of a carious lesion. He agreed that while photographs could be used as an adjunct for making a diagnosis, a photograph, standing alone, is not a sufficient basis on which to make a definitive diagnosis of caries. (Tr. at 405-07).

He also testified that he had reviewed the radiographs of Mr. Rodgers taken by Dr. Krahenbuhl. However, he indicated that conventional radiographs are “worthless for the diagnosis of pit and fissure caries,” which is exactly where Dr. Krahenbuhl claims to have discovered Mr. Rodgers cavities for which he recommended immediate treatment. (Tr. at 411; 270-72).

Dr. Rainey cannot have it both ways. His credibility is undermined when, on the one hand, he argues that even a blind man could see Mr. Rodgers caries, but then, on the other, agrees that he would actually have had to have seen Mr. Rodgers personally to have been able to make a definitive caries diagnosis. Dr. Rainey did not examine Mr. Rodgers and by his own testimony is unable to make any definitive diagnoses of him.

Dr. Rainey is also the owner of the Texas Institute for Advanced Dental Studies (Dental Studies) and half owner of the Texas Institute for Conservative Dentistry, which is the commercial arm of the Dental Studies organization that sells equipment and supplies for a caries detection dye system. His interest in that company coupled with his unabashed criticisms of dentists who practice “conventional” dentistry, including Drs. Ehler, McGrane, and Laws, serve to further undermine his credibility as an expert witness as his testimony illustrates:

Q: (by Mr. Polewski) Do you consider yourself a dreamer at the forefront of dentistry?

A: Where the heck do you think ideas come from, committees?

Q The answer is yes?

A: I am a dreamer, yes.

Q: And at the forefront of dentistry?

A: Yes.

Q: And page 4 of Exhibit 38, the goal at the Texas Institute, advancing dentistry?

A: Right.

Q: Doctor, do you consider that the Texas Institute for Advancing -- Advancements in Dentistry is your way of furthering the revolution; correct?

A: That's my contribution to whatever it is we end up with.

Q So this is going to be a revolution in dentistry?

A: What's wrong with that?

Q: Your intent is to have a revolution in dentistry?

A: That's what we are doing.

Q: Doctor, dentistry, conventional dentistry is obsolete; right?

A: Traditional dentistry is obsolete.

Q: And that's on the basis of what you were taught in dental school 27 years ago?

A: Right.

Q: Ridiculing the profession doesn't mean that Mr. Rodgers has cavities, does it?

A: That's a new one to me. Explain that one.

Q: You can ridicule the profession all you want, but that doesn't prove that Mr. Rodgers has cavities, does it?

A: It doesn't prove he has cancer either or periodontal disease.

Q: Assuming a minimally competent dentist, wouldn't the minimally competent dentist with years of experience treating a patient have more knowledge of a patient's experience than the dentist who just saw him this afternoon?

A: No. We fix problems like that all the time in our practice.

Q: This goes back to your testimony that Drs. Ehlert, McGrane and Laws were clueless?

A: Absolutely.

Q: And they're clueless because they don't use microdentistry?

A: No, they're clueless because they're behind, they don't understand the science, they don't understand tooth structure, and quite obviously you don't either.

Q: And if they were more than mediocre minds or they understood the science, they'd use microdentistry?

A: If they understood the science of microdentistry, they would use microdentistry.

Q: So the fact that they don't use microdentistry shows that they're clueless?

A: They're clueless about microdentistry. Their testimony shows that. It's a statement of fact.

(Tr. at 398-99, 414-15, and 443-444).

Dr. Rainey has a clear interest in seeing that Dr. Krahenbuhl is exonerated from any wrongdoing so that he can continue to sell both his products and services without challenge. Moreover, the literature he cited in support of his claims does not indicate that caries dye is a panacea for the detection of occlusal caries but, rather, that it can cause false positives and false negatives, that is, showing caries where none exist as well as no caries when they do exist. *See generally* Exhibits 39-43, *but see* Exhibit 43. At best, the literature cited suggests that caries detection dye may be useful in discovering cavities located in the tooth dentin, which is not where Dr. Krahenbuhl claims to have found Mr. Rodgers' carious lesions. Dr.

Rainey's scorn for those who disagree with his position regarding microdentistry, particularly Dr. McComb, is again best illustrated by his testimony:

- Q: (by Mr. Polewski) You will agree, won't you, Doctor, being a scientist, that there are academicians in the field of dentistry who dispute that caries detection dye is specific for caries, even in dentin?
- A: Yes.
- Q And you will agree that their articles are published in authoritative journals?
- A: Yes.
- Q: Do you know Dr. McComb?
- A: I sure do.
- Q: Do you consider her to be unscientific?
- A: Yes.
- Q: Do you consider her to be tradition bound?
- A: Yes.
- Q: Do you consider her to be of mediocre mind?
- A: Yes.
- Q: Have you read Dr. McComb's article in the *Journal of the Canadian Dental Association*?
- A: I sure did.
- Q: Didn't cite that article at all?
- A: I've cited it in other writings.
- Q: Dr. McComb is critical of the idea that caries disclosing agents are particularly specific or necessarily useful; correct?
- A: Yeah. She's pretty well clueless.
- Q: Dr. McComb is head of the discipline of restorative dentistry and faculty of dentistry at the University of Toronto?
- A: Right.
- Q: And she has got a Master's of Science in dentistry?
- A: Right.
- Q: And she's got, managed to get her article published in the *Journal of the Canadian Dental Association*?
- A: That's correct.
- Q: She doesn't agree with you; therefore, she's clueless?
- A: No. I spent a lot of time coming to that conclusion. I also concluded that in a legal brief or I came to the conclusions that she did not have expertise in the area of microdentistry yet she was writing in the area of microdentistry and I believe that -- remember then I'm testifying under oath -- and I believe that she has also testified that she does not have expertise in microdentistry.
- Q: Your opinion is that the only person that can read a scientific article about microdentistry is microdentists?
- A: No, of course not.
- Q: Your testimony is that academicians who don't actually use microdentistry have no business saying anything about the topic?
- A: No, of course not.
- Q: Your opinion is that Dorothy McComb, because she doesn't do microdentistry and isn't an expert in microdentistry, cannot do a critical evaluation of microdentistry?
- A: I don't think that Dorothy McComb is capable of placing scientific principles to anything that she does.
- Q: Dr. McComb states in her article or the conclusion of her article -- let me refer you specifically, the end of the article, the author has no declared financial interest; correct?
- A: I don't think that's correct.
- Q: Do you think that the *Journal of the Canadian Dental Associations* falsified that statement?
- A: No.
- Q: Perhaps I misheard your answer.
- A: I don't think that that's correct, that she doesn't have a financial interest. I think Dorothy McComb has an unpublished agenda.
- Q: An unpublished agenda is not the same as a financial interest, is it?
- A: It could be.
- Q: You, on the other hand, are a part-owner of the Texas Institute for Conservative Dentistry?

A: Yes, I am.

Q: And that firm sells and promotes microdentistry and the equipment necessary to use it?

A: Yes.

(Tr. at 492-495).

In short, Dr. Rainey is contemptuous of those dentists and academicians who either do not agree with his so-called revolution in dentistry characterized as “microdentistry” which utilizes caries detection dye and magnification or who question its efficacy. Dr. Rainey would have the Board believe that caries detection dye is the standard dental practice for determining whether caries exist on the occlusal surface of a tooth. According to the professional literature as well as the three other dentists who examined Mr. Rodgers, it was clearly not the standard of practice at the time Mr. Rodgers presented to Dr. Krahenbuhl in April of 2001. Dr. Rainey’s testimony proved to be both internally inconsistent and unsupported by the scientific literature. Because his testimony is at odds with the current standards and research in the profession, and because he has a notable economic interest in the outcome of this matter, the Board does not find him to be a credible witness and thus rejects his testimony.

Basis for Rejecting the Administrative Law Judge’s Finding that Caries Detection Dye and Magnification are the Standard of Care

Three experienced dentists, Drs. Ehlert, McGrane, and Laws, each with no motive to lie, independently concluded that Mr. Rodgers had no cavities. Using their trained eyes, hands, explorers, and radiographs in conjunction with their professional judgment, each found no evidence of caries. In contrast, Dr. Krahenbuhl maintains that he found evidence of cavities after applying a caries detection dye to the enamel on the occlusal surfaces of Mr. Rodgers’ teeth. The Administrative Law Judge, relying upon Dr. Rainey’s claims, found that the use of cavity detection dye and visual magnification is now the standard of care in the dental profession and that there was no other evidence in the record to refute Dr. Rainey’s opinion. The Board strongly disagrees with that conclusion and has noted several places in the record where it has been otherwise established.

However, to reiterate, the scientific literature establishes that caries detection dye is non-specific, that it can and often does stain material in the teeth that are not caries such as residual food and enamel. The literature also indicates that caries detection dye is not useful for identifying enamel caries, which is where Dr. Krahenbuhl claims to have found Mr. Rodgers’ cavities. In addition, both false positives and false negatives have been known to be found with the use of caries detection dye. Indeed, that is one of the reasons that it is not commonly used in the profession as Dr. Laws’ testimony indicates. It is simply not a reliable tool for diagnosing pit and fissure cavities, and the professional literature supports that position.

Moreover, Dr. Laws, in his capacity as a dental examiner for the CRDTS examination, has not once seen a candidate using the caries detection dye to diagnose occlusal cavities. If the caries detection dye and magnification were the standard of practice in the profession, the technique would be required in the examination to determine whether a candidate was minimally competent to practice dentistry. That it is not a technique used in the examination provides increased weight to the testimony of Drs. Ehlert, McGrane, and Laws that it is not a reliable basis for diagnosing enamel caries. Accordingly, the Board rejects the finding of the Administrative Law Judge that caries detection dye and magnification were the standard of care at the time Mr. Rodgers was examined by Dr. Krahenbuhl.

Basis for Rejecting the Administrative Law Judge’s Finding that Mrs. Krahenbuhl’s Explanations are Plausible

Dr. Krahenbuhl also testified that he delegated the majority of the patient consultations to his wife, Janet Krahenbuhl. Mrs. Krahenbuhl is a dental hygienist and her husband’s office manager. She testified that a conservative estimate of the number of consultations she had done prior to meeting with Mr. Rodgers was somewhere between 2000-3000. Mrs. Krahenbuhl also testified that she recalled meeting with Mr. Rodgers for his consultation. The Wisconsin Dentistry Examining Board (Board) reviewed the testimony of both Mrs. Krahenbuhl and Mr. Rodgers. However, contrary to the opinion of the Administrative Law Judge, the Board finds Mr. Rodgers to be the more credible of the two and therefore places greater weight on his testimony. The Board reaches that conclusion for several reasons.

To begin, Mr. Rodgers had absolutely no motive to be untruthful concerning his appointment with Mrs. Krahenbuhl. Indeed, he was so surprised by the information she gave him that he consulted with an attorney about it. The attorney

suggested he contact another dentist for a second opinion, which he did. Mr. Rodgers then made an appointment to see Dr. Ehlert, his long-standing dentist. After receiving Dr. Ehlert's opinion that he had no caries, Mr. Rodgers was still not fully convinced of that fact and therefore set up another appointment with Dr. McGrane who confirmed Dr. Ehlert's conclusions. Because Mr. Rodgers wanted an objective second opinion from each dentist, he made no mention of Dr. Krahenbuhl to Dr. Ehlert or to Dr. McGrane. He also did not tell Dr. McGrane that he had already seen Dr. Ehlert. As a result, neither dentist's opinion was premised on the other. A third examination conducted by Dr. Laws served to confirm the findings of the preceding two dentists. It is particularly notable that all three dentists, none of whom had ties to one other, each independently concluded that Mr. Rodgers had absolutely no cavities that required any type of treatment.

Mrs. Krahenbuhl, on the other hand, has a decided interest in this matter. She and her husband are in a dental business together, which forms the basis of their livelihood. It is exceedingly difficult to believe that she could actually recall any specifics of having met with Mr. Rodgers on April 21, 2001, given both the passage of time and the fact that she had conducted between 2000-3000 other consultations of a similar type by the time she met with Mr. Rodgers. She had an obvious financial stake in attempting to convince Mr. Rodgers of the immediacy of his treatment and is fully aware of the consequences her husband faces if found to have committed the allegations set forth in the Complaint.

Mrs. Krahenbuhl provided convenient, but not persuasive, explanations as to why Mr. Rodgers may have thought that he needed immediate treatment. However, her explanations are based on mere speculation and nothing more. The Board therefore rejects the Administrative Law Judge's conclusion that Mr. Rodgers might have been relying on the wording in a brochure as the basis for his belief that his treatment needs were immediate. At no time did Mr. Rodgers testify that the immediacy of his treatment was conveyed to him via a brochure. Rather, he made clear that such an impression was given to him by Mrs. Krahenbuhl. Thus, to suggest that a brochure formed the basis of his belief concerning the urgency of his treatment is wholly speculative and not based in fact.

The Board also rejects the conclusion of the Administrative Law Judge that because Mr. Rodgers was shocked by the cost of his potential treatment, his memory of the events was somehow "negatively impacted." The implication behind that statement is that Mr. Rodgers has misrepresented, albeit unintentionally, his meeting with Mrs. Krahenbuhl because he was so concerned with the cost of the suggested treatment. While Mr. Rodgers admitted that the cost of the treatment came as a surprise to him, his prevailing concern was with the fact that he supposedly had thirteen new cavities. It was because of the supposed cavities that he sought two "second" opinions. Again, it is mere speculation to suggest that Mr. Rodgers' memory of his consultation with Mrs. Krahenbuhl was somehow inaccurate because of the high costs associated with the recommended treatment.

Furthermore, the Board rejects the conclusion of the Administrative Law Judge that if Mrs. Krahenbuhl's representations were made for financial gain, that there would presumably be other patients with similar complaints. The implication being that because no other patients have made such claims, it is unlikely that the ones in this case are true. Once again, it is only speculation that leads to that conclusion. The Department of Regulation and Licensing is a complaint-driven agency. Neither it nor the Board solicits complaints from the public. The Board is only able to act upon the complaints it receives. The absence of similar complaints against Dr. Krahenbuhl does not, in turn, lead to the conclusion that Mr. Rodgers' complaint is untrue or that others have not had a similar experience. Indeed, theoretically, there could be multiple complaints against Dr. Krahenbuhl about which the administrative law judge would not have any knowledge. The Board is therefore not persuaded by this argument.

The Administrative Law Judge also concluded that because Mr. Rodgers' patient file contained no progress note from Mrs. Krahenbuhl indicating that his treatment needs were immediate, she did not so inform him. Again, the Board rejects that conclusion. While the urgency of the treatment is an issue, it is not pivotal to this case. Instead, it is the fact that Dr. Krahenbuhl diagnosed and recommended the restoration of thirteen cavities where none existed that is critical. Three other dentists each conducted an independent examination of Mr. Rodgers, and all three agreed that he did not have any cavities. Yet there is no doubt that Dr. Krahenbuhl's records reflect a contrary diagnosis and that Mrs. Krahenbuhl not only conveyed the diagnosis to Mr. Rodgers, but also recommended to him that he needed treatment. Consequently, the Board finds that Dr. Krahenbuhl falsely informed Kenneth Rodgers that he had thirteen caries that needed treatment and that he engaged in unprofessional conduct by having so informed him. As such, the Board rejects the testimony of Mrs. Krahenbuhl in favor of Mr. Rodgers' testimony.

Imposition of Discipline and Explanation for its Necessity

The question remains, therefore, as to what the appropriate form of discipline is for Dr. Krahenbuhl. Revocation of Dr. Krahenbuhl's license was recommended by the Complainant. 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. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485 (1969).

The Board's authority for disciplinary action is found in § 447.07, Wis. Stats. Under that provision, the Board may:

(3) ... reprimand any dentist or dental hygienist who is licensed or certified under this chapter or deny, limit, suspend or revoke his or her license or certificate if it finds that the dentist or dental hygienist has done any of the following:

(a) Engaged in unprofessional conduct.

(i) Obtained or attempted to obtain compensation by fraud or deceit.

The term "unprofessional conduct" is defined in § DE 5.02 (5), Wis. Admin. Code, to include "practicing in a manner which substantially departs from the standard of care ordinarily exercised by a dentist or dental hygienist which harms or could have harmed a patient."

Dr. Krahenbuhl's only apparent defense to the allegation that he falsely represented Mr. Rodgers' treatment for multiple caries is that he is right and the other three dentists who independently examined him are wrong. His defense relies primarily on the testimony of Dr. Rainey, a self-proclaimed expert in microdentistry. Dr. Rainey's testimony has been discredited based on his own self-interest in "microdentistry," the professional literature, and the testimony of the other treating dentists, including the Complainant's expert.

Accurate diagnoses are critical to the practice of dentistry. While caries detection dye may be used as a possible adjunct to a mirror and explorer in determining whether cavities exist, it is not a sufficiently reliable method on which to base a definitive diagnosis. The testimony of three independent dentists who reached identical conclusions as well as the academic research provides support for that position. Dr. Krahenbuhl nevertheless maintains that this method was and continues to be an appropriate diagnostic approach to caries detection. The Board finds his position wholly unconvincing.

In the present case, Dr. Krahenbuhl falsely represented to Mr. Rodgers that he had multiple cavities requiring immediate treatment. Had Mr. Rodgers gone ahead with the proposed treatment, he would have sustained costs of approximately \$1500.00. Were it not for his skepticism regarding his diagnosis, he would have not only suffered a significant economic loss, but also would have undergone unnecessary dental treatment. This Board has twice disciplined Dr. Krahenbuhl for prior acts of misrepresentation. He was first disciplined in 1993, following his criminal conviction for false representation with respect to submissions he made to the medical assistance program. He was again disciplined in 2002, in connection with his performance of a multi-millimeter apical overfill and false representation of the related x-rays. Since those disciplinary measures were imposed, he has not demonstrated any rehabilitation, but has instead engaged in further unprofessional conduct thereby warranting additional disciplinary action under §§ 447.07 (3) (a) and (i), Wis. Stats.

The Board's Order revokes Dr. Krahenbuhl's dental license, in part, because there is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on him. To be sure, Dr. Krahenbuhl does not believe that he has engaged in any wrongdoing in this matter. As such, it is extremely unlikely that he would respond to any efforts at remediation. By imposing such a stringent measure upon his license, other patients will be protected from treatment of this kind. Furthermore, the revocation of his license is essential in order to prevent other licensees from engaging in conduct of this nature and to ensure that the public continues to be adequately safeguarded.

In addition, the imposition of costs against Dr. Krahenbuhl is recommended. 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 proceeding 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 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 following a full evidentiary hearing, that licensee should bear the costs of the proceeding. The Board concludes that the licensee who engaged in unprofessional conduct, Dr. Krahenbuhl, should bear the costs of this disciplinary proceeding.

Dated this 21st day of July, 2004, in Madison, Wisconsin.

STATE OF WISCONSIN
DENTISTRY EXAMINING BOARD

Bruce J. Barrette, D.D.S.
Chairperson