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Before The
State Of Wisconsin
Dentistry Examining Board

In the Matter of the Disciplinary Proceedings
Against **JACK ELDER, D.D.S.**, Respondent

FINAL DECISION AND ORDER
WITH VARIANCE
LS 0807300 1 DEN

Division of Hearings and Appeals Case No. DRL-09-0004
Division of Enforcement Case No. 05 DEN 020

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, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, as modified by the Explanation of Variance, 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 at Madison, Wisconsin on the 29 day of September, 2011.

By: ON BEHALF OF
Lyndsay Knoell, D.D.S., Chairperson
Dentistry Examining Board

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST

FINAL DECISION AND ORDER WITH VARIANCE

JACK ELDER, D.D.S.,
RESPONDENT

DHA Case No. DRL-09-0004
DOE Case No. 05 DEN 020

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PROCEDURAL HISTORY

A hearing was held in the above captioned matter on November 17 and 18, 2009, in Madison, Wisconsin before Robert G. Pultz, Administrative Law Judge, Department of Administration, Division of Hearings and Appeals. Dr. Jack Elder DDS (Respondent) appeared in person and by Attorney W. Patrick Sullivan. The Department of Regulation & Licensing (Department) Division of Enforcement (DOE) appeared by Attorney James E. Polewski.

The following issues for hearing were agreed to by the parties prior to the commencement of the proceeding:

(1) Did Dr. Jack Elder engage in billing irregularities that constituted misconduct and violated State Statute?

(2) Did Dr. Jack Elder make misrepresentation(s) on his application for a license to practice dentistry in the State of California?

ALJ Pultz issued a Proposed Decision and Order dated February 9, 2010. The Dentistry Examining Board considered the disciplinary proceedings against the Respondent and the Proposed Decision and Order on May 5, 2010. Both parties appeared before the Dentistry Examining Board on May 5, 2010 and presented oral arguments. The Department of Regulation & Licensing appeared by its attorney, James E. Polewski. The Respondent appeared by his attorney, W. Patrick Sullivan.

The Dentistry Examining Board adopts the Findings of Fact and Conclusions of Law prepared by the Administrative Law Judge in this matter, as set forth in full below, but declines to adopt the Proposed Order.

FINDINGS OF FACT

1. Jack Elder, D.D.S., ("Respondent") was born on May 11, 1946, and is licensed to practice dentistry in the state of Wisconsin pursuant to license number 5001572-15, first granted on January 15, 1976.

2. At all times relative to this Complaint, Respondent was a practicing as a general dentist and was the owner of Downtown Dental (DD) in Lacrosse, Wisconsin.

3. Patient G.H. is a male, born December 15, 1956.

4. On December 14, 2004, Respondent treated Patient G.H., preparing teeth numbers 11 and 20 for crowns.

5. On December 30, 2004, Respondent cemented crowns on teeth 11 and 20.

6. On January 3, 2005, Respondent submitted a claim for $1,699.00 to the Operating Engineers Local 139 Health Benefit Fund, for services provided to Patient G.H., stating that he had prepared teeth 11 and 20 for crowns on January 3, 2005.

7. Patient G.H. had limited dental coverage, with a maximum payment of $1,500.00 per calendar year.

8. On January 21, 2005, Health Benefit Fund paid Respondent $1,287.70 as its share of the claim for services performed on January 3, 2005.

9. After Respondent became aware of the DOE's investigation, Respondent's attorney wrote to the Health Benefit Fund on June 22, 2006, offering to refund one-half of the $1,287.70 it paid on Respondent's falsified claim.

10. If Respondent had filed the claim for services to Patient G.H. with the correct date of service of December 14, 2004, the Health Benefit Fund would have paid only $135.20.

11. The Health Benefit Fund declined the offer, recalculated the benefits Patient G.H. would have received had Respondent submitted a claim with the correct date of service, and requested Respondent to forward $453.30 to correct the payments for Patient G.H. for the years 2004 and 2005.

12. Patient J.F. is a male, born on June 24, 1947.

13. On December 9, 2003, Respondent treated Patient J.F., preparing teeth number 23, 24, 25 and 26 for the placement of veneers.

14. On December 9, 2003, Respondent submitted a claim to Gundersen Lutheran Health Plan on behalf of Patient J.F. for placing porcelain veneers on the labial surface of teeth numbers 23 and 24, stating a date of service of December 9, 2003.

15. On December 22, 2003, Gundersen Lutheran Health Plan paid Respondent $753.45 in payment of the claim he filed on December 9, 2003, for services he provided to Patient J.F. on December 9, 2003.

16. On January 8, 2004, Respondent submitted a claim to Gundersen Lutheran Health Plan on behalf of Patient J.F. for placing porcelain veneers on the labial surface of teeth numbers 25 and 26, stating a date of service of January 7, 2004.

17. On January 19, 2004, Gundersen Lutheran Health Plan paid Respondent $1000.00 in payment of the claim he filed on January 8, 2004, for services he provided to Patient J.F. on January 7, 2004.

18. By a letter dated June 22, 2006, from his attorney to Gundersen Lutheran Health Plan, Respondent admitted that Gundersen Lutheran Health Plan had paid him $1,000.00 for services that Respondent had billed as having been provided to Patient J.F. on January 7, 2004, when those services had actually been provided to Patient J.F. on December 9, 2003.

19. Respondent offered to refund $500.00 of the payment Gundersen Lutheran Health Plan had paid Respondent in reliance on Respondent's January 8, 2004, claim for services provided to Patient J.F.

20. On July 3, 2006, Gundersen Lutheran Health Plan sent a letter to Respondent's attorney, stating that the payment of Respondent's claim for services on January 7, 2004, that had actually been provided December 9, 2003, had resulted in an overpayment of $1,000.00, because Patient J.F. had exhausted his coverage for 2003.

21. Gundersen Lutheran Health Plan requested that Respondent refund the entire amount of the overpayment Respondent received because of the false date of service on his January 8, 2004, claim.

22. Patient C.D. is a female, born on October 12, 1952.

23. On November 12, 2003, Respondent treated Patient C.D., doing on-lays on teeth numbers 18, 19, and 20, and a one surface resin based composite filling on tooth number 21.

24. Respondent submitted a claim for payment to Patient C.D.'s dental insurance carrier, Delta Dental of Wisconsin, for an onlay on tooth 20 and a filling on tooth 21, stating a date of service of November 12, 2003.

25. On November 26, 2003, Delta Dental of Wisconsin paid Respondent $123.20 in payment of the claim described in paragraph 27.

26. On or about January 5, 2004, Respondent submitted a claim for payment to Patient C.D.'s dental insurance carrier, Dental of Wisconsin, for onlays on teeth 18 and 19, stating a date of service of January 5, 2004.

27. On January 14, 2004, Delta Dental of Wisconsin paid Respondent $160.00 in payment of the claim described in paragraph 29. The explanation of payment accompanying that payment noted that the claim had been reduced to a claim for basic restoration because onlays were a covered benefit only when teeth cannot be restored with other material.

28. On March 3, 2004, Delta Dental of Wisconsin paid Respondent an additional $840.00 for the services Respondent misrepresented providing to Patient C.D. on January 5, 2004.

29. Patient C.D.'s dental insurance benefit year ran from December 1 through November 30, with a maximum benefit of $1,000.00 per year.

30. If Respondent had stated the correct date of service on the claim he sent to Delta Dental on or about January 5, 2004, for services supposedly provided to Patient C.D. but actually provided on November 12, 2003, Delta Dental would have paid Respondent $102.80, not the $1,000.00 he received in the January 14 and March 3, 2004, checks from Delta Dental.

31. Respondent received $879.20 from Delta Dental for treatment he provided to Patient C.D. on November 12, 2003, which Delta Dental would not have paid had the date of service been accurate.

32. Patient M.L. is a male, born on June 24, 1953.

33. On December 10, 2003, Respondent treated Patient M.L., placing porcelain/ceramic onlays on teeth 29 and 31.

34. On January 6, 2004, Respondent submitted a claim for payment to Patient M.L.'s dental insurance carrier, Gundersen Lutheran Health Plan, for placing the onlay on Patient M.L.'s tooth number 31, falsely stating that the service had been provided on January 5, 2004, instead of the actual date, December 10, 2003.

35. On January 12, 2004, Gundersen Lutheran Health Plan paid Respondent $590.01 in reliance on Respondent's January 6, 2004, claim stating the date of service of the onlay for Patient M.L.'s tooth number 31.

36. On December 30, 2004, Respondent treated Patient M.L., placing multi-surface onlays on teeth 2 and 5.

37. On January 4, 2005, Respondent submitted a claim for payment to Patient M.L.'s dental insurance carrier, Gundersen Lutheran Health Plan, for placing the onlay on Patient M.L.'s tooth number 5, falsely stating that the service had been provided on January 4, 2005, instead of the actual date, December 30, 2004.

38. On January 17, 2005, Gundersen Lutheran Health Plan paid Respondent $677.34 in reliance on Respondent's January 4, 2005, claim falsely stating the date of service of the onlay for Patient M.L.'s tooth number 5.

39. Patient M.L.'s dental insurance coverage year was January 1 through December 31.

40. By a letter dated June 22, 2006, from his attorney to Gundersen Lutheran Health Plan, Respondent admitted that Gundersen Lutheran Health Plan had paid him $590.01 for services that Respondent had billed as having been provided to Patient M.L. on January 5, 2004, when those services had actually been provided to Patient M.L. on December 10, 2003.

41. By a letter dated June 22, 2006, from his attorney to Gundersen Lutheran Health Plan, Respondent admitted that Gundersen Lutheran Health Plan had paid him $677.34 for services that Respondent had billed as having been provided to Patient M.L. on January 4, 2006, when those services had actually been provided to Patient M.L. on December 30, 2004.

42. Respondent offered to refund $633.67 of the $1,267.35 payment Gundersen Lutheran Health Plan had paid Respondent in reliance on Respondent's January 5, 2004, and January 4, 2005, false claims for services provided to Patient M.L.

43. On July 3, 2006, Gundersen Lutheran Health Plan sent a letter to Respondent's attorney, stating that the payments of Respondent's false claims for services on January 5, 2004, and January 4, 2005, for services provided to Patient M.L. had resulted in an overpayment of $1,000.08.

44. Patient S.R. is a male, born on March 20, 1945.

45. Patient S.R. had a regular dental examination and a periodontal examination and four bitewing radiographs at Respondent's clinic on December 29, 2004.

46. Respondent submitted a claim for payment to Patient S.R.'s dental insurance on December 29, 2003, stating that on December 29, 2003, he had provided periodontal treatment, scaling and root planning, of two quadrants of Patient S.R.'s dentition; a dental examination; four bitewing radiographs, and a three surface porcelain onlay on Patient S.R.'s tooth number 2.

47. Patient S.R. did not receive any dental services at Respondent's dental practice on December 30, 2004.

48. Respondent submitted a claim for payment to Patient S.R.'s dental insurance on December 30, 2004, stating that on December 30, 2004, he had provided periodontal treatment, scaling and root planning, of two quadrants of Patient S.R.'s dentition; and that he had extracted three teeth, numbers 1, 16, and 32.

49. On January 10, 2005, Patient S.R.'s dental insurance paid Respondent $472.00 for services Respondent claimed he provided to Patient S.R. on December 30, 2004.

50. On January 19, 2005, Respondent extracted Patient S.R.'s teeth number 1, 16, and 32.

51. On January 24, 2005, Patient S.R.'s dental insurance paid Respondent $860.00 for services Respondent claimed he provided to Patient S.R. on December 29, 2004.

52. Patient S.R. did not receive any dental services at Respondent's dental practice on February 23, 2005.

53. On February 23, 2oo5, Respondent submitted a claim to Patient S.R.'s dental insurance stating that on February 23, 2005, he had placed a five surface onlay on Patient S.R.'s tooth number 3, and that he had placed a three surface onlay on Patient S.R.'s tooth number 4, and that he had placed a one surface composite filling on Patient S.R.'s tooth number 5.

54. Patient S.R. retired on March 1, 2005, whereupon his dental insurance coverage ended.

55. On March 14, 2005, Patient S.R.'s dental insurance paid Respondent $1481.60 for work Respondent had not done on Patient S.R. on February 23, 2005, before Patient S.R. retired and his dental insurance coverage ended.

56. On March 29, 2005, Respondent placed a three surface onlay on Patient S.R.'s tooth number 2, doing work which he had falsely claimed to have done on December 29, 2004, and for which he had been paid on January 24, 2005.

57. On March 29, 2005, Respondent placed a five surface onlay on Patient S.R.'s tooth number 3, doing work which he had falsely claimed to have done on February 23, 2005, and for which Patient S.R.'s dental insurance had paid Respondent on March 14, 2005.

58. On March 29, 2005, Respondent placed a three surface onlay on Patient S.R.'s tooth number 4, doing work which he had falsely claimed to have done on February 23, 2005, and for which Patient S.R.'s dental insurance had paid Respondent on March 14, 2005.

59. On March 29, 2005, Respondent placed a one surface composite restoration on Patient S.R.'s tooth number 5, doing work which he had falsely claimed to have done on February 23, 2005, and for which Patient S.R.'s dental insurance had paid Respondent on March 14, 2005.

60. By falsely stating the dates of service and filing claims for work that had not been done, Respondent obtained $2,055.20 payment from Patient S.R.'s dental insurance for dental work that was performed after Patient S.R. was no longer covered by dental insurance.

61. By falsely stating the dates of service and filing claims in 2004 for work that had not been done in 2004, Respondent obtained $758.40 payment from Patient S.R.'s dental insurance for work that was performed in 2005.

62. Patient K.J. is a male, born on October 19, 1975.

63. Patient K. J. received no services of any description from Respondent on December 19, 2003.

64. Respondent submitted a claim to Patient K.J.'s dental insurance on December 19, 2003, stating that on December 19, 2003, he had extracted Patient K.J.'s teeth numbers 5 and 9, and that he had provided a temporary partial, and that Patient K.J. had had four quadrants of periodontal scaling and root planning.

65. On December 30, 2003, Patient K.J.'s dental insurance paid Respondent $782.30 for the services Respondent claimed to have provided to Patient K.J. on December 19, 2003.

66. At no time after December 19, 2003, did Patient K.J. receive from Respondent the services for which Respondent billed Patients K.J.'s dental insurance on December 19, 2003.

67. Respondent's chart for Patient K.J. includes false documentation of the provision of treatment to Patient K.J. on December 19, 2003, as if the treatment for which Respondent billed Patient K.J.'s dental insurance had actually been provided to Patient K.J.

68. Patient T.G. is a male, born on October 15, 1977.

69. In calendar year 2004 and calendar year 2005, Patient T.G. had dental insurance that provided a maximum annual benefit of $1,000.00 for dental work done during the calendar year.

70. On November 19, 2004, Respondent placed three surface onlays on Patient T.G.'s teeth number 29, 30, and 31.

71. On November 19, 2004, Respondent submitted a claim to Patient T.G.'s dental insurance, Gundersen Lutheran Health Plan, stating that he had placed a three surface onlay on Patient T.G.'s tooth number 29.

72. On November 29, 2004, Gundersen Lutheran Health Plan paid Respondent for the work he performed on Patient T.G. on November 19, 2004. That payment exhausted Patient T.G.'s dental insurance benefit for calendar year 2004.

73. On January 3, 2005, Respondent submitted a claim to Gundersen Lutheran Health Plan, stating that he had placed a three surface onlay on Patient T.G.'s teeth numbers 30 and 31 on January 3, 2005.

74. On January 17, 2003, Gundersen Lutheran Health Plan paid Respondent $1,000.00 for work Respondent claimed to have performed on Patient T.G. on January 3, 2005.

75. By a letter dated November 2, 2005, Respondent was informed he was under investigation by the Department of Regulation and Licensing, Division of Enforcement, for advertising as an orthodontist when he was not an orthodontist.

76. By a letter dated February 9, 2006, Respondent was informed there was a complaint filed against him at the Division of Enforcement, Department of Regulation and Licensing, for alleged billing irregularities.

77. On March 21, 2006, Respondent signed an application for a license to practice dentistry in the state of California, declaring that he had carefully read the questions in the license application, and that he had answered them truthfully, fully, and completely.

78. Respondent further certified, under penalty of perjury under the laws of the State of California and automatic forfeiture of his California dental license if one were issued that the information he provided to the Dental Board of California in his license application was true and correct to the best of his knowledge and belief.

79. Question 11 of the California dental license application Respondent signed reads "Are you currently the subject of any investigation by any governmental entity?"

80. Respondent answered question 11 of the California dental license application by checking the box labeled "No".

81. The DOE's investigation of Respondent's alleged advertising violation and the investigation of his alleged billing irregularities have never been closed.

82. Christine Vetsch worked for Dr. Elder at DD between January 1994 and December 9, 2005. Ms. Vetsch is currently the business manager at Yahnke Dental. Her last day of work for Dr. Elder was December 9, 2005 and she began work for Dr. Yahnke in January 2006.

83. While an employee at Downtown Dental Ms. Vetsch was the business coordinator. She performed posting of services for the patients, answered telephones, pulled charts, did billings, and scheduled appointments. As part of her job, Ms. Vetsch submitted claims to insurance companies for services provided to Downtown Dental patients.

84. As part of her job Ms. Vetsch attended treatment discussion visits with the respective dentist and patient to review treatment plans, financing, and insurance coverage for dental procedures to be scheduled. With respect to the several patients referenced in the Department's Complaint she made the call to the patients' insurance companies and documented the "insurance documentation call sheet" which indicates how much insurance benefit was available for the patient in a specific calendar year.

85. Downtown Dental made a no cost financing plan available to patients who did not have insurance, adequate insurance or who could not pay for treatment. Dr. Elder paid the interest on this financing plan.

86. Part of Ms. Vetsch's duties consisted of scheduling patients to have dental work completed during a particular insurance benefit year.

87. Ms. Vetsch earned a $5.00 bonus each time she scheduled an appointment for $500 or more of dentistry. These were referred to as "rock appointments."

88. During the years 2004 and 2005 Ms. Vetsch earned bonuses totaling $8,212 by scheduling patients to have $500 or more in dental work performed at Downtown Dental.

89. Sandra Linhardt, was a dental hygienist at Downtown Dental. Ms. Lindhardt told Ms. Vetch that Dr. Elder told her to bill insurance in two different years for work that was actually performed in one year.

90. Ms. Vetsch and Sandy Linhardt had 100 or more conversations concerning "inappropriate insurance billing" at Downtown Dental.

91. Leah Jorgensen is presently a dental hygienist at a dental office in Madison, Wisconsin. Ms. Jorgensen worked for Dr. Elder at the front desk at Downtown Dental from 1998 to 2000.

92. Leah Jorgensen was instructed to switch billing years on a crown preparation in order to maximize insurance benefits. Ms. Jorgensen also heard Dr. Elder tell other employees to bill in a similar manner for crown preparation.

93. Dr. Elder told Ms. Vetsch to bill insurance inappropriately and Ms. Jorgensen overheard this instruction.

94. On August 1, 1998 Jay Yahnke, DDS entered an employment agreement with Dr. Elder which included a "Non-Competition" provision which provided that Dr. Yahnke could not practice dentistry within thirty miles of Downtown Dental for two years after his employment terminated at Downtown Dental or Dr. Yahnke would have to pay Dr. Elder liquidated damages for all Downtown Dental patients who left that practice and became Dr. Yahnke's patients.

95. Jay Yahnke, DDS was an associate dentist employed by Dr. Elder at DD between 1998 and 2005.

96. Dr. Yahnke resigned from Dr. Elder's practice on December 7, 2005 and on December 8, 2008 he filed a Complaint for Declaratory Judgment seeking to have the Non-Competition provision of his employment contract nullified.

97. Dr. Yahnke's lawyers in that suit threatened Dr. Elder that if he did not "drop" the Non-Compete Agreement Dr. Yahnke would "create a paper trail," which "would be a big problem for Dr. Elder.

98. Dr. Yahnke filed an informal complaint with the Wisconsin Department of Regulation and Licensing on December 9, 2005 out of which the Department's formal Complaint against Dr. Elder in this matter arises.

99. As a result of Dr. Yahnke's Declaratory Judgment action, Dr. Elder agreed to cancel the Non-Compete Agreement.

100. In September or October 2005 Ms. Vetsch and her husband, who is a general building contractor, met with Dr. Yahnke at a building Dr. Yahnke intended to buy to start a new practice.

101. In August 2005 Kristine Vetsch and her husband met at their home with Dr. Yahnke to discuss plans for a building which would be Dr. Yahnke's new office. Mrs. Vetsch's husband eventually secured the contract to build Dr. Yahnke's new office.

102. Deb Range is currently a dental assistant at a dental office in Eagan, Minnesota. Prior to that job Deb Range was Dr. Elder's primary dental assistant for twenty-three years.

103. In her twenty-three years working for Dr. Elder as his primary assistant, Deb Range never overheard Dr. Elder ask or direct another employee to commit any fraudulent record keeping or to fraudulently bill any insurance company.

104. Ms. Range was aware Ms. Vetsch kept a Daily Operatory Schedule at the front desk with handwritten production totals.

105. After February 9, 2006 Dr. Elder never received any further information or any other inquiry from the DOE concerning 05-DEN-020, which is the matter concerning an alleged false yellow pages advertisement.

106. Pursuant to Wisconsin Administrative Code § RL 2.035, all informal complaints against license holders are screened by a screening panel, but not all informal complaints are opened for "investigation." (Wis. Admin. Code § RL 2.035.)

CONCLUSIONS OF LAW

1. The Dentistry Examining Board has jurisdiction in this matter pursuant to Wis. Stat. § 447.07.

2. Respondent instructed employees to change billing dates to obtain insurance payments, which constitutes repeated irregularities in billing and is unprofessional conduct within the meaning of Wis. Stat. § 447.07(3)(k)2.

3. Respondent made a false representation on his application for a license to practice dentistry in California, which constitutes unprofessional conduct within the meaning of Wis. Stat. § 447.07(3)(b).

The Board, having considered all information of record, including the oral arguments presented, orders the following:

ORDER

NOW, THEREFORE, IT IS ORDERED as follows:

1. The license of Jack Elder, D.D.S. to practice dentistry in the state of Wisconsin is hereby REVOKED. The Respondent shall not practice or attempt to practice dentistry in the state of Wisconsin without a valid license.

2. Jack Elder, D.D.S. shall not petition the Board for reinstatement of a license to practice dentistry in Wisconsin for a period of two years from the effective date of this Order. Any such petition filed during the two year period after the effective date of this Order shall not be considered or acted upon by the Board.

3. If, after a period of two years from the effective date of this Order, Jack Elder, D.D.S. petitions the Board for reinstatement, his application shall only be considered by the Board upon his meeting the following conditions:

   a. Filing an application as specified in Wis. Admin. Code § DE 2.01(1)(a);

   b. Paying the fee authorized by Wis. Stat. § 440.05(1) and Wis. Admin. Code § DE 2.01(1)(c);

   c. Providing evidence satisfactory to the Board both orally and in writing, as the Board deems necessary, that reinstatement to practice will not constitute a danger to the public or a patient. Such evidence shall include, but is not limited to:

      1. The successful completion of a dental ethics course at a provider approved by the Board; and

      2. A notarized affidavit that is prepared and signed by Jack Elder, D.D.S. attesting to and providing evidence indicating that he is sufficiently rehabilitated such that his reinstatement to practice will not constitute a danger to the public or a patient.

4. Jack Elder, D.D.S. shall pay the full costs of the investigation and prosecution of this disciplinary proceeding.

   a. The Division of Enforcement and the Division of Hearings and Appeals are directed to file their respective affidavits of costs in this matter with the Board office within 25 days for transmittal to Respondent's attorney.

   b. The Board shall consider any objections to the affidavits of costs at its regularly scheduled meeting next following submission of the affidavits to the Board office, and issue an Order fixing costs at that time.

5. All indicia of licensure shall be submitted to the Department Monitor within 15 days of the date of this Order by mailing or delivering the same to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 261-7904, Fax (608) 266-2264

6. This Order shall be effective on the date of its signing.

EXPLANATION OF VARIANCE

The Board declines to adopt the proposed discipline of the Administrative Law Judge. It is the conclusion of the Board that the proposed discipline by the Administrative Law Judge is not sufficient to protect the public from future harm or to provide deterrence for the future. There was clear and convincing evidence to demonstrate that Jack Elder, D.D.S. had knowledge of the fraudulent billing over a long period of time. There were a large number of events and evidence of repeated violations spanning several years. There is a significant risk to the public in the future. The Board's discipline as set forth in this Order is necessary to adequately provide for deterrence in the future and protect the public from future harm.

Dated this 23 day of September, 2011.

DENTISTRY EXAMINING BOARD

By: ON BEHALF OF:
Lyndsay Knoell, D.D.S., Chairperson