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Before The
State Of Wisconsin
Dentistry Examining Board

In the Matter of the Disciplinary Proceedings
Against **JAMES A. BORROR, D.D.S.**,
Respondent

FINAL DECISION AND ORDER

LS0911022 DEN

Division of Enforcement Case No. 08 DEN 1

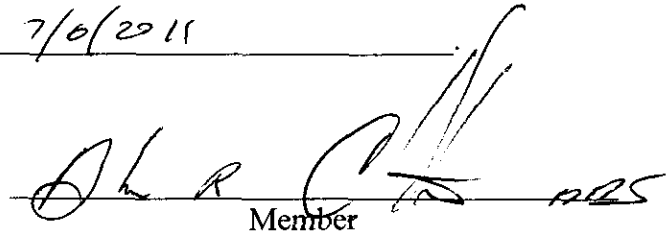
The State of Wisconsin, Dentistry Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, 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 at Madison, Wisconsin on 7/6/2011


Member

Dentistry Examining Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Disciplinary Proceedings
Against **JAMES A. BORROR, D.D.S.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-09-0111

Division of Enforcement Case Nos. 08 DEN 1

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

James A. Borrer	James Borrer
P.O. Box 1785	2676 Rockcrest Court
Wausau, WI 54402	West Palm Beach, FL 33415-8173
caneman@yahoo.com	

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

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Arthur Thexton
Department of Regulation
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Complaint in this matter was served on or about November 2, 2009. Paragraph 16 of this Complaint alleged that as a result of a severe injury he suffered to his right (dominant) wrist on November 12, 2007, and then again in April of 2008 (*see* Complaint paragraphs 12-15), Respondent Borrer is unable to practice dentistry with the requisite skill and safety to patients required of dentists. Respondent Borrer, by his attorney (James B. Connell) filed an Answer to this Complaint on or about November 23, 2009, denying that his above-referenced injuries have made him unable to practice dentistry, and affirmatively alleging that he is ambidextrous, and that the injuries to his right wrist were only temporary. The Division of Hearings and Appeals thereafter set a prehearing conference for February 3, 2010.

The Prehearing Conference Report from the above prehearing conference purports that Respondent Borrer's attorney and the attorney for the Division of Enforcement (Arthur Thexton) agreed to "work diligently to obtain the consent of the Marquette Dental School to evaluate Respondent Borrer's right hand."¹

Though the Marquette Dental School apparently consented to evaluate Respondent Borrer's right hand, and appointments for said evaluation were thereafter made for June 8, 2010, and July 13, 2010, Respondent Borrer cancelled both due to heart problems on behalf of his son.²

On September 8, 2010, in light of Respondent Borrer's failure to complete an evaluation of his right hand – and his additional failure to respond to repeated attempts of communication with him from both the Marquette Dental School and the Division³, the Division of Enforcement filed a motion requesting that Respondent Borrer "be ordered to submit to an examination [by a date certain] of his ability to perform certain of the physical acts of dentistry." A motion hearing was held on October 8, 2010, at which both parties were present. Administrative Law Judge David Braithwaite granted the Division's motion, and in his October 13, 2010, Order on the subject, commanded Respondent Borrer to submit to an examination by the Marquette Dental School by January 14, 2011, at his own expense.⁴ A telephone status conference was scheduled for January 21, 2011⁵, the purpose of which was to judge whether Respondent Borrer had completed his examination by the date ordered.

Respondent Borrer did not answer his telephone or otherwise make himself available when the undersigned ALJ called him for the January 24, 2011, telephone status conference.⁶ Moreover, he had not made any effort to schedule an evaluation of his hand with the Marquette Dental School since being ordered to on October 13, 2010, or to contact the Division of Enforcement or the administrative law judge. The conference was thus held without his participation. The Division of Enforcement made a verbal motion for partial default pursuant to Wis. Admin. Code § HA 1.07(3)(c)⁷ and RL 2.14⁸, which was followed by a written motion on

¹ According to the Prehearing Conference Report, "An appointment for such evaluation had been set earlier but the Respondent did not appear as evidentially he was ill."

² It appears that Respondent Borrer's son had heart surgery in June of 2010, and was in and out of the hospital from July through September, 2010.

³ Respondent Borrer's attorney voiced similar complaints about his client, and filed a Notice of Withdrawal on September 3, 2010. It was granted.

⁴ Respondent Borrer cited financial hardship and an inability to pay for this evaluation during the October 8, 2010, motion hearing. His position was found to be untenable.

⁵ The date of this status conference was changed to January 24, 2011, upon this case being reassigned to the undersigned administrative law judge.

⁶ It is the general practice of the undersigned administrative law judge to leave a message for the intended phone recipient at this point, requesting that he or she call the administrative law judge back at her direct line as soon as possible. Respondent Borrer failed to call the administrative law judge back.

⁷ Wis. Admin. Code § HA 1.07(3)(c) provides that "the administrative law judge may find a failure to appear [for a prehearing conference] grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division [of hearings and appeals] after it had been requested; (2) the failure to answer the telephone...; (3) the failure to free the [telephone] line for the proceeding; (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled."

⁸ Wis. Admin. Code § RL 2.14, **Default**, provides that when a respondent is in default, "the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence." HA 1.07(3) further

January 25, 2011. These motions requested that the tribunal issue an order striking that portion Respondent Borrer's Answer denying paragraph 16 of the Complaint (alleging that as a result of Respondent's injuries, he is unable to practice dentistry with the requisite skill and safety to patients), and ordering that Respondent Borrer not be permitted to offer any evidence concerning paragraph 16 at the hearing in this matter.

Based on the respondent's failure to have his right hand evaluated, as ordered, and his failure to appear at the status conference to determine whether he had, the administrative law judge granted the Division's motion for partial default and deemed paragraph 16 admitted. A contested case hearing with respect to the remaining allegations was scheduled for March 29, 2011.

On March 2, 2011, the Division of Enforcement requested a 90-day continuance of the contested case hearing, as the prosecutor assigned to this case (Arthur Thexton), had been unexpectedly hospitalized for an undetermined length of time. The administrative law judge granted the Division's continuance, and scheduled a prehearing conference for March 17, 2011, for the purpose of determining a new hearing date.

Though he had not responded to the Division's January 25, 2011, Motion for Partial Default, the administrative law judge's February 3, 2011, Notice of Partial Default, the Division's March 2, 2011, request for continuance, or the administrative law judge's March 7, 2011, Notice of Cancelled Hearing and Telephone Scheduling Conference, the administrative law judge was able to reach Respondent Borrer on his mobile phone for the March 17, 2011 prehearing conference. Respondent Borrer indicated that he had moved to Florida⁹, and had not received any filings in this case since doing so. The administrative law judge informed Respondent Borrer that due to his lack of involvement in this case, and his failure to have his hand evaluated by the date ordered by the previous administrative law judge, she had granted a motion for partial summary judgment which would preclude him from presenting any evidence at hearing that he was able to practice dentistry with the requisite skill and safety. Respondent Borrer indicated that while he recognized that he was supposed to have gotten his hand evaluated by January of 2011, he was still interested in defending his license. Nevertheless, he informed the administrative law judge that he planned on staying in Florida for quite some time, and did not want to have to return to Wisconsin for a hearing while he was there. Though the Division of Enforcement suggested that in light of the circumstances, this matter be resolved by dispositive motion and briefing – an option Respondent Borrer was open to – the administrative law judge determined that Respondent Borrer should first have the opportunity to review the filings he had not received on account of his move, and scheduled a status conference for April 7, 2010.

Despite the administrative law judge's efforts in resending all filings related to this case to Respondent Borrer to an address in Florida that he identified for her¹⁰, Respondent Borrer

provides that (b) "If a respondent fails to appear [at a hearing], the administrative law judge may take testimony and issue, modify or rescind an order – or take the allegations in an appeal as true as may be appropriate...." (Emphasis added).

⁹ Respondent Borrer did not notify either the Department of Regulation and Licensing or the administrative law judge of his move.

¹⁰ Said filings were also sent to Respondent at his most recent address on file with the Department of Regulations and Licensing; P.O. Box 1785, Wausau, WI, 54402.

once again did not answer the phone or call the administrative law judge back for the April, 7, 2011 status conference.¹¹ As such, the Division of Enforcement made a motion for default pursuant to Wis. Admin. Code § HA 1.07(3)(c), which the administrative law judge summarily granted.

This default decision follows.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Respondent James Alexander Borrer (dob 8/16/68) is and was at all times relevant to the facts set forth herein a dentist licensed in the state of Wisconsin pursuant to license #5552, first granted on 8/28/02. Respondent is a general dentist. His address of record is 1513 Lakeview Ave., Wausau, WI, 54401.

COUNT I

2. Respondent did, on 8/9/07, telephone a pharmacy in Wausau, WI, and purport to prescribe penicillin 500 mg, #28, and Roxicodone® 5mg #30, for T.J., a woman born in 1980. Respondent was informed by the pharmacist that Roxicodone® (an oxycodone product) is a Schedule II controlled substance, and could not be prescribed by telephone except in an emergency, in which case a written prescription must be subsequently provided. Respondent informed the pharmacist that he was concerned that T.J. could be pregnant, so he did not wish to use certain medications. Following further discussion, Respondent ordered a hydrocodone product, Vicodin ES®, #30, for T.J., instead of the oxycodone product. Vicodin ES® is a Schedule III controlled substance which may be ordered by telephone.

3. At the time, Respondent's only place of practice was Marathon Family Dentistry in Marathon, Wisconsin.

4. T.J. was, in fact, Respondent's live-in girlfriend, who did not have a dental chart at Marathon Family Dentistry.

5. In fact, T.J. had an allergy to penicillin.

6. On 8/10/07, Respondent was interviewed by Wausau Police Officer Paul Piskoty, and stated that he was not T.J.'s dentist, that T.J. refused to allow Respondent to look into her mouth, and that she had a dentist whose name he could not recall and whom he did not personally know. He further told the officer that the prescriptions were for an infected tooth, and that he had forgotten that T.J. was allergic to penicillin and had intended to prescribe amoxicillin for her.

7. Respondent had, on a previous occasion, also prescribed an antibiotic for T.J., for a bladder infection.

¹¹ In fact, the filings were returned as undeliverable.

COUNT II

8. Respondent has been convicted of operating a motor vehicle while intoxicated on two occasions, more recently in Marathon County Circuit Court on 7/29/08 (the offense having occurred on 6/18/08). He was previously convicted in Rock County Circuit Court of this offense, in 2004.

9. He has been diagnosed with alcohol dependence with alcohol blackouts.

COUNT III

10. Respondent suffered a severe cut to his right wrist on 11/12/07, which severed two tendons (the flexor carpi ulnaris and the Palmaris longus) and his median nerve, which were surgically repaired.

11. Respondent applied for social security disability in February, 2008.

12. Respondent re-injured his right wrist in April, 2008, when he “whacked in really hard on drywall,” resulting in numbness, pain, and loss of ability to flex or extend the wrist.”

13. Respondent is right-hand dominant.

14. As a result of his injuries, Respondent is presently unable to practice dentistry with the requisite care and safety to patients.¹²

DEFAULT

15. Respondent did not submit to an examination of his right hand by the Marquette Dental School by January 14, 2011, as ordered by the Division of Hearings and Appeals on October 13, 2010.

16. Respondent furthermore did not answer his telephone or otherwise make himself available when the undersigned ALJ called him for the January 24, 2011, prehearing conference to determine whether he had submitted to an evaluation of his right hand.

17. Respondent furthermore failed to respond to the Division’s January 25, 2011, Motion for Partial Default, the administrative law judge’s February 3, 2011, Notice of Partial Default, the Division’s March 2, 2011, Request for Continuance, and the administrative law judge’s March 7, 2011, Notice of Cancelled Hearing and Telephone Scheduling Conference.

18. Respondent furthermore did not inform the Department of Regulation and Licensing or the Division of Hearings and Appeals that he had moved to Florida.

19. Respondent furthermore did not answer his telephone, or otherwise make himself available for the April 7, 2011, status conference that was scheduled after the administrative law

¹² See February 3, 2011, Notice of Partial Default, discussed *supra*.

judge made contact with Respondent on March 17, 2011, and determined that he had a new address to which all filings in this matter were sent. Nor did Respondent reply to any of these filings, or April 8, 2011, Notice of Default. Indeed, all documents that were sent to Respondent at the address he provided to the administrative law judge on March 17, 2011, were returned as undeliverable. Regardless, the Notice for the April 7, 2011, status conference had been e-mailed to Respondent.

CONCLUSIONS OF LAW

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

2. Wis. Stat. § 440.03(1) provides that “the department [of Regulation and Licensing] may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings.” These rules are codified in Wis. Admin. Code Chapter RL. Where Ch. RL does not apply to the issues before an ALJ, the Division of Hearings and Appeals may apply rules contained in Wis. Admin. Code Chapter HA 1.¹³

3. Pursuant to Wis. Admin. Code § HA 1.07(3), “the ALJ may find a failure to appear [for a prehearing conference] grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) [t]he failure to provide a telephone number to the division [of hearings and appeals] after it had been requested; (2) the failure to answer the telephone...; (3) the failure to free the [telephone] line for the proceeding; (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.”

4. Respondent Borrer has defaulted in this proceeding pursuant Wis. Admin. Code § HA 1.07(3) by failing to answer the telephone for, or otherwise make himself available for two prehearing conferences, (January 24, 2011 and April 7, 2011), within 10 minutes of their commencements.

5. His failures to appear at these conferences are aggravated by the fact that he also failed to (1) comply with the Division of Hearings and Appeals October 13, 2010 Order to submit to a medical evaluation, and (2) respond to either the Divisions’ January 25, 2011, Motion for Partial Default or April 7, 2011, Motion for Default. *See Schneider v. Ruch*, 146 Wis.2d 701, 705-06, 431 N.W.2d 756, 758 (Wis. App., 1988).

6. Wis. Admin. Code § RL 2.14, **Default**, provides that when a respondent is in default, “the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence.” HA 1.07(3) further provides that (b) “If a respondent fails to appear [at a hearing], the ALJ may take testimony and issue, modify or rescind an order or take the allegations in an appeal as true as may be appropriate...” (Emphasis added).

¹³ Memorandum of Agreement between DRL and DHA.

7. By virtue of Respondent Berror's default, it is appropriate to deem the allegations of the Complaint admitted, and issue a decision based on the complaint and other evidence provided by the Division.

COUNT I

8. Pursuant to Wis. Stat. § 447.07(3)(a), the Dentistry Examining Board has the authority to "reprimand any dentist or dental hygienist who is licensed or certified under this chapter or deny, limit, suspend or revoke his or her license or certificate if it finds that the dentist or dental hygienist has... [e]ngaged in unprofessional conduct."

9. Pursuant to Wis. Stat. § 447.07(3)(h), the Dentistry Examining Board has the authority to "reprimand any dentist or dental hygienist who is licensed or certified under this chapter or deny, limit, suspend or revoke his or her license or certificate if it finds that the dentist or dental hygienist has... [e]ngaged in conduct that indicates a lack of knowledge of, an inability to apply or the negligent application of, principles or skills of dentistry or dental hygiene."

10. Pursuant to Wis. Stat. § 447.07(3)(L), the Dentistry Examining Board has the authority to "reprimand any dentist or dental hygienist who is licensed or certified under this chapter or deny, limit, suspend or revoke his or her license or certificate if it finds that the dentist or dental hygienist has... "[v]iolated ch. 450¹⁴ [Pharmacy Examining Board] or 961 [Uniform Controlled Substances Act]."

11. Wis. Admin. Code § DE 5.02(1) defines "unprofessional conduct," to include, "[e]ngaging in any practice which constitutes a substantial danger to the health, welfare or safety of a patient or the public."

12. Wis. Admin. Code § DE 5.02(3) further defines "unprofessional conduct," to include, "[p]racticing or attempting to practice beyond the scope of any license or certificate."

13. Wis. Admin. Code § DE 5.02(6) further defines "unprofessional conduct," to include, "[a]dministering, dispensing, prescribing, supplying or obtaining controlled substances as defined in s. 961.01 (4), Stats., other than in the course of legitimate practice, or as otherwise prohibited by law."

14. Wis. Admin. Code § DE 5.02(16) further defines "unprofessional conduct," to include, "[v]iolating any provision of ch. 447, Stats. (Dentistry Examining Board), or any valid rule of the board."

15. Wis. Admin. Code § DE 5.02(20), further defines "unprofessional conduct," to include "[v]iolating, or aiding or abetting the violation of any law [i.e. ch. 450] substantially related to the practice of dentistry or dental hygiene."

16. Respondent, by prescribing his live-in girlfriend, who was not a patient of his, prescriptions for Vicodin ES®, (a Schedule II narcotic), and antibiotics including penicillin

¹⁴ Wis. Stat. §450.11(7)(a) makes it illegal for any person to "...procure the administration of a prescription drug, by fraud, deceit or willful misrepresentation...; or by willful concealment of a material fact...."

(which she was allergic to), as described in paragraphs 2-7 of the Findings of Facts, has violated Wis. Stat. §§ 447.07(3)(a), (h), and (L), and Wis. Admin. Code §§ DE 5.02(1), (3), (16), and (20), and DE 11.10. He is thus subject to discipline pursuant to Wis. Stat. § 447.03.

COUNT II

17. In addition to the above, pursuant to Wis. Stat. § 447.07(3)(e), the Dentistry Examining Board has the authority to, “reprimand any dentist or dental hygienist who is licensed or certified under this chapter or deny, limit, suspend or revoke his or her license or certificate if it finds that the dentist or dental hygienist has... “[s]ubject to ss. 111.321, 111.322 and 111.335, been convicted of a crime, the circumstances of which substantially relate to the practice of dentistry or dental hygiene.”

18. Respondent, by having been convicted of driving while intoxicated on two occasions (2008 and 2004), and diagnosed with alcohol dependence with alcohol blackouts, as described in paragraphs 8-9 of the Findings of Fact, has violated Wis. Stat. §§ 447.07(3)(a) and (e), and Wis. Admin. Code §§ DE 5.02(1), (3), (16), and (20). He is thus subject to discipline pursuant to Wis. Stat. § 447.03.

COUNT III

19. In addition to the above, Wis. Admin. Code § DE 5.02(2) further defines “unprofessional conduct,” to include, “[p]racticing or attempting to practice when unable to do so with reasonable skill and safety to patients.”

20. Respondent, by severely injuring and reinjuring his right wrist (November 2007 and April 2008, respectively) to the extent that he is unable to practice dentistry with the requisite care and safety to patients, as described in paragraphs 10-14 of the Findings of Fact, has violated Wis. Stat. §§ 447.07(3)(a) and Wis. Admin. Code §§ DE 5.02(1), (2), and (16), and is thus subject to discipline pursuant to Wis. Stat. § 447.07(3).

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

By failing to participate in the proceedings against him, Respondent Borrer has conceded that all allegations contained within the Complaint are true. Wis. Admin. Code §§ 2.14 and HA 1.07(3). As such, it is undisputed that Respondent: (1) prescribed potent antibiotics and narcotics to someone who was not his patient, did not let him examine her; and was allergic to one of the antibiotics he prescribed; (2) was convicted of operating a motor vehicle while intoxicated on two occasions (2004 and 2008), and diagnosed with alcohol dependence with blackouts; and (3) severely injured and reinjured his right wrist (2007 and 2008) to the extent that he is unable to practice dentistry with the requisite care and safety to patients. Such conduct

clearly violates Wis. Stat. §§ 447.07(3)(a), (e)¹⁵, (h), and (L), and Wis. Admin. Code §§ DE 5.02(1), (3), (16), and (20).¹⁶ He is thus subject to discipline pursuant to Wis. Stat. § 447.03. (*See supra*). The only question that remains is what kind of discipline is appropriate.

Appropriate Discipline

As discipline for his violations, the Division of Enforcement requests that Respondent Borror's license be revoked. (Division's April 15, 2011 Written Recommendations for Discipline and Costs, p. 2). In support of this recommendation, the Division of Enforcement cites Respondent Borror's failure to comply with the Division of Hearings and Appeals October 13, 2010, Order to submit to an evaluation by the Marquette Dental School, and his further failure to cooperate with the Division of Enforcement and administrative law judge's telephone conferences. (*Id.*).

The Division of Enforcement additionally notes that:

Wis. Stat. § 447.07 provides that the Board may reinstate a revoked license on terms and conditions that it considers appropriate. In the event that Dr. Borror reapplies for licensure, this discipline will be on record, so the board will have the option of offering him a limited license at that time.

(*Id.*).

Though the Division's argument in support of its recommendation lacks substance, the undersigned ALJ ultimately agrees with the Division's recommendation and finds that Respondent Borror's conduct warrants the revocation of his license to practice dentistry until such time that he can show that he is physically and psychologically fit to practice.

The three purposes of discipline are to (1) to promote the rehabilitation of the licensee, (2) to protect the public from other instances of misconduct, and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Borror's assumed alcohol dependency and inability to safely practice due to a severe right wrist injury pose a significant risk of danger to the public he serves, for which rehabilitation is warranted. His inability to participate in these proceedings despite numerous opportunities to do so only strengthens these concerns – and shows that he does not value the rules that govern his practice. Revoking Respondent's license until he can prove that he can safely and reliably practice is thus not only logical, but necessary in light of the above-stated purposes of discipline. In addition to protecting the public, such discipline will further work to deter other licensees from thumbing their noses at the rules that govern safe practice.

¹⁵ Though the Division provides no argument as to *how* operating a motor vehicle while intoxicated is substantially related to the practice of dentistry, devoid of any argument from the respondent, the administrative law judge will accept that it is.

¹⁶ The Complaint further alleged violations of Wis. Stat. § 447.03(g) and DE 5.02(4) (practice of dentistry while impaired). The evidence, as alleged in the complaint, does not support these violations.

Costs

The Division of Enforcement requests that Respondent Borrer be ordered to pay the full costs of its investigation and of these proceedings. (See Motion for Discipline and Costs, ¶ 14).

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent Borrer should be assessed the full amount of recoverable costs. His alleged conduct is of a serious nature, he did not cooperate in the proceedings against him, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Borrer on Respondent Borrer, and not fellow members of the dentistry profession who have not engaged in such conduct. Payment of assessed costs will be necessary before Respondent's license can be reinstated pursuant to Wis. Stat. § 447.07. If the

Board assesses costs against Respondent Borrer, these amount of costs will be determined pursuant Wis. Admin. Code § RL 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent James A. Borrer to practice dentistry in the State of Wisconsin be and is hereby **REVOKED**.

Pursuant to Wis. Stat. 447.07, the board in its discretion may reinstate a license or certificate that has been voluntarily surrendered or revoked on terms and conditions that it considers appropriate. Any reinstatement by the board must address whether Respondent has presented proof that he is both physically and psychologically sound to practice, and, if so, in what settings.

IT IS FURTHER ORDERED that Respondent Borrer shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established 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 James A. Borrer.

Dated at Madison, Wisconsin on May 31, 2011.

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: _____

Amanda Tollefsen
Administrative Law Judge