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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
MICHAEL O'CONNELL, D.D.S.,	:	LS0705181DEN
RESPONDENT.	:	

Division of Enforcement Case No. 07DEN007

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 5th day of March, 2008.

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

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
MICHAEL O'CONNELL D.D.S., : FINAL DECISION
RESPONDENT : AND ORDER
: LS 0705181DEN
:

1. Michael O'Connell, D.D.S. ("Respondent") was born on November 15, 1961, and was credentialed to practice dentistry in the state of Wisconsin pursuant to credential number 4259, first granted on June 19, 1991.
2. Respondent's most recent address on record with the Dentistry Examining Board is P.O. Box 44549 , Madison, Wisconsin 53744.
3. Respondent had, at all times pertinent to this action, a dental office at 310 N. Midvale Boulevard, Madison, Wisconsin, and practiced dentistry at this location.

4. Respondent's credential registration expired on September 30, 2005.
5. Respondent is prohibited from renewing his credential to practice dentistry in the state of Wisconsin pursuant to Wis. Stat. § 440.12, based on his tax delinquency.
6. On March 31, 2006, the Respondent was notified by the Department of Regulation and Licensing that his application for renewal of his credential as a dentist would be denied on the basis of the tax delinquency.
7. The Respondent was notified by the Wisconsin Department of Workforce Development on April 14, 2006, that he was delinquent for child support and that Department of Regulation and Licensing would be directed to deny the renewal of his credential on the basis of the child support delinquencies.
8. Between October 1, 2005, and May 1, 2007, Respondent continued to practice dentistry at 310 N. Midvale Boulevard, Madison, Wisconsin.

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 447.07.
2. Respondent, by his practice of dentistry without a current credential registration as described in paragraph 6 and 7 above, has violated Wis. Stat. §§ 447.03(1)(a), and 447.07(3)(f), and Wis. Admin. Code § DE 5.02(20).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the dentistry credential of Respondent, Michael O'Connell, D.D.S., is hereby SUSPENDED INDEFINITELY.

IT IS FURTHER ORDERED that:

- A. Upon resolution of his state tax and/or child support delinquencies, Respondent may petition the Board for full reinstatement of his credential. An acceptable form of resolution shall be proof of payment in full of the outstanding tax and child support arrearages or entry into a formal agreement with the Wisconsin Department of Revenue or Wisconsin Department of Workforce Development for repayment of the arrearages on an installment basis. The terms of the resolution shall be acceptable and satisfactory to the respective agencies and the Board.
- B. The Respondent shall pay the full costs of this proceeding and a forfeiture of two thousand five hundred (\$2,500.00) dollars prior to petitioning the Board to reinstate his credential.
- C. Payment shall be made via certified check or money order and shall be made payable to the Wisconsin Department of Regulation and Credential and mailed to the Department Monitor, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin, 53708-8935.
- D. The reinstatement of Respondent's credential shall be, within the discretion of the Board, subject to any additional terms and conditions, deemed appropriate given the Respondent's disciplinary history.

OPINION

The essential facts involved in this matter are not disputed. Respondent did not contest the allegation that he had practiced dentistry after his credential had expired. Nor was it disputed that the Respondent's credential could not be renewed after the date of its expiration due to outstanding tax and child support delinquencies. The only remaining question to be determined in

this proceeding is whether the credential previously issued to the Respondent should be disciplined; specifically, whether it should be reprimanded, limited, suspended or revoked. In addition, there remains the question of whether a monetary forfeiture and costs of the proceeding should be imposed against the Respondent. The bulk of the testimony and evidence submitted during the hearing focused on mitigating factors relevant to the appropriate level of discipline.

Respondent testified that his problems began after he purchased a private dental practice in 1994. He indicated that he had school loans and other debts; that his financial problems escalated because his new dental practice business was not always good. Respondent also testified that his new dental practice had to be relocated shortly after he purchased it which resulted in further expenses and debt. Respondent indicated that since that time he has been trying to “catch-up” financially. Respondent admitted that he was aware that his credential had expired and that he should have ceased his practice of dentistry but he had pressing financial obligations and needed the income. As for his current tax delinquencies, the Respondent testified that he had tried to make a repayment arrangement with the Wisconsin Department of Revenue (DOR); made a few payments but then stopped making any further payments when a lien was placed on his bank account. Respondent testified that he now plans to sell his dental office and retire from practice altogether.

The record evidence shows that the Respondent’s financial difficulties have been on-going for many years. When given an opportunity at the hearing to make a statement on his own behalf to be included as mitigating evidence as to why he continued to practice after his credential had expired, the Respondent testified as follows:

A: I basically got to make a choice to -- just to keep working to try to pay off the taxes and so that was my decision, so I -- you know, I did what you said as far as, you know, working with -- with a suspended license.

Q: Doctor, in the hall you told me that you’ve been making arrangements with the Department of Revenue?

Q: Could you tell the administrative law judge and the Board about that?

A: Well, I don’t know if it was an arrangement, but I started making some payments in January and toward the end of the month I think, maybe February, they filed a lien I guess on my account, on my checking account, and so at that point I stopped making payments because I was trying to do the right thing, but then they did that and then I was just kind of frustrated and that where we’re at now with the -- revenue people. I should say too I did file some tax returns that hadn’t been filed and that what they were looking at too. So at this point I’ve got some of the returns filed and I did make some payments as of January.

[Hearing Transcript pgs. 9-10]

When Respondent was asked whether he had proof that he had entered into a written repayment agreement with the DOR, he testified that he did not think he had one. When asked for additional information or evidence that might be relevant to his decision to not pay his tax delinquencies, the Respondent indicated only that he was “frustrated” when funds were taken out of his checking account. Although the Respondent’s frustration is understandable, this reaction does not justify his decision to avoid his legal obligations. There was no documentary or testimonial evidence to support the claim that the Respondent had actually cooperated with DOR in establishing a repayment agreement. Nor was there any evidence submitted as to how many payments were made by the Respondent, what amounts were paid, and whether the payments were made in a timely manner. The Respondent never explained the reason for the placement of the lien on his bank account in the first place. Accordingly, it is difficult for this Administrative Law Judge to determine that the Respondent’s efforts should mitigate the recommendation for discipline.

The law is clear in regard to the preclusive effect of tax and child support delinquencies on the renewal of an occupational credential. Under Wisconsin law, an application for a renewal of a credential must be denied if the credential holder is liable for delinquent taxes or child support. The legislature has spoken; the failure to satisfy one’s obligations will result in adverse consequences. A credential holder is precluded by law from renewing their credential until such obligations are satisfied.

Based upon the evidence in the record, the Respondent is fully culpable for violating the law by continuing to practice

dentistry after his credential expired. The Respondent admitted that he knew that he was not permitted to continue practicing dentistry after his credential expired. He offered little, if any, mitigating evidence to justify his conduct. In 2001, the Board had reprimanded the Respondent's credential and imposed a forfeiture of \$1,500.00 for the same conduct; practicing after his credential had expired and could not be renewed due to a state tax delinquency. It is therefore recommended that the Board issue an order suspending the Respondent's credential until such time as he satisfies his outstanding state tax and child support delinquencies.

The proposed disciplinary recommendation is consistent with the objectives of professional discipline which are to promote the rehabilitation of the credential holder; to protect the public; and to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the credential holder is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969). The suspension of the Respondent's credential for an indefinite period will serve not only as an impediment to his ability to practice in this state or in any jurisdiction, above and beyond the statutory "hold" currently in place, it may deter others who might engage in similar conduct. When the Respondent has resolved his outstanding tax and child support delinquencies, he may petition the Board for reinstatement of his credential to practice dentistry.

COSTS AND FORFEITURE

In addition to the suspension of the Respondent's credential, it is recommended that the Board impose full costs and a forfeiture. The assessment of costs in Class 2 proceedings is authorized by Wis. Stat. § 440.22(2), and Wis. Admin. Code, RL 2.18. The statutory provision provides in relevant part:

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. This discretion also extends to the decision whether to impose a forfeiture. It is recommended that the full costs of this proceeding and a forfeiture be assessed. Licensing fees are calculated based upon costs attributable to the regulation of each of the credentialed professions and the costs of prosecuting cases for a particular credentialed profession should be borne by those who violate the law. It is unfair to impose the costs of prosecuting a few members of the profession on the majority of the credential holders who have not engaged in misconduct.

The full recommended discipline; a suspension, forfeiture and costs, should serve to impress upon the Respondent the importance of not practicing until his credential is reinstated and to take action to resolve his tax and child support delinquencies. Under the terms of this order, the Respondent must satisfy his outstanding delinquencies as a prerequisite for petitioning to reinstate his credential, as well as any other terms and conditions the Board deems appropriate, given the circumstances of the Respondent's violations.

Based upon the hearing record, and the reasons set forth 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 this 7th day of February, 2008.

Colleen M. Baird
Administrative Law Judge