

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



### Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

#### Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscga>

- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DSPS website:** An individual who believes that information on the website is inaccurate may contact [DSPS@wisconsin.gov](mailto:DSPS@wisconsin.gov)



Before The  
State Of Wisconsin  
DENTISTRY EXAMINING BOARD

0003297

In the Matter of the Disciplinary Proceedings  
Against **DENNIS A. BUTLER, D.D.S.**,  
Respondent

FINAL DECISION ~~AND ORDER~~  
Order No. 0003297

**Division of Legal Services and Compliance Case No. 13 DEN 027**

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 the 9 day of July, 2014.

Member  
Dentistry Examining Board



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

0003297

In the Matter of the Disciplinary Proceedings  
Against **DENNIS A. BUTLER, D.D.S.**,  
Respondent

PROPOSED DECISION AND ORDER  
DHA Case No. SPS-13-0043

**Division of Legal Services and Compliance Case No. 13 DEN 027**

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

Dennis A. Butler, D.D.S.  
5525 Fleming Road  
Fowlerville, MI 48836

Wisconsin Dentistry Examining Board  
P.O. Box 8366  
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and  
Compliance, by

Attorney James E. Polewski  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P. O. Box 7190  
Madison, WI 53707-7190

**PROCEDURAL HISTORY**

On February 26, 2014, the undersigned administrative law judge (ALJ) issued an Order granting summary judgment to the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), on the issue of whether the violation alleged by the Division occurred. That Order is attached to this decision and incorporated by reference herein. The Order concluded that Respondent Dennis A. Butler violated Wis. Stat. § 447.07(3)(b) by providing false information on his application for Wisconsin licensure. The Order denied summary judgment with respect to the issues of discipline and costs, and a hearing was held on those issues on March 12, 2014, at which counsel for the Division appeared in person and Dr. Butler appeared by phone.

Additional procedural history is contained in the attached Summary Judgment Order.

### **FINDINGS OF FACT**

The undisputed material facts related to the violations in this matter are contained in the attached February 26, 2014 Summary Judgment Order.

### **DISCUSSION AND CONCLUSIONS OF LAW**

#### **Violation**

As explained and established in the attached Summary Judgment Order, Dr. Butler violated Wis. Stat. § 447.07(3) by making a false statement on his application for Wisconsin licensure. In his application for Wisconsin licensure, Dr. Butler checked “no” in response to Question 4, which asked, “Is disciplinary action pending against you in any jurisdiction?” At the time Dr. Butler checked “no,” disciplinary action was pending against him in Michigan.

#### **Discipline**

The three purposes of discipline are: (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, 237 N.W.2d 689 (1976).

The Division requests that Dr. Butler’s license to practice dentistry be revoked. Under the circumstances of this case and the factors set forth in *Aldrich*, revocation is warranted.

Wisconsin’s licensing scheme requires a minimum level of honesty from license applicants. Dishonesty from those seeking a license undermines the capacity of the regulatory authority to regulate the profession for the protection of public health, safety and welfare. An applicant whose application fraudulently conceals disciplinary proceedings in another jurisdiction is an obvious risk to the Board’s ability to protect the public from dishonest and incompetent licensees.

Revocation places Dr. Butler and the Board back into the positions each occupied before the Board granted the license on the basis of Dr. Butler’s falsified application. At the same time, revocation is not necessarily a permanent bar to a future license, but only terminates a license previously granted based on false information. Dr. Butler may file a new application for a license in Wisconsin at any time following revocation of the license he currently holds under Wis. Stat. § 447.07(5) and the Board will be able to consider all of the information, including the prior professional discipline in Michigan, in determining whether the license should be granted.

Dr. Butler’s stated views on his conduct demonstrate that he is in need of rehabilitation as he still does not appear to understand the seriousness of his conduct. At hearing, he suggested he misinterpreted the question on the application but when the ALJ read the application question at issue to Dr. Butler and asked him how he interpreted it, Dr. Butler merely launched into a discussion about why Michigan was incorrect in seeking to discipline him. (Hrg. Tr., pp. 18-20) In his Answer to the Complaint and at hearing, Dr. Butler also suggested that because the

voluminous documents he submitted with his application contained a reference to the disciplinary proceedings pending against him in Michigan, he was somehow absolved of answering falsely. He further suggested that the problem rested with the Board, in trusting without verifying, rather than resting with him to answer a straight-forward question in a straight-forward manner. (Hrg. Tr., p. 22) Dr. Butler's conduct, which includes signing an affidavit which states that the answers set forth on the application are "all strictly true in every respect," demonstrates that revocation of his license will best serve his rehabilitative needs and will also best protect the public and deter others from falsifying information on license applications.

### **Costs**

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors to consider include: (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 prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI).

I conclude that the Department's request for full assessment of costs against Dr. Butler is warranted. The Department has proved the count alleged and has sought and obtained a very high level of discipline, license revocation. As stated above, Dr. Butler's conduct was serious, and although he participated to some extent in these disciplinary proceedings, his cooperation was minimal, as set forth in the procedural section of the Summary Judgment Order. In fact, Dr. Butler did not even file a response to the Division's motion for summary judgment, even after being given an extension, over the Division's objection, in which to do so. Also, as explained in more detail in the attached Summary Judgment Order, Dr. Butler has previously been disciplined by the Michigan Board. Finally, it would be unfair to impose the costs of this proceeding on members of Dr. Butler's profession who have not engaged in such misconduct.

### **ORDER**

For the reasons set forth above, IT IS ORDERED that:

1. Dr. Butler's license to practice dentistry is revoked.
2. Dr. Butler shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

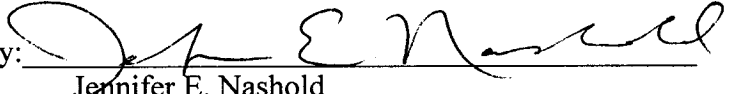
**Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190**

3. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on April 14, 2014.

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: \_\_\_\_\_

  
Jennifer E. Nashold

Administrative Law Judge



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

0003297

In the Matter of the Disciplinary Proceedings  
Against **DENNIS A. BUTLER, D.D.S.**,  
Respondent

SUMMARY JUDGMENT ORDER  
DHA Case No. SPS-13-0043

**Division of Legal Services and Compliance Case No. 13 DEN 027**

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

Dennis A. Butler, D.D.S.  
5525 Fleming Road  
Fowlerville, MI 48836

Department of Safety and Professional Services, Division of Legal Services and  
Compliance, by

Attorney James E. Polewski  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P. O. Box 7190  
Madison, WI 53707-71905

**PROCEDURAL HISTORY**

The above-captioned matter is before this tribunal on a motion for summary judgment filed by the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division) on November 1, 2013. A hearing in this matter is scheduled for March 12, 2014. Following the withdrawal of Dr. Butler's counsel in this matter, on November 27, 2013, Dr. Butler requested that his case be postponed by ninety days so that he could obtain new counsel. Over the Division's objection, the undersigned administrative law judge (ALJ) granted Dr. Butler's request in part, and on December 3, 2013, issued an Amended Scheduling and Briefing Order which extended the deadline for Dr. Butler to file his response to the Division's motion for summary judgment by sixty days to February 3, 2014, and extending the deadline for Dr. Butler to file his witness and exhibits lists and his exhibits by forty-five days, to January 27, 2014.

Dr. Butler did not file a response to the Division's motion for summary judgment by the December 3, 2013 deadline, nor did he file a witness or exhibit list or any exhibits. On February

7, 2014, the Division filed a letter with the ALJ noting Dr. Butler's failure to comply with the deadlines imposed and requesting that summary judgment be granted to the Division.

On February 24, 2014, Dr. Butler filed a letter with the ALJ stating, in full: "Regarding the matter before you affecting my ability to practice dentistry in the state of Wisconsin[,] I am not a lawyer but I request that I may represent myself before your court?" Because it did not appear that Dr. Butler had provided a copy of his correspondence to the Division's attorney as required by law, on February 24, 2014, the ALJ emailed Dr. Butler's letter to the Division's attorney, and informed the attorney that if, after reviewing Dr. Butler's letter, he wished to withdraw his motion for summary judgment and go to hearing on March 12, 2014 as currently scheduled, his summary judgment documents could be accepted as his post-hearing brief. Counsel for the Division responded by email the same day, February 24, 2013, copying Dr. Butler on both his response and the ALJ's original email,<sup>1</sup> again requesting that summary judgment be granted in the Division's favor.

### **UNDISPUTED MATERIAL FACTS**

1. Respondent Dennis A. Butler, D.D.S. (DOB September 11, 1946) is licensed in the State of Wisconsin as a dentist, having license number 7009-15, first granted on December 12, 2012, and current through September 30, 2015. Dr. Butler's most recent address on file with the Wisconsin Department of Safety and Professional Services is 5525 Fleming Road, Fowlerville, Michigan 48836. (Complaint, ¶¶ 1 and 2; Answer, ¶¶ 1 and 2; Ex. B to Muche affidavit, p. 19)

2. Dr. Butler was previously or is currently licensed to practice dentistry in the State of Michigan. (Complaint ¶ 3; Answer, ¶ 3)

3. Dr. Butler testified in his own defense at a disciplinary hearing convened in Michigan on August 14, 2012, on a complaint charging him with eight counts of unprofessional conduct. (Complaint, ¶ 4; Answer, ¶ 4)

4. On October 4, 2012, an Administrative Law Judge for the Michigan Administrative Hearing System issued a Proposal for Decision recommending that the Board of Dentistry for the State of Michigan take appropriate action on her findings of fact and conclusions of law, concluding that Dr. Butler had violated several sections of the Michigan regulations governing the practice of dentistry. (Complaint, ¶ 5; Answer, ¶ 5; Ex. A to Muche affidavit, pp. 5-22)

5. On October 19, 2012, Dr. Butler filed his Exceptions to Proposal for Decision with the Michigan Board of Dentistry. (Ex. A to Muche affidavit, p. 2)

6. On or about November 9, 2012, Dr. Butler applied for a license to practice dentistry in the State of Wisconsin. (Complaint, ¶ 6; Answer, ¶ 6)

---

<sup>1</sup> Given the March 12, 2014 hearing date, in the interests of time, the ALJ emailed counsel for the Division. At the time of the email, the ALJ did not have an email address for Dr. Butler, and instead intended to inform him of the communications in a follow-up telephone status conference or written communication.



7. Question 4 of the Wisconsin application for a license to practice dentistry reads, "Is disciplinary action pending against you in any jurisdiction? If yes, attach a sheet providing details about pending action, including the name of the agency and status of action." (Complaint, ¶ 7; Answer, ¶ 7; Ex. B to Muche affidavit, p. 24)

8. Dr. Butler answered Question 4 "no" and attached to his application numerous pages of documentation, one page of which indicated that there were open formal complaints against him in Michigan. (Complaint, ¶ 8; Answer, ¶ 8; Ex. B to Muche Affidavit, pp. 24, 40)

9. The Wisconsin application for a license to practice dentistry which Dr. Butler signed contains an Affidavit of Applicant which requires the applicant to swear under oath that "all answers set forth" are "strictly true in every respect" and that "failure to provide requested information" or "making any materially false statement" may result in "denial, revocation, suspension or limitation" of the applicant's licensing credential. Dr. Butler signed the affidavit before a notary public on October 22, 2012, thereby swearing that his answer to Question 4 was true. (Ex. B to Muche Affidavit, p. 61)

10. On December 12, 2012, the Wisconsin Dentistry Examining Board (Board) granted Dr. Butler's application for a license to practice dentistry in Wisconsin. (Complaint, ¶ 9; Answer, ¶ 9)

11. On December 18, 2012, the Michigan Board of Dentistry issued an order suspending Dr. Butler's license to practice dentistry in Michigan for an indefinite period of not less than six months and one day. The Michigan Board of Dentistry explicitly notified Dr. Butler that reinstatement of his license after a suspension of more than six months is not automatic, and that if Dr. Butler applies for reinstatement of the license, he must supply clear and convincing evidence that he is of good moral character, is able to practice the profession with reasonable skill and safety, that it is in the public interest for him to resume the practice of dentistry and that he has met applicable guidelines on reinstatement. (Complaint, ¶ 10; Answer, ¶ 10; Ex. A to Muche Affidavit, pp. 1-4)

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **Standards Governing Summary Judgment**

"The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge." Wis. Admin. Code § HA 1.10(2).

Pursuant to Wis. Stat. § 802.08, summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). "When a motion for summary judgment is made and supported as provided in this section [§ 802.08], an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party's response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there

is a genuine issue for trial.” Wis. Stat. § 802.08(3). “If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party.” *Id.*

“A motion for summary judgment may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material.” *Tews v. NHI, LLC*, 2010 WI 137, ¶ 49, 330 Wis. 2d 389, 793 N.W.2d 860 (citation omitted). On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 2007 WI 91, ¶ 7, 302 Wis. 2d 564, 734 N.W.2d 394.

#### **Violation of Wis. Stat. § 447.07(3)(b)**

Wisconsin Stat. § 447.07(3)(b) provides that the Board may reprimand any dentist who is licensed under Chapter 447 of the Wisconsin Statutes or may “deny, limit, suspend or revoke his or her license” if the Board finds that the dentist has “(m)ade any false statement or given any false information in connection with an application for a license . . . or received a license or certificate through error.”

It is undisputed that on his application for Wisconsin licensure, Dr. Butler checked “no” in response to Question 4, which asked, “Is disciplinary action pending against you in any jurisdiction?” It is also undisputed that disciplinary action in Michigan was pending against Dr. Butler at the time he checked “no.” In his Answer to the Complaint, Dr. Butler admitted that he checked “no,” but suggested that because the documents he submitted with his application showed that he had disciplinary proceedings pending against him in Michigan, he was somehow absolved of answering falsely. Notably, Dr. Butler failed to advance this theory in any way by submitting a response to the Division’s motion for summary judgment. Thus, he appears to have abandoned this argument.

However, even if such an argument had been advanced in these proceedings, that argument would be unpersuasive as the undisputed facts nonetheless show that Dr. Butler violated Wis. Stat. § 447.07(3)(b) by providing false information on his application. Dr. Butler’s false answer to the question posed is not negated by the fact that buried within the ream of documents he submitted with his application is a brief reference to formal complaints pending in Michigan. This is particularly true given the fact that Question 4 also states that if the answer is yes, the applicant is required to “attach a sheet providing details about pending action, including the name of the agency and status of action,” and Dr. Butler failed to provide any details about the pending action.

In view of the foregoing, the undisputed material facts demonstrate that Dr. Butler violated Wis. Stat. § 447.07(3) by making a false statement on his application for Wisconsin licensure. As a result, the Division is entitled to summary judgment as a matter of law.

#### **Discipline and Costs**

The Division requests that Dr. Butler’s license to practice dentistry be revoked and that the full costs of these proceedings be imposed upon Dr. Butler.

The three purposes of discipline are: (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, 237 N.W.2d 689 (1976).

With respect to imposition of costs, factors to consider include: (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 prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. See *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI).

The Division has failed to apply the standards of summary judgment to the issues of discipline and costs and has not provided any authority suggesting that summary judgment is appropriate for such discretionary determinations.

In light of the discretionary nature of determining both discipline and costs, the exercise of which entails consideration of a wide variety of factors, and in view of the fact that these issues have not been briefed within the framework of summary judgment standards, I cannot conclude that imposition of a particular discipline or percentage of costs is required as a matter of law under Wis. Stat. § 802.08. Therefore, the issues of discipline and costs will be heard at the hearing currently scheduled for March 12, 2014.

If Dr. Butler wishes to appear by telephone rather than in person for the hearing, he must inform the ALJ and opposing counsel no later than March 7, 2014 and provide a telephone number at which he may be reached for the hearing. If, in lieu of, or in addition to, oral argument on this issues of discipline and costs counsel for the Division wishes to submit its previously filed summary judgment arguments at the hearing on March 12, 2014, the ALJ will accept such filings as the Division's hearing brief.

### **ORDER**

For the reasons set forth above, IT IS ORDERED that:

1. Summary judgment is granted in favor of the Division with respect to whether Dr. Butler violated Wis. Stat. § 447.07(3)(b) by providing false information on his application for Wisconsin licensure.
2. Summary judgment is denied with respect to the issues of discipline and costs.
3. The hearing scheduled for March 12, 2014 will take place as set forth in the October 21, 2014 Notice of Hearing and Scheduling Order; however, the hearing will only be on the issues of discipline and costs and not on the issue of whether Dr. Butler violated Wis. Stat. § 447.07(3)(b).

4. If Dr. Butler wishes to appear by telephone rather than in person at the March 12, 2014 hearing, he must so inform the ALJ and opposing counsel no later than March 7, 2014 and provide a telephone number at which he may be reached for the hearing.

Dated at Madison, Wisconsin on February 26, 2013. <sup>4</sup>

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: 

Jennifer E. Nashold  
Administrative Law Judge