

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
PETER HEHLI, D.D.S.,	:	LS0404271DEN
RESPONDENT.	:	

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Division of Enforcement Case No. 03DEN059, 00DEN003

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 2<sup>nd</sup> day of November, 2005.

Nanette K Dreves  
Member of the Board  
Dentistry Examining Board

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST      PROPOSED FINAL DECISION  
AND ORDER

PETER HEHLI, DDS,                      Case No. LS0404271DEN  
Respondent.

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(Division of Enforcement Case File Nos. 03 DEN059, 00DEN003)

For purposes of review under Wis. Stat. § 227.53, the parties in this matter under Wis. Stat. § 227.44 and Wis. Admin. Code § RL 2.037, are:

Peter Hehli, DDS  
W. Patrick Sullivan (Attorney for Respondent)  
200 North Jefferson Street  
Milwaukee, WI 53202

Division of Enforcement  
James E. Polewski (Attorney for Complainant)  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

Wisconsin Dentistry Examining Board  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

PROCEDURAL HISTORY

This case was initiated by the filing of complaint dated April 26, 2004, before the Dentistry Examining Board, Department of Regulation and Licensing. An answer was filed on behalf of the Respondent on May 14, 2004. A hearing was held in this matter on June 30, 2005, before Administrative Law Judge Colleen M. Baird. The Division of Enforcement appeared by attorney James E. Polewski. Attorney W. Patrick Sullivan appeared on behalf Peter Hehli, D.D.S. The record was complete on July 29, 2005, with filing of written closing statements. At the onset of the hearing, the parties indicated that they had reached a stipulation as to the Findings of Fact and Conclusions of Law. The parties' stipulation was received and admitted into evidence and is incorporated into this Proposed Final Decision and Order.

FINDINGS OF FACT

1. Peter D. Hehli, D.D.S ("Respondent") was born on June 17, 1963, and is licensed to practice dentistry in the state of Wisconsin pursuant to license number 4059, first granted on July 31, 1989.
2. Between April 1991 and March 1999, Respondent was the general dentist for patient EVD, a female born July 1, 1984.
3. Patient EVD was also the patient of Dr. Karen Wedde, an orthodontist.

4. Dr. Wedde treated Patient EVD for malocclusion, with the additional goal of maintaining space for an implant or pontic for tooth #10, which was congenitally missing from Patient EVD.
5. On December 3, 1998, without the informed consent of the patient, aged 14, or her parents, Respondent prepared teeth #9 and #11 for a permanent fixed porcelain bridge.
6. At the time, the patient and her parents believed that Respondent was performing the necessary work for a bonded bridge, which would allow the patient to complete her growth and maintain a space for future implant of a prosthetic #10.
7. The actual preparation for the permanent fixed porcelain bridge required substantial modification of teeth #9 and #11, which were, at the time, virgin teeth.
8. The bridge which Respondent designed and installed was less than minimally competent dental work in that it had open margins, tissue impingement because of overcontouring, bridge margins short of the prepared margins on teeth #9 and #11, and esthetic errors of contour and shade.
9. Respondent did not recognize the deficiencies of the bridge which he designed and installed until after the patient and her parents had sought a second opinion of Respondent's assurances that the bridge was technically acceptable.
10. Respondent designed and installed a second permanent fixed porcelain bridge.
11. Respondent treated Patient VH, a female born June 8, 1954, as her regular primary dentist between January 1992 and October 1999.
12. Respondent performed endodontic treatment on ten teeth for Patient VH, using the Sargenti method.
13. Respondent extracted tooth number 29 on May 22, 1998, and placed a two unit bridge on Patient VH on July 3, 1998, using tooth number 28 as an abutment; tooth number 30 was present, with a crown, but was not used as an abutment for the bridge replacing tooth #29.
14. Tooth number 28 required endodontic therapy on August 6, 1998, and Respondent used Sargenti technique in that effort.
15. On September 15, 1998, a different dentist checking Patient VH's complaints of discomfort discovered that the endodontic treatment performed by Respondent on tooth number 28 on August 6, 1998, had been left with a short fill, and the subsequent dentist re-treated the tooth.
16. It was inappropriate to place a bridge for tooth number 29 with only a single supporting abutment.
17. The use of Sargenti technique and paste was below the minimally acceptable standard of practice for endodontic treatment during the period Respondent was treating Patient VH.
18. During the pendency of this proceeding, in consultation and cooperation with the Division of Enforcement and at significant personal expense, Respondent has successfully completed 35 hours of continuing dental education in endodontics in residence at the University of California Los Angeles, and 23 hours of continuing dental education in prosthodontics sponsored by the American College of Prosthodontists in Chicago, Illinois.

#### CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to Wis. Stat. §. 447.07.
2. Respondent's treatment of Patient EVD with the first bridge constituted less than minimally competent practice of prosthodontics in that it altered teeth that could have been preserved by a bonded bridge, and in that the first bridge was

deficient in technical considerations, and in that there was a lack of informed consent to the first bridge, all of which constitutes a violation of Wis. Admin. Code § DE 5.02(5).

3. Respondent's treatment of Patient VH constituted a violation of Wis. Admin. Code s. DE 5.02(5) in the use of Sargenti technique and paste, and in using only tooth number 28 as an abutment for a bridge replacing tooth number 29.

### ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Peter Hehli, D.D.S., (lic. #4059) to practice dentistry in the state of Wisconsin, shall be, and hereby is, REPRIMANDED.

IT IS FURTHER ORDERED that the license of Peter Hehli, D.D.S., shall be, and hereby is, LIMITED. The limitation shall permanently prohibit Dr. Hehli from using the Sargenti technique or paste in performing endodontic treatment in his dental practice.

IT IS FURTHER ORDERED that Dr. Hehli shall pay the COSTS incurred in this proceeding in the amount of \$4,618.83.

IT IS FURTHER ORDERED that Dr. Hehli shall pay a FORFEITURE in the amount of \$500.00 dollars. Payment of the costs and forfeiture shall be submitted within 90 days from the date of this order. Payment shall be made by certified check or money order, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor  
Divisions of Enforcement  
Dept. of Regulation & Licensing,  
P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED that the Dentistry Board accepts the 35-hour *Endodontic Continuum Course* held on August 12, 2004 through August 15, 2004 at the University of California Los Angeles School of Dentistry and the 23-hour *American College of Prosthodontics' Prosthodontist Review Course* held on November 18, 2004 through November 20, 2004 in Chicago, Illinois, taken by Dr. Hehli prior to the issuance of this order as appropriate continuing education to address his deficiencies in practice and unprofessional conduct. The continuing education taken by Dr. Hehli constitutes the type of education and clinical training that the Board would otherwise have ordered him to obtain. The courses were from American Dental Association (ADA) accredited providers of continuing dental education.

### OPINION

#### Applicable Laws

Wis. Stats. § 447.07(3)(a) provides that examining board may, without further notice or process, limit, suspend or revoke the license or certificate of any dentist or dental hygienist who engages in unprofessional conduct.

Wis. Admin. Code § DE 5.02(5) provides that unprofessional conduct by a dentist or a dental hygienist includes practicing in a manner which substantially departs from the standard of care ordinarily exercised by a dentist or a dental hygienist which harms or could have harmed a patient.

#### Analysis

From the onset and throughout the course of these proceedings, the factual and legal allegations of unprofessional conduct have not been in dispute. Prior to the filing of the formal complaint, Dr. Hehli and the Division of Enforcement entered into a settlement stipulation, including agreed findings of fact and conclusions of law, in an effort avoid holding a hearing. Pursuant to the stipulation, Dr. Hehli agreed to take at his own expense, continuing education courses that were recommended by the Division of Enforcement in anticipation of the Board's discipline. Unfortunately, the parties' stipulation did not make it to the Dentistry Examining Board members.

At the beginning of the hearing the parties indicated that they were still willing to cooperate in reaching a resolution and again

stipulated to the operative facts and violations of law. This cooperation significantly reduced the time and expense that would have been required if the matters were contested. As a result, the only issue left to be decided at the hearing was whether, based upon the evidence received at the hearing, Dr. Hehli's voluntary compliance with the Division of Enforcement's recommended discipline constitutes an appropriate resolution of this matter.

The dental practices at issue in this case occurred approximately 6-1/2 years ago. In his testimony, Dr. Hehli admitted that he made mistakes that many other young dentists could make or do make; that it was a matter of judgment and being less experienced. Dr. Hehli further explained that the situation involving patient EVD, and the placement of a permanent bridge, was in part due to a patient-communication problem. Dr. Hehli testified:

This involved a 14 year-old child who looked like she was 18 and was a good patient of our practice for many, many years. And as the record states, there were several interviews with the parents and specialists. And when I did this first procedure, I thought it my mind that's what the patient and the parents wanted. In fact, the patient's father was in the room when I started the procedure. [Tr at pgs. 60-61.]

Dr. Hehli further testified that if he had to do it over again now, he would not do that same type of bridge. Instead, Dr. Hehli would offer the patient other options such as dental implants. He further stated that he would not have recommended an implant in 1997, but dentistry and dental technology and dental science have changed a lot since then. Dr. Hehli's demeanor at the hearing showed a sincere recognition of his errors and an understanding of his obligation to practice in competent manner.

With respect to the treatment of the second patient, Dr. Hehli was also candid and forthright in acknowledging his deficiencies in treatment planning. Dr. Hehli also explained that much like the first case, technology has changed so much that the treatment options are now quite different. Dr. Hehli admitted that the treatment planning was not commensurate with the standard of care required in the dental profession.

As to the Sargenti technique, Dr. Hehli testified that it was a recognized treatment in 1998 and that he learned the technique from his father. He explained that it was used at time when the technology was different and he worked in a managed care practice. [Tr. at pg. 45]. Upon further questioning, Dr. Hehli elaborated about the technique and explained that it was practiced by a very small percentage of dentists as compared to the American Association of Endodontics who practice the gutta-percha method:

I guess that I mean that there's a small percentage of dentists - - in fact they have their own group that practice the Sargenti method, but it's a very small minority. And if you asked a hundred dentists, 99 of them would say that it's not acceptable. [Tr. at pg. 66]

Dr. Hehli's view of the efficacy of the Sargenti technique as an endodontic treatment and his use of it has changed dramatically since this disciplinary process began. He testified that he stopped using the Sargenti method as soon as it was brought to his attention by the Division of Enforcement and he signed the stipulation agreeing to discipline. [Tr. at pg. 45]. Dr. Hehli also testified that he does not intend to ever use that technique in a root canal procedure again. [Tr. at pg. 46] Throughout the course of the hearing, Dr. Hehli demonstrated a remarkable level of candor and acceptance of professional responsibility for his actions.

More importantly, the evidence submitted at the hearing supported Dr. Hehli's contention that he has taken meaningful action to improve his diagnostic and clinical technique in the areas of endodontics and prosthodontics. In 2004, Dr. Hehli took an ADA accredited continuing education course in endodontics offered by the University of Southern California (UCLA). The UCLA course consisted of three and ½ days of instruction, including one-on-one participation with faculty and student, hands-on demonstration and practice. The course fee was \$3,495.00. Dr. Bernice Ko, the Director of the UCLA Continuing Education Program, testified at the hearing that Dr. Hehli met the requirements of her course and that Dr. Hehli was competent as a general dentist in the performance of endodontic procedures.

Dr. Ko testified that her program teaches to the standard of care as established by the American Association of Endodontics; that the goal of the program is to make general dentist more proficient in doing root canal treatment, but not to make them endodontists. [Tr. at pg. 39] Dr. Ko further explained that the UCLA course teaches the current technique for filling the root

canal system, how to pick the appropriate length and size of the filling materials, proper working length and biomechanical preparation, disinfection, and mixing of agents and solutions. [Tr. at pg. 29-32]. Dr. Ko testified that she had a personal opportunity to work with Dr. Hehli. In her opinion, Dr. Hehli exhibited a keen interest and willingness to increase his knowledge and improve his skills; asking detailed questions and showing that he was eager to apply his training. Dr. Ko testified:

Dr. Hehli stands out in the class. He asked very good questions. And that I remember. And in the laboratory he's always next to me showing me what he's done, how to critique, how to cement, how to do a better, you know, root canal treatment. And I like when the dentists are very inquisitive and like to prove themselves; especially in a course like this when there's so much to learn." [Tr. at 37]

In November 2004, Dr. Hehli also completed a twenty-three hour Prosthodontics Review Course offered by the American College of Prosthodontists in Chicago, Illinois. [Tr. at 54-55]. This course was recommended to Dr. Hehli by the Division of Enforcement and was referenced in the stipulation which he entered into with the Division. At the hearing, Dr. Hehli submitted a list showing all of the continuing education courses that he has taken to improve his diagnostic and clinical skills. In 2004 alone, Dr. Hehli took 8 continuing education dentistry courses, including the etiology, prevention and management of post extractions; reliable techniques to prevent separation of rotary files; tooth surface loss; precision-based endodontics; restorative options and radiologic appraisal of abnormalities. [Res. Exhibit 2] From the year 2000 through 2003, Dr. Hehli took a total of 19 continuing education courses on various dentistry topics. Some of the courses involved as much as 16 continuing education credit hours.

The substantial coursework which Dr. Hehli has taken in endodontics and prosthodontics should be considered sufficient to address and remedy the errors of judgment or deficits in technique that he made over six years ago when he was relatively new in his practice. No further continuing education is necessary. This result is consistent with the Board order in the Zollya Geller, DDS, (May 2004) where Dr. Geller completed a week long course at an ADA accredited school of dentistry before the disciplinary order was issued, and the order credited that course as the necessary remedial education. Continuing education has been routinely imposed by this Board as a facet of a disciplinary order in similar circumstances. James Michaels, DDS (May 2005); John Syverson, DDS (November 2004) and Eugene Weber, DDS (January 2004). Although it is generally preferable for a respondent to await the final decision of a Board before taking continuing education, there is substantial value to the public when such education occurs earlier rather than later as a respondent can make changes in his practice and avoid making the same mistakes with other patients.

The overwhelming evidence received at the hearing supports the conclusion that Dr. Hehli has exhibited a genuine commitment to acquiring and or improving his knowledge and skills as a dentist, particularly in the area of endodontics and prosthetics. It is also reasonable to conclude that Dr. Hehli is now a competent practitioner in these areas given the additional education and training which he has taken. Dr. Hehli has been an associate member of the American Association of Endodontists since April 16, 2004. [Res. Exhibit 1] Additionally, in August 2004, Dr. Hehli was appointed by the Marquette University Dental School to serve as a preceptor for dental students at the Tri-County Community Dental Clinic. [Res. Exhibit 3] Dr. Hehli's current competency and professional growth is further demonstrated by a review of his complaint track record with the Department of Regulation and Licensing. The Division of Enforcement confirmed at the hearing that there have been no other complaints filed against Dr. Hehli after the two complaints involved in this proceeding. The Division of Enforcement also confirmed that the only other consumer complaints filed against Dr. Hehli occurred between the time of the first and second complaint in this matter and were closed by the screening panel without any action.

The recommendation that Dr. Hehli receive a reprimand for his conduct in this case is consistent with the objectives of professional discipline to promote the rehabilitation of the licensee, to protect the public; and 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. McIntyre*. 41 Wis. 2d 481, 485 (1969). Although Dr. Hehli has cooperated with the disciplinary authority in admitting his mistakes and obtaining continuing education to address his deficiencies and errors, the fact remains that his conduct was below the minimum standard of care and formal discipline is warranted.

#### Costs and Forfeiture

Under the law, the Board has the discretion to impose all, some, or none of the costs of the proceeding. Wis. Stats. § 440.22 (2). In addition, the Board has the authority to assess a forfeiture. Wis. Stats. § 447.07(7). The costs incurred in regulating a profession are primarily funded through the revenue received from licensee fees because the Department of Regulation and Licensing is a “program revenue” agency. Licensee fees are calculated based upon those costs. As a result, it would be fundamentally unfair to pass along to all of the members of a professions the regulatory costs incurred because of an individual member’s unprofessional conduct. However, the assessment and imposition of costs against a respondent should not include expenses which were incurred through no fault of the respondent. Therefore, it is recommended that only a proportionate assessment of costs be imposed against Dr. Hehli since he attempted in good faith to resolve this matter and avoid the necessity of a hearing. Accordingly, the recommended costs of the proceeding are capped in the amount which reflects the costs incurred by the Division of Enforcement at the point when the parties entered into a stipulation and attempted to present that stipulation to the Board. This result is fair to the parties and consistent with the applicable laws and previous decisions of the Board.

Respectfully submitted,

Dated this 29th day of September, 2005.

Colleen M. Baird  
Administrative Law Judge  
P.O. Box 8935, Madison, WI 53708