

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : FINAL DECISION AND ORDER  
HOWARD J. LUBIN, DDS, : LS0409232DEN  
RESPONDENT :

Division of Enforcement Case Nos. 03 DEN 113, and 03 DEN 129

The parties to this action for the purposes of section 227.53 of the Wisconsin statutes are:

Howard Jay Lubin, DDS  
1505 Woodmont Way  
Green Bay, WI 54313

Dentistry Examining Board  
Department of Regulation and Licensing  
Post Office Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
Post Office Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

**FINDINGS OF FACT**

1. Howard J. Lubin, D.D.S. (D.O.B. 12/04/1957) is duly licensed as a dentist in the state of Wisconsin (license # 318). This license was first granted on August 1, 1983.

2. Dr. Lubin's most recent address on file with the Wisconsin Dentistry Examining Board is 1505 Woodmont Way, Green Bay, WI 54313.

3. In 1996 and 1997, the Division of Enforcement received complaints (Case Nos. 96 DEN 104, 97 DEN 009, 97 DEN 012 and 97 DEN 061) that Dr. Lubin had practiced negligently with respect to several endodontic patients.

4. On or about September 5, 2001, the Dentistry Examining Board issued a Final Decision and Order in Case Nos. 96 DEN 104, 97 DEN 009, 97 DEN 012 and 97 DEN 061, pursuant to a stipulation of the parties, which limited Dr. Lubin's license to practice dentistry in Wisconsin in several respects. A copy of that Final Decision and Order is attached as Exhibit A.

5. Pursuant to the Final Decision and Order, Dr. Lubin was required to submit to quarterly reviews of his endodontic work. Every three months, he was required to provide to a Board-appointed Monitor a list of all patients examined or treated by him for endodontic problems in the previous three months. The Monitor would then select patients from this list and review the patient records.

6. On or about September 10, 2003, the Department of Regulation and Licensing received a complaint from patient F that Dr. Lubin had negligently performed a root canal on him in June and July, 2003. In particular, R.M. complained that Dr. Lubin had left one root canal (the distal-buccal root canal) unfilled, and that the other two root canals (the mesial-buccal and palatal) were under-treated and only partially filled or obturated with root canal filling material.

7. In response to an inquiry by the Division of Enforcement regarding R.M.'s care, Dr. Lubin claimed that his Touch 'n Heat appliance had failed during the procedure and that he told the patient he would have to return to complete the procedure. The patient states that he was told by Dr. Lubin that the root canal treatment was finished and that he should proceed to have the tooth crowned.

8. On or about October 28, 2003, the Department of Regulation and Licensing received a complaint from patient B.L. Dr. Lubin had negligently performed a root canal on her in July and August of 2003. In particular, B.L. complained that Dr. Lubin had opened her tooth on four different occasions without completion of the root canal, and that she had sustained a gross mesial perforation, a retained, separated endodontic instrument in the distal root and she had a distinct apical radiolucency indicative of infection.

9. In response in an inquiry by the Division of Enforcement regarding B.L.'s care, Dr. Lubin stated that he did not believe that he had perforated the tooth, and that although he broke an endodontic file in B.L.'s root, he recovered that instrument on the next visit. However, the tooth was perforated, and a portion of an endodontic file was present in the tooth after B.L. terminated treatment with Dr. Lubin. The parties agree that endodontic files can separate in teeth during root canals through no fault of the dentist.

10. Dr. Lubin did not report to his Monitor having done any endodontic work on patients R.M. or B.L. as required by September 5, 2001 Dentistry Examining Board Order.

11. Dr. Lubin's 2001 Board Order required him to "list all patients examined or treated by him for endodontic problems in the previous three months" and report those cases to his monitor. Dr. Lubin had not reviewed the Order for several years and erroneously believed that he was only required to report completed root canal therapy cases to his mentor.

12. During the course of this investigation, the Division of Enforcement requested certified copies of all treatment records from May 1, 2003 to the present for patient R.M.

13. In response to the Division's request, Dr. Lubin produced incomplete treatment records for R.M. (missing the last page of treatment notes). Dr. Lubin later claimed that although the written request was for all treatment records, he did not think that the Division of Enforcement would be interested in the last page since it did not contain the details of the root canal. However, the missing page did contain a notation that the patient was expected to come in for crown prep, information that is relevant to the allegations of the complaint.

14. Respondent consents to the entry of the following Conclusions of Law and Order.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Dentistry Examining Board has jurisdiction in this proceeding pursuant to § 447.07, Wis. Stats.
2. The Wisconsin Dentistry Examining Board has the authority to resolve this disciplinary proceeding by stipulation without an evidentiary hearing pursuant to § 227.44(5), Wis. Stats.
3. Respondent's conduct as described above was conduct contrary to §§ 447.07(3)(a), 447.03(h), and 447.07(3)(n), Wis. Stats. and Wis. Admin. Code §§ DE 5.02(5), DE 5.02(7), DE 5.02(17) and DE 5.02(25).
4. The Wisconsin Dentistry Examining Board has the authority pursuant to Wis. Stat. § 447.07(7) to assess forfeitures against Respondent. The Wisconsin Dentistry Examining Board has the authority pursuant to § 440.22, Wis. Stats., to assess the costs of this proceeding against Respondent.

### **ORDER**

1. The stipulation of the parties is approved.

2. As of the date that this Order is signed, Dr. Lubin's license to practice dentistry in the State of Wisconsin is LIMITED such that he shall not perform any endodontic procedures.

3. The license of Howard J. Lubin (license #3187) to practice dentistry in the State of Wisconsin is SUSPENDED for a period of one year, commencing 45 days from the date that this Order is signed.

4. Following the period of suspension, Dr. Lubin may return to the practice of dentistry with the LIMITATION described in paragraph 2 above, provided that he is in compliance with the subparts of this paragraph.

(a) Dr. Howard J. Lubin shall participate in and satisfactorily complete a course in record keeping within one year of the date on which this Order is signed. Before taking the course, Dr. Lubin shall request and receive approval of the course from the Dentistry Examining Board.

(b) Dr. Howard J. Lubin shall participate in and satisfactorily complete a course in ethics for dentists within one year of the date on which this Order is signed. Before taking the course, Dr. Lubin shall request and receive approval of the course from the Dentistry Examining Board.

(c) Dr. Howard J. Lubin's dentistry practice will be monitored both for quality of care and for type of care provided for two years following the completion of his suspension. Before commencing practice upon the conclusion of his suspension, Dr. Lubin shall request and receive approval of a monitor from the Dentistry Examining Board. That monitor will, at a minimum, review Dr. Lubin's charts, billing records, and interview his office staff, on-site, once every three months, and certify to the Dentistry Examining Board that he or she has made a good faith review of Dr. Lubin's practice and that either: (1) it appears that Dr. Lubin is practicing at or above minimally competent standards; or (2) it appears that Dr. Lubin is practicing below minimum standards. Dr. Lubin will pay the cost of this monitor.

(d) Dr. Lubin shall, within 45 days of the date of this Order, pay a forfeiture, in the amount of \$5,000.00 for the violation of his Board Order.

(e) Respondent shall, within 45 days of the date of this Order, pay costs of this proceeding in the amount of nine thousand (\$9,000.00) dollars.

(f) Payment of costs and forfeitures shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, WI 53708-8935  
Telephone (608) 267-3817  
Fax (608) 266-2264

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit any payment of the costs or forfeiture as set forth above, Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order. [\[smg1\]](#)

6. This Order is effective on the date of its signing.

WISCONSIN DENTISTRY EXAMINING BOARD

Bruce Barrette, DDS

July 13, 2005

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[\[smg1\]](#) This section should be the standard summary suspension provision: **Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.** Where the terms of discipline consist of a forfeiture, costs or continuing education, alternative "self-effectuating" language should be utilized. E.g.: **In the event Respondent fails to timely submit any payment of the forfeiture as set forth above, the Respondent's license(#1550) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.**