

# 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 THE DISCIPLINARY :  
PROCEEDINGS AGAINST :

TERRY A. BURKE, DDS, MS,  
RESPONDENT. :

FINAL DECISION AND ORDER  
LS0809032DEN

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[Division of Enforcement Case #05 DEN 079]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Terry A. Burke, DDS, MS  
7433 Elmwood Avenue  
Middleton WI 53562

Division of Enforcement  
Department of Regulation and Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708-8935

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

PROCEDURAL HISTORY

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 Dentistry Examining 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. Terry A. Burke, D.D.S., M.S., (“Respondent”) was born on February 6, 1948, and is licensed to practice dentistry in the state of Wisconsin pursuant to license number 5001767-15. This license was first granted on March 31, 1977.
2. Respondent's most recent address on file with the Wisconsin Dentistry Examining Board is 7433 Elmwood Avenue, Middleton, Wisconsin 53562.
3. At all times relevant to this proceeding, Respondent was working as a dentist at Middleton, Wisconsin. Respondent is an orthodontist.
4. Patient A.W. is a female, born on October 23, 1990.

5. On May 29, 2002, Respondent began orthodontic treatment to correct an anterior open bite, overjet, maxillary spacing problems, and mandibular anterior crowding, utilizing maxillary and mandibular braces and a transpalatal bar.
6. Respondent's record for treatment of Patient A.W. on September 25, 2002, notes "terrible" oral hygiene.
7. Respondent's record for treatment of Patient A.W. on July 30, 2003, notes "poor" oral hygiene.
8. Respondent's record for treatment of Patient A.W. on September 10, 2003, notes "need better" oral hygiene.
9. On November 20, 2003, Patient A.W. was seen as a new patient by a general dentist in Fitchburg, Wisconsin, for examination and prophylaxis. At that visit, the dental hygienist assessed Patient A.W.'s oral hygiene as "good" and the dentist diagnosed occlusal caries on teeth 15, 18, and 31.
10. On December 16, 2003, Patient A.W. had the caries on 15 and 18 treated by air abrasion and flowable composite fillings. The cavity on 31 was filled on December 30, 2003, also with a flowable composite.
11. Respondent's record for treatment of Patient A.W. on February 25, 2004, notes "terrible" oral hygiene.
12. Respondent's record for treatment of Patient A.W. on January 19, 2005, notes "terrible" oral hygiene.
13. Respondent's treatment records for Patient A.W. do not contain documentation of any discussions with the patient or her parents of the risks of poor oral hygiene or of the possibility of alterations to the treatment plan because of poor oral hygiene contemporaneous with the repeated notes of Patient A.W.'s inadequate oral hygiene, although Respondent has provided statements from his staff indicating that those discussions did take place.
14. Respondent's first mention of caries on examination of Patient A.W. appears in his record for February 9, 2005.
15. On February 23, 2005, Patient A.W. was seen as a new patient by a general dentist in Spring Green, Wisconsin, for examination and prophylaxis. At that visit, the dentist recorded:

"full braces. Lots of decalc. (decalcification) Decay present upper ants. (anterior) Brushes fairly well. Pt. (patient) says she drinks 1 soda. Told Ashley best to avoid soda. Thorough brush – floss and use FL (fluoride) gel at night – leave "brush on" gel. Braces should come off 2 -6 mo. Will need PA's (periapicals) of ant. (anterior) teeth to determine all surfaces needing to be filled. Noticeable decay on #7, 8, 9, 10, possibly 19. 20 also decayed."
16. Respondent paid the Spring Green general dentist \$4897.00, the full amount of the treatment estimate, for porcelain veneers on Patient A.W.'s teeth numbers 6, 8, 10 and 11; root canal treatment and Empress restorations on numbers 7 and 9. The general dentist returned \$549.00 when no root canal was actually needed on number 9.
17. Respondent does not agree with the conclusion, but concedes that there is sufficient evidence to support a reasonable conclusion that his response to Patient A.W.'s non-compliance with oral hygiene instructions during the course of orthodontic treatment failed to meet the minimally acceptable standard of practice of dentistry.

### CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §447.07, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraphs 4 - 13, above, constitutes a violation of Wisconsin Administrative Code § 5.02(1).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Terry A. Burke, DDS, MS, is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. Respondent's license is LIMITED by the condition that he shall, within nine months of the date of this Order, complete eight (8) hours of continuing dental education on the topic of risks associated with orthodontic treatment and available preventive measures.
  - a. Respondent shall locate courses, and submit them to the Board or the Board's designee for approval. The Board will not accept any course that it has not approved for compliance with this Order before Respondent completes the course; the Board in its sole discretion may approve part or all of any course for compliance with this Order. No part of the continuing education required under this Order may be credited toward compliance with any other continuing education requirement to which Respondent may be subject.
  - b. Respondent shall submit satisfactory evidence of completion of each course he takes in compliance with this Order to the Board's designee within one month of the date of the course.
  - c. This limitation shall be lifted upon satisfactory completion of the continuing education requirements of this Order.
  - d. For purposes of this Order, the Board's designee is

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

3. Respondent shall, within 180 days from the date of this Order, pay costs of this proceeding in the amount of one thousand three hundred (\$1,300.00) dollars. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

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Division of Enforcement  
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P.O. Box 8935  
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4. 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 pay costs as ordered, or fails to complete the continuing education as ordered, the Respondent's license (#5001767-15) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Wisconsin Dentistry Examining Board

By: Lori Barbeau DDS  
A Member of the Board

9/3/08  
Date