

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
DAVID F. PLYER, D.D.S.,	:	LS0612291DEN
RESPONDENT.	:	

Division of Enforcement Case No. 03DEN130

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 7th day of November, 2007.

Lori R. Barbeau DDS
Member of the Board
Dentistry Examining Board

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :

PROCEEDINGS AGAINST

:

PROPOSED DECISION

:

AND ORDER

DAVID F. PLYER, D.D.S.

:

Case No. LS0612291DEN

RESPONDENT

:

[DOE Case #03DEN130]

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

David F. Plyer, D.D.S.
12500 West Hampton Avenue
Butler, WI 53007

Dentistry Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on June 26, 2007, before Administrative Law Judge Jacquelynn B. Rothe. The Division of Enforcement appeared by Attorney Pamela Stach. Dr. Plyer appeared *pro se*.

Based on the entire record in this case, the undersigned 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. David F. Plyer is licensed to practice dentistry in the State of Wisconsin (License #5001222). His credential was first granted on May 24, 1973. Dr. Plyer's current address is 12500 West Hampton Avenue in Butler, Wisconsin.
2. On September 30, 2003, Dr. Plyer's Wisconsin dentistry license expired.
3. On October 20, 2003, Dr. Plyer paid \$131.00 for the renewal of his Wisconsin dentistry license for 2003-2005 biennium and \$25.00 for a late renewal penalty.
4. From October 1, 2003, to October 20, 2003, Dr. Plyer was engaged in the practice of dentistry in Wisconsin.
5. On September 30, 2005, Dr. Plyer's Wisconsin license to practice dentistry expired.
6. On January 9, 2006, Dr. Plyer paid \$131.00 for the renewal of his Wisconsin dentistry license for 2005-2007 and \$25.00 for a late renewal penalty.
7. From October 1, 2005, to January 9, 2006, Dr. Plyer was engaged in the practice of dentistry.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to § 447.03 (7), Wis. Stats.
2. By having practiced dentistry without a valid license from October 1, 2003, to October 20, 2003, and from October 1, 2005, to January 9, 2006, Dr. Plyer violated § 447.03 (1) (a), Wis. Stats., and § DE 5.02 (26), Wis. Admin. Code.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that David F. Plyer is **REPRIMANDED**.

IT IS FURTHER ORDERED that Dr. Plyer pay the total assessable costs in this matter pursuant to sec. 440.22, Wis. Stats.

OPINION

David F. Plyer is licensed to practice dentistry in the State of Wisconsin (License #5001222). His license was first granted on May 24, 1973, and his current address is 12500 West Hampton Avenue in Butler, Wisconsin. On September 30, 2003, Dr. Plyer's Wisconsin dental license expired. However, he continued to engage in the practice of dentistry from October 1, 2003, to October 20, 2003. On October 20, 2003, Dr. Plyer renewed his dental license and paid a late payment fee.

On September 30, 2005, Dr. Plyer's Wisconsin dental license again expired. Nevertheless, from October 1, 2005, to January 9, 2006, Dr. Plyer was engaged in the practice of dentistry. On January 9, 2006, Dr. Plyer paid the renewal fee for his dentistry license, along with a late renewal penalty.

At issue in this matter is whether Dr. Plyer engaged in the practice of dentistry without having a valid license. Dr. Plyer maintains that s. 447.07 (1), Wis. Stats., affords him a sixty-day "grace period" in which to renew his dental license from the date of its expiration and, as a result, he was permitted to continue practicing as a dentist during that time. Section 447.07 (1), Wis. Stats., provides the following:

The examining board may, without further notice or process, limit, suspend or revoke the license or certificate of any dentist or dental hygienist who fails, within 60 days after the mailing of written notice to the dentist's or dental hygienist's last-known address, to renew his or her license or certificate.

However, that provision may not be read in a vacuum but must instead be read in conjunction with other applicable statutes, namely s. 447.03 (1) (a), Wis. Stats., which provides that, certain exceptions notwithstanding, no person may practice or offer to practice dentistry without a valid license. In addition, s. DE 2.03 (3) of the Wisconsin Administrative Code requires that any dentist who has not renewed his or her license by October 1st of an odd-numbered year must cease and desist from practicing dentistry. Section DE 5.02 (26) of the Wisconsin Administrative Code further provides that it is unprofessional conduct to practice dentistry with an expired credential. Dentists are also reminded of that prohibition on the renewal notices that they receive from the Department of Regulation and Licensing. *See* Ex. 3 and 6.

Under s. 440.08 (2) (a) 26., Wis. Stats., dental licenses expire on September 30th of odd-numbered years. According to Cathy Pond, the division administrator of professional credentialing processing at the Wisconsin Department of Regulation and Licensing and a witness at Dr. Plyer's hearing, the renewal notices for dentists are customarily sent out two months in advance of the license expiration date. Consequently, the Department sends renewal notices to dentists in August of odd-numbered years. Dentists then have until October 1st of odd-numbered years to renew their licenses. If a dentist chooses not to renew his or her license, then the dentist must cease practicing dentistry.

Even if s. 447.07 (1), Wis. Stats., is read in the light most favorable to Dr. Plyer, he would only have had sixty days from the date he received his *renewal notice* to renew his dentistry license, not, as he suggests, sixty days from the date his license expired. However, Dr. Plyer failed to submit any evidence that he had not received timely notice of his renewal. Instead, he admitted to paying late renewal fees and also to practicing dentistry during a period of time in which his dental license was expired. The law in Wisconsin requires dentists to hold a valid license if they wish to engage in the practice of

dentistry. Once a dental license expires, a dentist may not continue to engage in the practice of dentistry unless or until he or she renews the license. Thus, by practicing dentistry without having a valid license, Dr. Plyer engaged in unprofessional conduct, contrary to s. 447.03 (1) of the Wisconsin Statutes and s. DE 5.02 (26) of the Wisconsin Administrative Code.

The question therefore remains as to what the appropriate form of discipline is given Dr. Plyer's actions. 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. McIntyre*, 41 Wis. 2d 481, 485 (1969).

A reprimand has been recommended. In order to deter other licensees from acting in a similar manner and to prevent future occurrences of this kind, discipline, in the form of a reprimand, is appropriate. A reprimand will sufficiently serve to rehabilitate Dr. Plyer while alerting others in the profession that practicing dentistry without a current license will not be tolerated. Dr. Plyer is now on notice as to when his dentistry license will expire. Consequently, he has no excuse going forward to practice dentistry without a valid credential.

In addition to the aforementioned discipline, the imposition of costs against Dr. Plyer has been 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 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. Under the circumstances of this matter, it is reasonable to assess the full costs of this proceeding to Dr. Plyer.

Dated at Madison, Wisconsin, this 29th day of June, 2007.

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Jacquelynn B. Rothstein
Administrative Law Judge