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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
WALTER M. LUCAS, III, D.D.S.,	:	LS0909242DEN
RESPONDENT.	:	

Division of Enforcement Case No. 08 DEN 055


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 3 day of March, 2010.


Member
Dentistry Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **WALTER M. LUCAS, III**, Respondent

PROPOSED DECISION AND ORDER
Case No. LS0909242DEN

Division of Enforcement Case No. 08 DEN 055

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

Walter M. Lucas
P.O. Box 170
Sheboygan, WI 53082

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

Attorney James E. Polewski
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The complaint in this matter was filed on September 24, 2009. On that same date, the Complaint and Notice of Hearing were sent to the Respondent at his address of record listed above. On October 20, 2009, the Division of Hearings and Appeals (the "Division") received a written request from the Respondent to extend the deadline to file an Answer to the Complaint. On October 23, 2009, the Department of Regulation and Licensing (the "Department") filed a written objection to the Respondent's request. On October 27, 2009, the undersigned administrative law judge issued an Order extending the deadline for the Respondent to file an Answer to November 9, 2009.

On November 4, 2009, the Division received the Respondent's Answer to the Complaint. In his Answer, the Respondent admitted all facts alleged in the Complaint and added some "clarifications" of fact.

A prehearing telephone conference was held on November 11, 2009. During the telephone conference, the Respondent confirmed that he was not disputing any of the facts as alleged in the Department's Complaint but stated that he was disputing the discipline proposed by the Department. Consequently, the parties agreed that a hearing on the facts was unnecessary and that the matter should be decided on the basis of written briefs. On November 12, 2009, the Division issued a Prehearing Conference Report and Scheduling Order, directing the parties to file with the Division and exchange with one another written briefs on or before December 10, 2009.

On December 7, 2009, the Division received a written brief from the Department which set forth its argument on discipline. No brief or written argument has been filed by the Respondent.

FINDINGS OF FACT

1. Walter M. Lucas, III, DDS ("Respondent") was born on August 9, 1956, and is licensed to practice dentistry in the state of Wisconsin pursuant to license number 5936, first granted on October 5, 2005.
2. Respondent is licensed to practice dentistry in the state of Michigan pursuant to license number 2901013924, first granted on September 10, 1984. On May 9, 2009, Respondent's Michigan license was placed on probation, a fine was imposed, and community service was ordered.
3. Respondent's most recent address on record with the Dentistry Examining Board is P.O. Box 170, Sheboygan, Wisconsin, 53082.
4. On September 11, 2002, the State of Michigan filed a criminal complaint against Respondent, charging him with sixty-three counts of Medicaid fraud for filing false claims for payment for services he did not perform, and eleven counts of intentionally placing false information in a medical record, in violation of Michigan Compiled Laws section 750.492a(1)(a).
5. Respondent was bound over for trial of the criminal charges following a preliminary hearing at which the State of Michigan produced evidence that Respondent had charged for extracting teeth that the patients still had in their mouths, and for supplying dentures that had never been made, and proof that Respondent had made entries in patient records stating that he had performed extractions and placed restorations he had not performed or placed.
6. Respondent filed a motion to quash the bind-over and dismiss the criminal charges on the grounds that the dental records in which he had entered false information were not "medical records" within the meaning of the Michigan law making it a crime to falsify medical records, because they were dental records, not medical records; and further arguing that the State had not made a sufficiently convincing case that the inaccuracies in

the records and the multiple claims for services that he had not performed were anything more than innocent mistakes.

7. On January 5, 2005, the Michigan 30th Judicial Circuit Court granted Respondent's motion to quash the bind-over and dismiss the criminal charges against him.
8. On February 11, 2005, the State of Michigan appealed the dismissal of the criminal charges.
9. On March 11, 2005, Respondent filed his application for a license to practice dentistry in the State of Wisconsin.
10. Question #5 on the Wisconsin application for a license to practice dentistry asks "Do you have any felony or misdemeanor charges pending against you?" Because the criminal charges had been dismissed, Respondent was accurate when he answered that question "no" despite the fact that the State of Michigan was then appealing the dismissal of the criminal charges.
11. On November 20, 2007, the Michigan Court of Appeals reinstated the criminal charges against Respondent and remanded the criminal prosecution to the Circuit Court for further proceedings.
12. On March 14, 2008, Respondent entered into a plea agreement by which he was convicted of larceny by false pretenses.
13. On April 25, 2008, Respondent was sentenced to 30 days in jail, two years of probation, fines and costs of \$2,705.00, and he was ordered to pay restitution in the amount of \$2,571.92 and perform 500 hours of community service.
14. On April 12, 2007, Respondent was disciplined by the Michigan Board of Dentistry on Respondent's plea of no contest to a disciplinary complaint charging that he commenced orthodontic treatment of a patient without first obtaining study models, a panoramic radiograph, a cephalometric radiograph and intra- and extr-oral photographs.
15. The discipline imposed by the Michigan Board of Dentistry on April 12, 2007 included a requirement that Respondent complete a continuing education course in the area of recordkeeping, and another course in the area of orthodontic diagnosis, planning and treatment; the disciplinary order required Respondent to obtain advance approval for each of these course from the Chairperson of the Disciplinary Subcommittee of the Michigan Board of Dentistry. In addition, the April 12, 2007 disciplinary order required Respondent to successfully complete a CNA Dental Professional Liability Risk Management seminar. Further, the disciplinary order required Respondent to complete all of the continuing education courses within six months of the date of the order.
16. On April 9, 2009, Respondent was again disciplined by the Michigan Board of Dentistry on Respondent's plea of no contest to a disciplinary complaint charging that he had failed

to comply with the continuing education requirements of the April 12, 2007 disciplinary and that he had been convicted of "false pretenses \$200.00 or More But Less than \$1,000.00, a misdemeanor" on March 14, 2008.

17. Respondent's conviction of larceny by false pretenses for making claims for payment of dental services he did not perform constitutes unprofessional conduct in violation of Wis. Admin. Code § DE 5.02 (15), conviction of a crime the circumstances of which substantially relate to the practice of dentistry.
18. By having disciplinary action taken against him by the Michigan Board of Dentistry on April 12, 2007, Respondent has violated Wis. Admin. Code § DE 5.02(14).
19. By having disciplinary action taken against him by the Michigan Board of Dentistry on April 9, 2009, Respondent has violated Wis. Admin. Code § DE 5.02(14).
20. In his Answer, dated November 2, 2009, Respondent admitted to all facts alleged in the Department's Complaint dated September 24, 2009. Specifically, Respondent admitted that he was charged with creating false patient records. In addition, he admitted that he defended against the criminal prosecution on the grounds that his staff was responsible for the false billings and that the creation of the false patient records was not a violation of the law because the law specified medical records, whereas his records were dental records. Moreover, he admitted that he entered into a plea bargain with the State of Michigan to resolve 63 counts of Medicaid fraud and 11 counts of placing false information in medical records. Finally, Respondent admitted that he has been disciplined twice by the State of Michigan Board of Dentistry – first, for improper performance of orthodontic treatment and, second, for failing to fully comply with the disciplinary order in the time specified. None of the clarifications of fact contained in Respondent's Answer negated the admissions or justified the conduct described in the allegations to which admitted.
21. In its written brief, counsel for the Department's Division of Enforcement stated that the Division's costs related to this matter amounted to \$2,568.60, as of December 4, 2009.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction over this matter pursuant to Wis. Stat. § 447.07.
2. Wisconsin Administrative Code § RL 2.09 (3) provides that allegations in a complaint are admitted when not denied in an answer. In his Answer, dated November 2, 2009, the Respondent did not deny the allegations and admitted to all allegations contained in the Complaint.
3. Wisconsin Stat. § 447.07(3) grants the Dentistry Examining Board the authority to deny, limit, suspend or revoke a dentist's license. Conduct that may result in the Board imposing such discipline includes a dentist having engaged in "unprofessional conduct"

or having “been convicted of a crime, the circumstances of which substantially relate to the practice of dentistry or dental hygiene.” § 447.07(3)(a) and (e).

4. Wisconsin Administrative Code § DE 5.02 (14) and (15) defines “unprofessional conduct by a dentist or dental hygienist” to include: “[h]aving a license, certificate, permit, or registration granted by another state to practice as a dentist or dental hygienist limited, suspended or revoked, or subject to any other disciplinary action” and “[v]iolating any law or being convicted of a crime the circumstances of which substantially relate to the practice of a dentist or dental hygienist.” As described in the Findings of Fact and admitted by Respondent in his Answer, the Respondent has been convicted of larceny by false pretenses for making claims for payment for dental work he did not perform, and he has been disciplined on two occasions by the Michigan Board of Dentistry. This conduct by Respondent constitutes unprofessional conduct contrary to Wis. Stat. § 447.07(3) and Wis. Admin. Code § DE 5.02 (14) and (15).
5. Revocation of Respondent’s to practice dentistry in Wisconsin constitutes appropriate discipline in this case.
6. Under Wis. Stat. § 440.22, when discipline is imposed on a credential-holder, the Board has the authority to impose all or part of the costs of a proceeding on the credential-holder. The imposition of costs equal to the Division of Enforcement’s costs of the proceeding as of December 4, 2009 is appropriate in this case.

DISCUSSION

The Respondent’s conviction for larceny and his discipline by the Michigan Board of Dentistry, as described in the Findings of Fact, constitute “unprofessional conduct” for which the Dentistry Examining Board may deny, limit, suspend, or revoke his license to practice dentistry in Wisconsin, pursuant to Wis. Stat. § 447.07(3).

In terms of disposition, the Division of Enforcement requests that the Respondent’s license to practice dentistry be revoked. The Division of Enforcement also requests that Respondent be ordered to pay the full costs of these proceedings.

The primary purpose of both professional licensure and discipline is to protect the public from the risk of harm. In this case, any disposition other than revocation would not effectively protect the public from possible risk of harm in the future. Moreover, imposing less stringent discipline would unreasonably depreciate the seriousness of Respondent’s unprofessional conduct, which included a conviction for larceny for making payment claims for dental work he did not perform. In addition, Respondent’s partial and apparently half-hearted participation in these proceedings indicate that he could not be reasonably relied upon to comply with any Board order which might have been considered in an effort to limit or suspend his ability to safely practice dentistry. For these reasons, the relief requested by the Division of Enforcement is necessary and appropriate to protect the public.

The Dentistry Examining Board has the authority pursuant to Wis. Stat. § 440.22 to recover the costs of a proceeding when discipline is imposed on a credential-holder. The Respondent should be assessed the full amount of recoverable costs for this proceeding.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Walter M. Lucas, III, D.D.S. to practice dentistry in the State of Wisconsin be and is hereby **REVOKED**.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. Payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

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

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Walter M. Lucas, III, D.D.S.

Dated at Madison, Wisconsin on January 7, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Sally Pederson

Administrative Law Judge