**WISCONSIN DEPARTMENT OF
REGULATION & LICENSING**

**Wisconsin Department of Regulation & Licensing
Access to the Public Records of the Reports of Decisions**

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: http://ccap.courts.state.wi.us/InternetCourtAccess and http://www.courts.state.wi.us/wscca .
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPOINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
THEODORE L. TAYLOR, D.D.S., RESPONDENT,	:	LS0601256DEN

Division of Enforcement Case No. 05DEN114

The State of Wisconsin, Dentistry Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administration 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 7th day of March, 2007.

William R. Skarie D.D.S.
Member of the Board
Dentistry Examining Board

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

THEODORE L. TAYLOR, D.D.S.,
RESPONDENT.

PROPOSED DECISION
Case No. LS0601256DEN

Division of Enforcement Case No. 05DEN114

PARTIES

The parties in this matter under Wis. Stats., § 227.44, and for purposes of review under Wis. Stats., § 227.53, are:

Theodore L. Taylor, D.D.S.
130 Dauphin Street, Suite B
Green Bay, WI 54301

Theodore L. Taylor, D.D.S.
2254 Eastman Avenue, #3
Green Bay, WI 54302

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

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on January 25, 2006. The hearing was held on April 12, 2006. The hearing transcript was filed on April 26, 2006. Closing arguments of the parties were filed by June 12, 2006. Attorney James E. Polewski appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Dr. Taylor appeared without legal counsel.

Based upon the record herein, the Administrative Law Judge recommends that the Dentistry Examining Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Theodore L. Taylor (d.o.b., 07/28/29) is licensed to practice dentistry by the state of Wisconsin pursuant to license #4001379, which was first granted on June 27, 1957.

2. Dr. Taylor's latest address of record with the Dentistry Examining Board is 130 Dauphin Street, Suite B, Green Bay, Wisconsin 54301.

3. At least from the fall of 2004 to the end of February 2006, Dr. Taylor rented office space in the Disabled American Veterans ("DAV") Office building in Green Bay, Wisconsin. The office, which was approximately a 10-by-11 square foot area, was carpeted and did not have running water. Within a month to two months after renting the office space, Dr. Taylor started seeing and providing dental services to patients at the office.

4. On January 12, 2006, Celina Kobs, an Investigator with the Wisconsin Department of Regulation and Licensing interviewed Dr. Taylor at his Green Bay office in the DAV office building and performed an inspection of the office. During

Investigator Kobs' interview, Dr. Taylor admitted that:

(a) He was seeing and proving dental care to patients in his office.

(b) There was no running water in his office. If he needed to wash his hands, he washed them in the men's room, which was location in the common area of the DAV office building.

(c) He cleaned his dental tools in the break room and the bathroom sinks, which were located in the common areas of the DAV office building.

(d) He used the sink in the break room of the building to prepare study models.

(e) He told his patients to use the break room and bathroom sinks in the common areas of the building to accomplish the "rise and spit maneuver".

(f) He did not have a sharps container for his office. He kept his used syringes in a "Ziplock" bag.

5. While practicing dentistry in his office at the DAV office building, Dr. Taylor did not separate biohazardous waste generated in his dental practice from general office trash. He disposed of biohazardous waste through the common trash for the office building in which he maintained his dental practice.

6. While practicing dentistry in his office at the DAV office building, Dr. Taylor did not use an autoclave for infection control purposes. He did have an autoclave, but it was stored in an off-site facility.

7. Dr. Taylor has been disciplined previously by the Dentistry Examining Board for failure to comply with standard infection control precautions, and has been required to undergo training and monitoring of his practice to determine his compliance with infection control precautions.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to Wis. Stats., s. 447.07 (3).

2. Dr. Taylor's conduct in refusing to comply with standard infection control precautions, as described in Findings of Fact 3-7 herein, constitutes a substantial departure from the standard of care ordinarily exercised by a dentist, which could harm patients or the public, and is unprofessional conduct within the meaning of Wis. Adm. Code, s. DE 5.02 (5).

3. Dr. Taylor's conduct in failing to comply with standard infection control precautions, as described in Findings of Fact 3-7 herein, constitutes reckless disregard of the standards and principles of dentistry, and the health of patients, and the public and is unprofessional conduct within the meaning of Wis. Stats., s. 447.07 (3) (a).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license (#4001379) of Theodore L. Taylor, D.D.S., to practice as

a dentist in the State of Wisconsin be, and hereby is, **Revoked.**

IT IS FURTHER ORDERED that pursuant to s. 440.22 Wis. Stats., the full cost of this proceeding shall be assessed against Respondent, and shall be payable to the Department of Regulation and Licensing.

This Order is effective on the date on which it is signed on behalf of the Dentistry Examining Board.

OPINION

The Division of Enforcement alleges in its Complaint that by engaging in the conduct described therein, respondent violated Wis. Stats., s. 447.07 (3) (a), and Wis. Adm. Code, s. DE 5.02 (5). Dr. Taylor denies that the violations occurred. The evidence presented establishes that the violations occurred.

I. Applicable Law

447.07 Disciplinary proceedings.

(3) Subject to the rules promulgated under s. 440.03 (1), the examining board may make investigations and conduct hearings in regard to any alleged action of any dentist or dental hygienist, or of any other person it has reason to believe is engaged in or has engaged in the practice of dentistry or dental hygiene in this state, and may, on its own motion, or upon complaint in writing, 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.

(7) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license or certificate under sub. (3), the examining board may assess against an applicant, licensee or certificate holder a forfeiture of not more than $5,000 for each violation enumerated under sub. (3).

DE 5.02 Unprofessional conduct. Unprofessional conduct by a dentist or dental hygienist includes:

(5) 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.

II. Summary of Evidence

(A) Testimony of Celina Kobs

Ms. Kobs is employed by the Department of Regulation and Licensing as an Investigator in the Division of Enforcement. Ms. Kobs testified that she was assigned a case file in which it was alleged that Dr. Taylor had an unsanitary office. On January 12, 2006, Ms. Kobs interviewed Dr. Taylor and performed an inspection of his office, which was located in the Disabled American Veterans office building in Green Bay. Ms. Kobs said that as a general rule she takes pictures of every dental office that she inspects and did so during her inspection of Dr. Taylor's office. Exhibit #1; Tr. p. 24-31.

Ms. Kobs testified that when she entered the office and told Dr. Taylor that the purpose of her visit was to inspect his dental office because there had been a complaint about his sanitation, he started to "go on about how this wasn't his dental office, this is just a temporary place until he had a new office and he just did paperwork there". Her response was, "Dr. Taylor, I already know that you have been seeing patients in this office, so don't pretend that you're not. Let's just get beyond that". He said, "I never said that I wasn't seeing patients, did I?" Then he proceeded to talk about how he set up his office for the treatment of patients and how he handled issues in caring for the patients.

In reference to setting up the office for seeing patients, Dr. Taylor told Ms. Kobs that he laid out a paper towel to protect the work surface and that he washed his equipment with hot water and soap in the break room. Then, he sterilized his equipment in cold sterilizing fluid. Ms. Kobs said that Dr. Taylor did not have an ultrasound, but that he did have an autoclave, which was in storage. In reference to the use of protective equipment, Dr. Taylor said that he had gloves in his storage area, which was off site. He made a note to himself to remember to get some gloves and bring them to the office. In reference to washing his hands, Dr. Taylor said that when he needed to wash his hands, he did it in the men's bathroom in the common area of the building. He did produce a bottle of the alcohol-based hand sanitizer that he had in his office.

In reference to preparing study models in his office, Ms. Kobs testified that Dr. Taylor did poured his own study models; that he did so in the break room sink, and that he rinsed them in hot water to send them off when they needed to be sent off to the manufacturers or labs. Tr. p. 33.

During the interview, Ms. Kobs made note of the fact that there was no running water in Dr. Taylor's office. When asked about he accomplishes the "rinse-and-spit maneuver" with dental patients in his office, Dr. Taylor said that if people needed to use water, they could go back to the bathrooms. In reference to cleaning his dental tools after he sees a patient, Dr. Taylor told Ms. Kobs that he takes them back to the break room sink, uses soap and hot water to clean them, and then he places them into the cold sterilization fluid usually for an hour and many times overnight.

One of the things that Ms. Kobs observed during her inspection was a bag of syringes. She asked Dr. Taylor if he had a sharps container for the office and he said that he did not and that he kept his used syringes in a "Ziplock" bag.

When asked how he handled his dental waste, Dr. Taylor pulled out a bag and said that he "puts it in this bag." Ms. Kobs said that she went back into the corner and opened the bag to attempt to show photographically the presence of dental waste combined with the mail and cigarette boxes. While she saw some dental waste, she does not think that it shows in the photograph at all.

In reference to handling a biohazardous spill, Ms. Kobs testified that Dr. Taylor did not appear to understand the term biohazardous. She said that since the term biohazardous spill didn't mean anything to Dr. Taylor, she tried to think of something that would be more concrete that they could use to communicate. So she asked him, "Well, what do you do if a patient throws up?" She said that he pointed over to a stack of plastic containers and said "if someone looked like they were going to throw up, he would hand them a plastic container, but usually they could make it to the restroom on time."

(B) **Testimony of Mary Anderson**

Ms. Anderson testified at the request of the Division of Enforcement. Ms. Anderson manages the Disabled American Veterans office building at 130 Dauphin Street in Green Bay where Dr. Taylor had his dental office. The office building has seven rental offices and two offices occupied by the building owners. There is a common area as you come in the front door. The building has a copy room with work tables across the back. There is a common kitchen and two restrooms and a conference room.

In reference to the space that Dr. Taylor rented, he indicated that he was interested in securing the space for storage and office use, He said that he would not be using the space for the practice of dentistry. According to Ms. Anderson the space that Dr. Taylor rented is a 10-by-11 or an 11-by-12 square space with a window facing the street and a door. The floor is carpeted. There in no running water in that particular unit. She said that Dr. Taylor moved into the building in the fall of 2004 and was a tenant until the end of February 2006. He started seeing patients within a month and a half to two months after he moved into the building. Tr. p. 66-70; Exhibit #6.

According to Ms. Anderson, Dr. Taylor had his patients rinse their mouth, gargle and spit in the building's break room sink and in the bathroom sinks. She said that Dr. Taylor supplied the patients with coffee mugs which would pile up in the sink until they needed to be washed. She said that they were constantly "finding gauze, garbage". She and the other building staff also had the occasion to wipe blood off the restroom floors and the toilet seats. Tr. p. 73-74.

When asked if she had seen Dr. Taylor escort a patient or send a patient to the break room to do the "rinse-and-spit maneuver", Ms. Anderson testified as follows:

> Q Had you ever seen Dr. Taylor escort a patient or send a patient to the break room to do the rinse-and-spit maneuver?
>
> A Very definitely I have.
>
> Q Can you describe that?
>
> A Well, on some occasions when he was doing work he would come out, he would rush to the kitchen, bring a glass of water back in, then he would sometimes just walk the patient to the back, give them a cup out of the cupboard, fill it with water and tell them to do the rinsing.
> This is just not one occasion. This is on a number of occasions, and that I can tell by the number of cups that would pile up in the kitchen sink. And I refused to wash them. It was unsanitary.
>
> Q How do you know that it was Dr. Taylor's visitors

or patients who were doing this and not some other tenant in the building?

A I'm the only coffee drinker. I maintain one green cup which is kept in my possession at all times. The only other coffee you can buy here next door at the gas station, and it's disposed of in the trash can.

Q Who cleans the restrooms?

A I used to, but I quit. We had to hire someone to actually come in and clean the facilities.

Q And who cleans the break room?

A I also quit cleaning that. We had to hire someone to come and do that because I was afraid of infection.

During cross-examination, when Dr. Taylor asked Ms. Anderson about her statement that he collected trash in his office for a couple of weeks, then took it out and left it in the kitchenette trash receptacle, Ms. Anderson testified as follow:

A Doctor, that I can verify because I saw it with my own eyes. Trash was emptied on Friday, and I can't give you the dates, but it was the following Monday I came in, opened the trash can, and talk about disgusting, there were bloody gauze patches, wrappers, toweling, all sorts of things. And you could tell by looking this was not what I would consider fresh trash. This was trash that appeared to me that sat somewhere and fermented. As no one else here would have cause to dispose of bloody gauze patches, wrapped toweling, I can only assume it was yours.

(C) Testimony of Nancy McKenny

Ms. McKenny testified at the request of the Division of Enforcement. Ms. McKenny has been a Licensed Dental Hygienist in the State of Wisconsin since 1977. She received her training in dental hygiene at Northeast Wisconsin Technical College in Green Bay. She has a Bachelor's degree in Community Health Management with Specialized Administration and a Master's degree in Management and Organizational Behavior. Ms. McKenny has been employed as a State Dental Hygiene Officer with the Department of Health and Family Services, Division of Public Health, since 2001. Tr. p. 89-90.

Prior to becoming a State Dental Hygiene Officer, Ms. McKenny practiced for about 22 years in private practice, in periodontal practices and in private dental practices, as well as in public health. She was also an instructor at Northeast Wisconsin Technical College in Green Bay for about ten years. She taught a Periodontology course and she developed and taught a course relating to Occupational Safety and Health (which included infection control and hazard communication). The course on infection control was based on the Guidelines for Infection Control in Dental Healthcare Settings that was published by the Centers for Disease Control and Prevention (CDC). The course incorporated both infection control, what is now called exposure control, and hazard communication management. The course focused on protecting both patients and the clinicians. In addition, Ms. McKenny taught continuing education courses in a variety of subjects but most intensively in infection control. Finally, Ms. McKenny's services were contracted out to local dental practices through the Northeast Wisconsin Technical

College, Center for Business and Industry. She consulted with dentists in the development of exposure control and hazard communication manuals, and in occupational safety and health. Tr. p. 90-94.

In reference to Dr. Taylor's practices, Ms. McKenny testified that she was present throughout the course of the hearing; heard the testimony of Celina Kobs and Mary Anderson and that she had an opportunity to look at some of the Exhibits offered at the hearing, including the photographs contained in Exhibit 1. She said that on the basis of the exhibits that she saw and the testimony that she heard, she felt that she was capable of making a competent opinion on the infection control practices in Dr. Taylor's office. Ms. McKenny testified as follows regarding the infection control practices in Dr. Taylor's office [Tr. p. 96-107]:

Q On the basis of the exhibits that you have seen and the testimony that you have heard, do you feel that you are capable of making a competent opinion on the infection control practices in Dr. Taylor's office as they have been described?

A Yes, I do.

Q First I would like to discuss the physical plant of Dr. Taylor's office. From the information that you have heard, does the description of Dr. Taylor's office as a 10-by-10 or 11-by-12 carpeted office without running water, vacuum or an ejection line raise any concerns in your mind for infection control?

A Yes.

Q The answer was yes?

A Uh-huh.

Q And what are those concerns?

A Well, basically the proximity to running water is far away, and there's no evacuation system or capability for evacuation systems. And one of the controls we use in infection control to help minimize splash and splatter, which is one route of transmission if we look at the ability to transmit, is to use evacuation in dental procedures.

Q I'm going to stop you right there. Can you tell

me what evacuation in dental procedures means?

A It would be you need some level of a compressor and the ability to contain or to remove the blood and body fluids that are coming out of the field into a contained environment so that they can be disposed of or that they can be away from the field basically.

Q Is this the sort of thing that we would know as those little tubes they put in our mouths to suck things out and --

A Yes, there's high-volume evacuation, which is the larger tube we use for surgical procedures sometimes or for larger aerosol and splash and splatter and blood, and then there's smaller tubes, they're just called saliva ejectors, and it's a low-volume evacuation, so low-volume evacuation, which we use in any environment like if we're doing a sealant in school-based settings. They're smaller tubes. And so those are the two major evacuations that we have.

Q Now I'd like to ask you a couple of sort of definitional questions as we're going through this. So I don't want to break it up too much, but --

A Sure.

Q -- you use the term splash and splatter?

A Yes.

Q It sounds very descriptive, but maybe you could give us a little more elaboration.

A Well, there's really four routes of transmission of diseases, and I think I better step back a little bit and just talk about some of the diseases that we're concerned about.
In dentistry we use a concept called universal health standard precautions, and that's a concept where we treat all blood or body fluids as though they're known to be infectious for Hepatitis B, which is a very hardy virus, and, of course, you've all heard of HIV.
So we treat all blood and body fluids as

though they're known to be infectious, and in dentistry that would include saliva. When we do that -- want rephrase your question for me?

Q Splash and splatter.

A Splash and splatter, okay. So where I was going with that is that there are -- looking at ways to contain the splash and splatter is important because there are four routes of transmission, and the first route of transmission is called direct contact; in other words, if I would touch someone and have a hangnail, that blood could be transmitted from me to the person or the person to me. That's direct.

And then there's indirect transmission where you would have a surface, and the environment would be contaminated with droplets. And then the third route of transmission would be droplets or aerosol, where you would inhale it. And then the fourth is actually looking at, you know, contaminating an oral cavity or your eyes and mucus membranes.

So, you know, we look at that kind of an environment as trying to contain those four routes of transmission. So droplet is definitely a way, you know, when things come out of that field. You're concerned about transmission, either indirect on a surface or actually inhaling it or, you know, like flying into an eye.

Q Another term you used was aerosol?

A Aerosol, yes.

Q We're not talking about the little spray cans. We're talking about something else?

A Right.

Q What is that something else?

A Well, in this case it would be a biohazard. It would be blood and body fluids that would be able to be small enough that would be particulate matter that you would be able to inhale as it's coming back towards you or would land on surfaces adjacent to your operatory.

Q Is it accurate to say that droplet is a large aerosol?

A Yes, droplet is a large aerosol.

Q Aerosols being small tend to float in the air

longer?

A Yes, that's right.

Q One of the descriptions of Dr. Taylor's office is that he has the carpeted floor. Are there any concerns about having carpeted floor in a dental operatory?

A Truthfully, there has not been a documented exposure to blood-borne pathogens from floor to person, but a floor needs to be capable of being cleaned and disinfected, you know, maintained. For example, if there's a blood spill, you need to be able to contain the blood spill, clean it and disinfect the area.
It's difficult to do with carpeting, and it should be done routinely as a matter of sanitation to clean an area. Carpeting is something that people are trying to get away from having in their operatories because of the difficulty cleaning it.

Q Another topic that was raised by Ms. Kobs in her testimony was surfaces, the horizontal surfaces in the office. You had an opportunity to look at the photographs that were Exhibit No. 1?

A Uh-huh, would that be A?

Q A would be fine. Looking at photograph A, for instance, and in several others showing horizontal surfaces in the office, E, I believe is a particular -- E and F are good examples, is it possible in your opinion to clean those horizontal surfaces?

A No, these surfaces would be an area where you could have problems with the aerosol and droplets landing on those pages. So you can't disinfect that, but it could be a route of indirect transmission, for example, if someone picks up that paper and then gets, you know, contaminated on their hands and then, you know, might be transmitting it around the room or around other areas of the office.
We generally try to keep the operatories as free of any debris as we possibly can and at a minimum would cover with something that has an impervious liner at the base so that we wouldn't have the droplets landing and the possibility of indirect transmission.

Q Directing your attention with particularity to I believe it's photograph E?

A Yes.

Q That's the pull-out shelf on the lateral filing cabinet, correct?

A Yes.

Q What problems, if any, are presented by using that surface as it is pictured there as a dental operatory tray?

A See, this did concern me. I believe that I was told that this was -- or not I was told but that I heard today that this bag contains sharps, and then I also do see all of the debris or the --

Q Stack of papers?

A -- stack of papers that would pose the potential for droplets and then indirect transmission.

Q Why were you concerned about the baggy with the used syringes?

A Because, No. 1, it's adjacent to the operatory, and those syringes were used apparently in someone's mouth. This is the method of disposal. That's No. 1.
But No. 2, the method of disposal that I'm seeing is not a sharps containers, and sharps containers must be used to dispose of sharps, and then you usually -- not usually but you must send them to a medical waste hauler. So this isn't the method of disposing of sharps.
The problem here that I see from a public health standpoint is that if this were to go into the medical waste stream -- and I heard the individual, Mary Ann I believe her name was, testify that, you know --

Q Mary Anderson?

A Mary Anderson -- was that there was waste. If this waste went into the regular waste stream, you would potentially be exposing the waste haulers from the city to this, and they're not prepared to manage that. And so you would be putting them at

risk when they picked up items like sharps in a baggy without having them containerized.

Q Just a moment, please, while I find the photograph that I want. With reference to sterilization in the dental practice, you heard testimony that Dr. Taylor cleans his instruments, scrubs them and rinses them in hot water and then places them in cold sterilization?

A Uh-huh.

Q Looking at picture G, which appears to have a cold sterilization tray on it, does that sterilization area raise any particular concerns for you?

A Yes.

Q What are they?

A I have several concerns. I'm not exactly sure -- when you set up a sterilization area, you need to have areas clearly labeled Contaminated, for example. Then you bring contaminated instruments to be processed, and that would be removing the organic debris, blood, tissue, et cetera.
Then you need to have an area where the instruments are actually bagged, and when we clean the instruments I should say that we avoid hand scrubbing. We usually use an ultrasonic device. That's a preferred method. You can use a long-handled scrub brush to remove debris, but generally you avoid that.
Then you go to the area where you wrap and bag the instruments, and then you put them in the processor. So then you've got your contaminated area, and then you have your sterile area where you put them into the processor.
And then finally you have a storage area, and then they must be bagged and stored after it comes out of the sterilizer. This concerns me because I'm understanding that this is the method of processing the instruments. (Indicating)

Q You're holding photograph G?

A Yes. And this appears to be -- well, I'm not sure if this is high-level disinfectant/sterilant, but

for critical items that touch bone or pierce or
cut tissue or touch mucosa, such as a mirror,
those items need to be sterilized. They must be
sterilized in a steam processor or a chemi-clave.
This would not be an appropriate method of
sterilizing instruments that cut bone or tissue or
mirrors that touch mucosa, semi-critical items.
So we have a problem here with both, you know,
clearly defining what is contaminated and what is
sterile and where they're stored, and then we
also -- I don't see a steam under pressure or a
chemi-clave here. I only see the disinfectant of
some sort.

When asked if it is possible to practice dentistry to the standard required by infection control procedures without having an autoclave on site, Ms. McKenny testified that only if you were going to transport those instruments in a covered container that would be labeled "Biohazards", and then put them into an autoclave at another location. She said that even that procedure would be questionable, but may be possible if the container is clearly labeled. Tr. p. 109.

In reference to Dr. Taylor's failure to wear gloves during his practice of dentistry, Ms. McKenny testified that the standard of care is to wear gloves during patient care. She said that the reason gloves should be worn is "because there is bacteria on our hands, and that
bacteria is -- even though we do good handwashing, we have found that there's been a reduction in Hepatitis B when healthcare workers wear gloves for patient services".

When asked about the lack of running water in Dr. Taylor's office, Ms. McKenny testified as follows [Tr. p.111-114:

Q What concerns, if any, are raised by the lack of
running water in Dr. Taylor's office at the
Disabled American Vets building?

A Handwashing is No. 1; evacuation for the patient
is the second; being able to adequately clean
surfaces because you need to clean environmental
surfaces too and keep them sanitary.

Q You heard testimony from both Ms. Kobs and
Ms. Anderson that Dr. Taylor made use of the break
room and his patients made use of the restrooms
for functions related to the practice of
dentistry. What concerns, if any, arise from
that?

A I have concerns for the people that are working
within that environment that have not been trained
in infection control and hazard communication.
They've not been trained to clean blood spills.
That's No. 1.
If there are people, you know, spitting and
there are droplets of blood on the floor, on
counters, they need to wear personal protective

equipment and be trained how to clean that surface properly so that they can maintain, you know, an environment that's healthy. That's No. 1.
No. 2 is that when you look at using restrooms, it's a public restroom, so it's not just employees in that building, but then there are also people using the restroom from the public. And then someone's got to be taught how to clean that because we know there's blood.
When you process instruments in a sink, in a break room or in a bathroom, in a public restroom, after you're done the only way I could think that this could happen is that you could intermediate level disinfect the insides of the sink and the counters to maintain some level of disinfection, and yet I didn't see intermediate level disinfection on the counters in the break room or I didn't hear anyone talk about using those types of chemicals to disinfect afterward. So that's the concern I have.
I didn't like hearing that there were cups in the sink that weren't disinfected after people had used them to spit, and that's --

Q Why did you not like that?

A Well, because what if someone were to come in and use one of those cups thinking that it was cleaned, what if, you know -- and there had been blood or saliva, and I explained earlier that universal precautions and standard precautions tell us that we need to treat all blood and body fluids as though they're known to be infectious for Hepatitis B.
Those cups should be pre-cleaned and disinfected, and there's no assurance that that's happened. Someone may pick those up. Either touching them or drinking from them would cause a problem -- or could potentially cause a problem.

Q During Ms. Kobs' testimony and cross-examination you heard discussion of cleaning dental tools either in the break room double stainless sink or in a restroom sink.
As a practical standpoint, is there any benefit to doing the tool cleaning, the dental instrument cleaning, in a public restroom as opposed to the break room sink?

A No, there's no difference. In fact, it probably would expose more people to the hazard in a public

restroom if things weren't disinfected afterward.

Finally, in reference to the medical dental waste that Ms. Anderson found in the trash in the kitchenette, Ms. McKenny testified that:

Q What concerns, if any, are raised from that?

A What concerned me is that she talked about bloody gauze, and it's apparent in her testimony that extractions were done. So, you know, very likely there was significant amounts of bleeding. When you have bloody gauze, those items need to be put in a red bag labeled Biohazard and then picked up by a licensed medical waste hauler. That is not appropriate to put in a regular waste stream because, again, what you're doing is you're exposing the city worker or the people within that facility to biohazards without their knowledge.

(D) **Testimony of Theodore L. Taylor, D.D.S.**

(1) Background

Dr. Taylor graduated from Marquette University School of Dentistry in 1957. He is licensed to practice dentistry by the state of Wisconsin pursuant to license #4001379, which was first granted on June 27, 1957. At least at the time the Complaint was filed in this matter, Dr. Taylor practiced dentistry in Green Bay, Wisconsin.

(2) Treatment of Patients

Dr. Taylor admitted that the 10-by-11 square foot area in which he saw patients did not have running water. He said that running water was available within 20 feet of his office. He provided water to the patient for purposes of rinsing, and if they wished, he provided them with drinking water. He said that usually it was just a matter of the patients rinsing into a larger volume disposable cup. He said that the patients were happy to be relieved of their pain after having called 25 or 30 different dental offices in Green Bay and Brown County without successfully being scheduled for treatment in less than a week or ten days. So the patients were not upset that they had a cupful of water to take water from and a cup to rinse into.

In reference to treating patients without covering his hands and the allegation that when he needed to wash his hands, he used the men's room in the common area of the office building, Dr. Taylor said that the he normally covered his hands and that he had boxes of rubber latex gloves in his office. He said that as with most of his dental supplies and all of his dental equipment, he had the gloves stored in a storage area. When he ran low or ran out of the gloves, he would go to the storage area and replenish his supplies as needed. In reference to the inspection conducted by Ms. Kobs, Dr. Taylor said that he did not realize at that time that he had not quite used all of the gloves out of the box that he had been using. In fact, there were some gloves left in the bottom of the box.

In reference to sending his patients to use the sink in the break room in the common area of the office building to rinse their mouths in connection with dental treatment, Dr. Taylor said that he never sent patients to the break room or even the restroom to rinse their mouths in connection with dental treatment. He said that in the event of an extraction, for example, he provided the patient with rinse water. He had them rinse out into a large plastic disposable cup. He said that he took the rinse cup into the restroom and dumped the contents of the rinse cup into the toilet. After rinsing the cup several times, he then rinsed it with hot, soapy water, put a
little liquid soap in the cup, filled it with hot water, let it sit, agitated it, and then took one of several brushes that he had available and scrubbed it out, rinsed it and dried it off with a paper towel.

In my opinion, Dr. Taylor's testimony that he never sent patients to the break room or the restrooms to rinse their

mouths is not credible. Ms. Anderson, who, in my opinion, had no reason to lie, testified that she saw Dr. Taylor walk patients to the bathroom and that she and other building staff had to wipe blood off the restroom floor and the toilet seats.

In reference to the allegation that he disposed of bio-hazardous waste through the common trash for the office building in which he maintained his practice, Dr. Taylor said that it was not true. If he disposed of a blood-soaked gauze sponge during the process of extracting a tooth, which is about the only time there was any blood flowing anywhere, he threw it in a small wastebasket. He said that the contents of the wastebasket did not go in the general office trash. Instead, he put the content of the wastebasket in a plastic bag, tied it up and put it in his storage area, along with other previous accumulations of bio-hazardous waste until he had a sufficient amount of it.

In reference to Dr. Taylor's testimony regarding the disposal of bio-hazardous waste, as noted previously, in my opinion, Ms. Anderson's testimony is more credible than Dr. Taylor's testimony. Ms. Anderson testified that, at least on one occasion, she opened the trash can that is used for disposal of waste for the building tenants and found "bloody gauze patches, wrappers, towels, all sorts of things". In addition, Ms. Kobs testified that when she did her inspection of Dr. Taylor's office, she saw dental waste combined with mail and cigarette boxes, in the office wastebasket.

IV. Discipline

Having found that Dr. Taylor violated laws relating to the practice of dentistry, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Dentistry Examining Board is authorized under s. 447.07 (3), Stats., to reprimand a dentist, or limit, suspend or revoke his or her license if it finds that the dentist has engaged in any conduct prohibited under that section including, but not limited to, unprofessional conduct.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Dr. Taylor's license be revoked. Dr. Taylor recommends that this matter be dismissed. Based upon the evidence presented, the Administrative Law Judge recommends that Dr. Taylor's license to practice dentistry be revoked. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct.

Dr. Taylor was reprimanded and his license was Limited by the Board in November, 1995, for failure to comply with universal infection control procedures. [Exhibit 4]. Dr. Taylor has shown by his conduct that he is not capable of practicing dentistry in a manner which safeguards the interest of the public. If, in the future, Dr. Taylor submits evidence satisfactory to the Board that he is capable of practicing dentistry in a manner which safeguards the interest of the public, the Board can determine at that time whether to reinstate his license and, if so, whether limitations should be placed on his practice.

V. Costs of the Proceeding

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 the respondent is a discretionary decision on the part of the 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 Administrative Law Judge's 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.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Dentistry Examining Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 24th day of January 2007.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge