

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
STEPHEN SCHWALBACH, D.D.S.,	:	
RESPONDENT.	:	<b>0002736</b>

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Division of Legal Services and Compliance Case No. 12 DEN 122

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

Stephen Schwalbach, D.D.S.  
650 S. Main Street  
River Falls, WI 54022

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

Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Dentistry Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Stephen Schwalbach, D.D.S., (dob September 23, 1946), is licensed in the State of Wisconsin to practice dentistry, having license number 5001126-15, first issued on July 11, 1972, with registration current through September 30, 2015. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 650 S. Main Street, River Falls, WI 54022.

2. On January 31, 2011, Respondent performed an initial evaluation on Patient A to discuss the problem with her central incisors which were retruded, making her lateral incisors appear flared. Patient A had significant crowding of her lower incisors and very constricted maxillary and mandibular arches. Respondent noted that the roots on teeth # 7 and # 10 were

shorter than normal. Respondent and Patient A discussed treatment for an ALF (Advanced Light wire Functional) appliance at a cost of \$1500, with possible need for brackets for both arches with an additional cost. Respondent did not provide a written proposal of a treatment plan or a financial agreement.

3. During a periodic oral hygiene prophylaxis on August 1, 2011, Patient A stated that her central incisors had moved more lingually and her front teeth felt sore in the morning. Patient A also stated that since her last fluoride treatment her posterior teeth were very sensitive.

4. On October 24, 2011, Patient A presented to Respondent for an orthodontic work-up including study models, photographic images, and a cephalometric film.

5. On November 14, 2011, Respondent orally provided a treatment proposal to Patient A, based on the orthodontic work-up. Patient A understood that the treatment proposal involved one essential phase, and a second optional phase thereafter. Respondent did not provide Patient A with a written description of the treatment proposal.

6. Patient A understood that Phase I involved placement of an appliance to develop the maxilla without affecting the position of the lateral incisors and treatment to correct the lower anterior crowding. This treatment would include Omega Loops on the inside of her teeth and all pre and post-appliance work (retainers).

7. Patient A understood that the optional Phase II would include placement of brackets on the upper arch, and retainers for both arches. Respondent asserts that he made clear that Phase II was as essential as Phase I to the treatment proposal.

8. From January 2012 through June 2012, Patient A participated in Phase I of the treatment. In June 2012, Respondent informed Patient A that Phase II of the treatment plan would be necessary to achieve the cosmetic results she sought. Patient A states that she was upset due to surprise that Respondent considered the placement of brackets and the use of retainers to be necessary to the treatment plan.

9. In July 2012, despite her surprise and upset about the lack of clear communication of the treatment plan, Patient A allowed Respondent to place brackets on both arches.

10. On October 1, 2012, Patient A told Respondent that teeth # 7 and # 10 were sore and sensitive.

11. On October 22, 2012, based on another orthodontist's opinion, Patient A asked Respondent to remove the brackets.

12. On October 29, 2012, Respondent removed the upper and lower brackets, and Patient A ended treatment with Respondent.

13. In November 2011, Respondent knew that Patient A had had orthodontic treatment as a teenager, and Respondent knew that Patient A's teeth # 7 and # 10 had abnormally shortened roots.

14. Iatrogenic shortening of the roots of teeth is a recognized complication of orthodontic treatment.

15. It is below the minimally acceptable standard of practice of dentistry to attempt orthodontic movement of teeth with abnormally short roots without clearly informing the patient that doing so will almost certainly result in the premature loss of those teeth, and the necessity for prosthetic replacements, with unavoidable financial costs and at least temporary cosmetic consequences.

16. Respondent failed to identify and failed to disclose the contra-indications of his treatment proposal to Patient A.

17. Respondent failed to keep adequate records for the proposal for treatments including any possible issues resulting from such treatment, treatment plans or financial agreement.

18. Respondent neither admits nor denies any allegation, but agrees not to contest the findings and conclusions as stated in this resolution. Respondent therefore agrees to this negotiated resolution.

#### CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 447.07(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent Stephen Schwalbach, D.D.S., engaged in unprofessional conduct pursuant to Wis. Admin. Code § DE 5.02(5) by practicing in a manner which substantially departs from the standard of care ordinarily exercised by a dentist which harms or could have harmed a patient.

3. As a result of the above conduct, Stephen Schwalbach, D.D.S., is subject to discipline pursuant to Wis. Stat. § 447.07(3).

#### ORDER

1. The attached Stipulation is accepted.

2. Respondent Stephen Schwalbach, D.D.S., is REPRIMANDED.

3. The license to practice dentistry issued to Stephen Schwalbach, D.D.S., (license number 5001126-15) is LIMITED as follows:

a. Within nine (9) months of the date of this Order, Respondent shall successfully complete: eight (8) hours of education on the topic of diagnosis; eight (8) hours of education on the topic of treatment planning, specifically including contra-indications to treatment; eight (8) hours of education on the topic of risk management for clinical practice of

dentistry; and four (4) hours in the topic of dental documentation. These courses must be in-person and not on-line courses.

b. Respondent shall be responsible for obtaining the course(s) required under this Order, for providing adequate course(s) descriptions to the Department Monitor, and for obtaining pre-approval of the course(s) from the Wisconsin Dentistry Examining Board, or its designee, prior to commencement of the course(s).

c. The Board or its designee may reject any course(s) and may accept a course(s) for less than the number of hours for which Respondent seeks approval. Any decision under this subsection is not reviewable.

d. Within thirty (30) days of completion of each educational component, Respondent shall file an affidavit with the Department Monitor stating under oath that he has attended, in its entirety, the course(s) approved for satisfaction of this requirement along with supporting documentation of attendance from the sponsoring organizations.

e. Respondent is responsible for all costs associated with compliance with this educational requirement.

f. None of the education completed pursuant to this requirement may be used to satisfy any other continuing education requirements that have been or may be instituted by the Board or Department.

4. Within 90 days from the date of this Order, Stephen Schwalbach, D.D.S., shall pay COSTS of this matter in the amount of \$508.00.

5. Proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent by Respondent to the Department Monitor at the address below:

Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

6. 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 timely submit payment of costs as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 5001126-15) may, in the discretion of the Board or its designee, be SUSPENDED,

without further notice or hearing, until Respondent has complied with payment of the costs and completion of the education.

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

WISCONSIN DENTISTRY EXAMINING BOARD

by:

A handwritten signature in black ink, appearing to be "R. L. M.", written over a horizontal line.

A Member of the Board

11/6/13

Date

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

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IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

STEPHEN SCHWALBACH, D.D.S.,  
RESPONDENT.

:  
:  
:  
:  
:

STIPULATION

**0002736**

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Division of Legal Services and Compliance Case No. 12 DEN 122

Respondent Stephen Schwalbach, D.D.S., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and is represented by W. Patrick Sullivan in this matter.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Dentistry Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.


5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

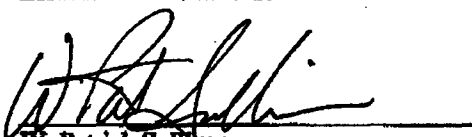
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

  
Stephen Schwalbach, D.D.S., Respondent  
650 S. Main Street  
River Falls, WI 54022  
License no. 5001126-15

OCT 16, 2013  
Date

  
W. Patrick Sullivan  
Siesennop & Sullivan  
200 N. Jefferson Street, Suite 200  
Milwaukee, WI 53202-5900  
Attorney for Respondent

10/16/13  
Date

  
James E. Polewski, Attorney  
Division of Legal Services and Compliance  
P.O. Box 8935  
Madison, WI 53708-8935

OCT 15, 2013  
Date