

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before the  
State Of Wisconsin

WISCONSIN DENTISTRY EXAMINING BOARD

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In the Matter of the Disciplinary Proceedings  
Against Allen W. Knox, D.D.S., Respondent

FINAL DECISION AND ORDER

Order No. 0003960

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**Division of Legal Services and Compliance Case No. 14 DEN 035**

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 6 day of MAY, 2015.

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Member



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

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In the Matter of the Disciplinary Proceedings  
Against Allen W. Knox, D.D.S., Respondent

DHA Case No. SPS-14-0061  
DLSC Case No. 14 DEN 035

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**PROPOSED DECISION AND ORDER**

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

Attorney Travis Richardson  
Richardson & Mackoff, Ltd.  
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Chicago, IL 60604

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

These proceedings were initiated on August 11, 2014, when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), served a Notice of Hearing and Complaint on Respondent Allen W. Knox, D.D.S. (Respondent). The Complaint alleged two violations: (1) that Respondent engaged in unprofessional conduct pursuant to Wis. Stat. § 447.07(3)(b) by submitting a false answer and affidavit on his Wisconsin license application with respect to whether disciplinary action was pending against him in another jurisdiction; and (2) that Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § DE 5.02(14) by having his license to practice dentistry in Illinois revoked.

Following a telephone prehearing conference on September 15, 2014, a hearing was held on November 10, 2014 at which counsel appeared for the parties and Respondent testified on his own behalf. During the hearing, Respondent's counsel informed the administrative law judge

(ALJ) that the Illinois license revocation was on review in Illinois circuit court, with a hearing and briefing to be concluded in February 2015 and a decision expected within a few weeks of the hearing. Respondent's counsel requested that a decision in this matter be postponed until the Illinois court proceedings had concluded. Respondent's counsel informed the ALJ that he would provide the ALJ with the precise briefing and argument schedule in Illinois upon his return to the office. Respondent failed to do so, even after the ALJ sent a reminder to him by email on December 18, 2014.

Nevertheless, by Order dated December 22, 2014, the ALJ granted Respondent's motion to stay a decision in these proceedings and scheduled a telephone status conference for February 26, 2015. Following the order granting the stay, Respondent's counsel sent an email to the ALJ (which the ALJ forwarded to the Division) on December 28, 2014, indicating that arguments in the Illinois matter were set for February 9, 2015. The scheduled telephone status conference was held on February 26, 2015. Respondent's counsel failed to appear and the Division requested that a proposed decision be issued forthwith.

### FINDINGS OF FACT

1. Respondent Allen W. Knox, D.D.S., was born on March 15, 1950, and is licensed in the State of Wisconsin to practice dentistry, having license number 7189-15, first granted on December 3, 2014, and current through September 30, 2015. (Complaint, ¶ 1; Answer ¶ 1)

2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 8120C S. Prairie Street, Chicago, Illinois 60619. (Complaint, ¶ 2; Answer, ¶ 2)

3. On October 15, 2013, Respondent applied for a license to practice dentistry in Wisconsin. (Complaint, ¶ 3; Answer, ¶3; Ex. 1)

4. Question 4 on the Wisconsin application for a dentistry license asks, "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, ¶ 4; Answer ¶ 4; Ex. 1, p. 10)

5. Respondent answered "no" to Question 4. He repeated that answer on his online application. (Complaint, ¶ 5; Answer, ¶5, Ex. 1, pp. 10, 59)

6. Directly preceding Question 4 is Question 3, which asks, "Has any licensing or other credentialing agency ever taken any disciplinary action against you, including but not limited to, any warning, reprimand, suspension, probation, limitation, revocation? If yes, attach a sheet providing details about the action, including the name of the credentialing agency and date of action." Respondent answered "no" to Question 3. (Ex. 1, pp. 10, 59)

7. Respondent attached an affidavit to his application which declares that "all answers set forth [on his application] are each and all strictly true in every respect." Respondent's affidavit was sworn and notarized on October 13, 2013. (Complaint, ¶ 6; Answer, ¶ 6; Ex. 1, p. 12)

8. Respondent's answer to Question 4 on his Wisconsin application and his affidavit were false because at the time he submitted his application, disciplinary proceedings were pending against his license in Illinois. (Exs. 1, 2)

9. On March 3, 2012, the Illinois Department of Financial and Professional Regulation (Illinois Department) commenced a disciplinary proceeding against Respondent. On June 11, 2012, Respondent's attorney appeared at a status hearing on Respondent's behalf. On October 30, 2012, neither Respondent nor his attorney appeared for a prehearing conference. On January 15, 2013, the Illinois Department filed a motion for discovery sanctions. On January 28, 2013, the presiding Administrative Law Judge in that proceeding granted the motion for sanctions, and held Respondent in default. (Ex. 2, pp. 4, 13)

10. On March 20, 2013, the Illinois Board of Dentistry of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation (Illinois Board) recommended that the Illinois Department revoke Respondent's license to practice dentistry and impose a fine of \$12,000 against Respondent for engaging in conduct likely to deceive, defraud or harm the public; false charting; and professional incompetence manifested by poor standards of care with regard to each of four patients. (Complaint, ¶ 9; Answer, ¶ 9; Ex. 2, pp. 11-16)<sup>1</sup>

11. On January 21, 2014, the Illinois Department adopted the findings and recommendation of the Illinois Board, revoking Respondent's license to practice dentistry in Illinois and imposing a fine of \$12,000 against him. (Complaint, ¶ 10; Answer, ¶ 10; Ex. 2, pp. 4-6)

12. The Illinois Department adopted the Illinois Board's finding that Respondent engaged in 12 counts of misconduct. These included engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public; willfully making or filing false records or reports in his practice as a dentist; and professional incompetence as manifested by poor standards of care. The specific conduct at issue involved Respondent's charting that he performed procedures on four patients in February and September of 2010, when in fact he did not perform such procedures. The procedures included six crowns on Patient A.N., 14 composite fillings on Patient E.M., 16 composite restorations on Patient E.M., and 16 composite restorations on Patient C.M. (Ex. 2, pp. 14-15)

## DISCUSSION

### Burden of Proof

The burden of proof in disciplinary proceedings is on the Division to show by a preponderance of the evidence that the events constituting the alleged violations occurred. Wis. Stat. § 440.20(3); *see also* Wis. Admin. Code § HA 1.17(2). To prove by a preponderance of the evidence means that it is "more likely than not" that the examined action occurred. *See State v. Rodriguez*, 2007 WI App. 252, ¶ 18, 306 Wis. 2d. 129, 743 N.W.2d 460, citing *United States v. Sauter*, 60 F.3d 270, 280 (7th Cir. 1995).

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<sup>1</sup> The Complaint and Answer erroneously list the date of the Board's recommendation as March 13, 2013; however, Division Exhibit 2 shows that the recommendation was signed on March 20, 2013. (Ex. 2, p. 16)

## Violations

Following an investigation and hearing, the Wisconsin Dentistry Examining Board (Board) may reprimand any dentist or deny, limit, suspend or revoke his or her license if the Board finds that the dentist has engaged in “unprofessional conduct” or has “[m]ade any false statement or given any false information in connection with an application for a license. . . .” Wis. Stat. § 447.07(3)(a) and (b), respectively.

The phrase “unprofessional conduct” includes “[h]aving a license . . . granted by another state to practice as a dentist . . . limited, suspended or revoked, or subject to any other disciplinary action.” Wis. Admin. Code § DE 5.02(14). It is undisputed that Respondent’s license to practice dentistry in Illinois was revoked on January 21, 2014. As a result, he has engaged in unprofessional conduct under and Wis. Stat. § 447.07(3)(a) and Wis. Admin. Code § DE 5.02

The Division also alleges that Respondent violated Wis. Stat. § 447.07(3)(b) by providing a false answer to Question 4 and providing a false affidavit on his application for a license to practice dentistry in Wisconsin. A preponderance of evidence supports this conclusion.

Respondent completed his application, including his affidavit, in October of 2013. Question 4 of the application asks, “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.” Respondent answered “no” to Question 4. He repeated that answer on his online application and swore in his affidavit that his responses were true. However, his answers and affidavit were false because the Illinois disciplinary proceeding against him was clearly pending at the time he filled out his application and affidavit.

The Illinois disciplinary proceeding against Respondent commenced on March 13, 2012, over a year and half before Respondent submitted his Wisconsin application. Not only had the Illinois proceeding commenced at the time of his application, but the following events had also occurred in the Illinois proceeding:

- On June 11, 2012, Respondent’s attorney appeared at a status hearing on Respondent’s behalf.
- On October 30, 2012, a prehearing conference was held on at which neither Respondent nor his attorney appeared.
- On January 15, 2013, the Illinois Department filed a motion for discovery sanctions, which the presiding ALJ in that case granted on January 28, 2013, finding Respondent in default.
- On March 13, 2013, the Illinois Board recommended that the Illinois Department revoke Respondent’s license to practice dentistry and impose a fine of \$12,000 against Respondent for engaging in conduct likely to deceive, defraud or harm the public; false charting; and professional incompetence manifested by poor standards of care with regard to each of four patients.

Accordingly, it is undeniable that disciplinary action was pending against Respondent at the time he asserted on his application that it was not.

Respondent has asserted that he did not intend to mislead and that his understanding of Question 4 was that it asked whether or not any disciplinary action had been *taken* against him. This claim is not credible. The question is clear: “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.” Question 4 asks whether action is “pending” and asks the “status” of the action. It clearly does not ask what discipline was taken or imposed. Although the question is not ambiguous, it is made even clearer by the fact that it is juxtaposed with the preceding question, Question 3, which asks whether disciplinary action had been taken against Respondent, the very question which Respondent states he believed Question 4 asked. I find it more likely than not that Respondent understood the language of Question 4, the difference between Questions 3 and 4, and that the application would not ask the very same question twice, back to back. This conclusion is further reinforced by Respondent’s level of education. He obtained a Bachelor’s degree in 1971 from Loyola University, a doctorate in dentistry from the University of Illinois College of Dentistry in 1984, and a Master’s in Business Administration, with honors, in healthcare management from the University of Phoenix in 2008. (Hrg. Trans., pp. 26-27; Ex. 1, p. 7) Therefore (and assuming that intent is required for a violation of Wis. Stat. § 447.07(3)(b)), a preponderance of the evidence shows that Respondent intended to falsely respond to this question.

Respondent also asserted in his Answer to the Complaint and at hearing that the doctrine of laches applies. Respondent asserted that his application was completed in 2013 and that he has been practicing as a dentist in Wisconsin since that time. He stated that any matters regarding his Illinois license are a matter of public record and that because approximately a year passed between the time he submitted his license and the time the Complaint was filed, the Division waived any issue regarding Respondent’s answer to the question of whether any disciplinary actions were pending against him at the time he submitted his application. Respondent’s argument is negated, however, by *State v. Josefsberg*, 275 Wis. 142, 81 N.W.2d 735 (1957) (State is not barred by laches for fraud on application).

Because Respondent engaged in unprofessional conduct under Wis. Admin. Code § DE 5.02(14) by having his license to practice dentistry in Illinois revoked, and also provided false information on his Wisconsin license application, in violation of Wis. Stat. § 447.07(3)(a) and (b), respectively, he is subject to discipline pursuant to Wis. Stat. § 447.07(3).

### 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 recommends that Respondent’s license be revoked. Based on the record, such discipline is warranted. Respondent was found to have engaged in 12 counts of serious misconduct in Illinois, including dishonorable, unethical or unprofessional conduct, filing false records and professional incompetence as manifested by poor standards of care. His credential to practice dentistry in Illinois was revoked for this conduct. Despite the fact that disciplinary proceedings were pending against him in Illinois for his fraudulent and unprofessional conduct, Respondent engaged in similar conduct in this jurisdiction by falsely asserting on his Wisconsin

application that no disciplinary proceedings were pending against him in any jurisdiction, thereby obtaining his dentistry license on false pretenses. Respondent's repeated unprofessional and fraudulent behavior demonstrates that he is not amendable to rehabilitation and that the public needs protection from his misconduct. Revocation of his Wisconsin license is also consistent with the discipline imposed in Illinois, places Respondent in the position he would have been had he not submitted a misleading application, and serves to deter others from engaging in such conduct.

### 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*, Order No. LS0802183CHI (Aug. 14, 2008).

The Division requests that full costs of these proceedings be imposed on Respondent. Based on the factors of *Buenzli-Fritz*, the Division's recommendation is appropriate. The Division has proven both of the allegations it alleged, namely, that Respondent was disciplined in Illinois and that he submitted false information on his Wisconsin license application. Second, the misconduct alleged is serious, as shown by the Illinois orders and as shown by Respondent's efforts to hide his misconduct in Illinois from the Wisconsin Board by stating on more than one occasion in his application that he had no pending disciplinary proceedings against him. Third, the level of discipline sought and imposed in this matter, revocation of Respondent's Wisconsin license, is the most severe discipline possible.

The only factor operating in any way in Respondent's favor is his cooperation, which has been somewhat hit and miss in these proceedings. Although Respondent cooperated by filing an Answer and appearing at the prehearing conference and at the hearing, Respondent (through counsel) dropped the ball after the hearing. He failed to provide information regarding the Illinois proceeding as he represented he would do, and then, even though his request to stay a decision was granted, he did not bother to show up at the telephone status conference held on February 26, 2015.

The fifth factor, prior discipline, has already been addressed. As stated, Respondent was disciplined in Illinois. Although Respondent evidently practiced for many years prior to 2010 without disciplinary action taken against him, the Illinois conduct at issue involved 12 counts and a total of 52 procedures on four different patients which Respondent falsely claimed to have performed. Finally, I note that it would be unfair to impose the costs of this proceeding on members of the dentistry profession who have not engaged in such misconduct.

### CONCLUSIONS OF LAW

1. The Division has shown by a preponderance of the evidence that Respondent engaged in unprofessional conduct under Wis. Stat. § 447.07(3)(a) and Wis. Admin. Code § DE 5.02(14) by having his license to practice dentistry in Illinois revoked.



2. The Division has shown by a preponderance of the evidence that Respondent made false statements on his Wisconsin application for a license to practice dentistry, in violation of Wis. Stat. § 447.07(3)(b).

3. Revocation of Respondent's Wisconsin license is warranted based on the facts of record and the factors delineated in *Aldrich*.

4. Imposition of the full costs of these proceedings on Respondent is warranted under the facts of this case and the Department's prior decision in *Buenzli-Fritz*.

ORDER

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

1. Respondent's license to practice dentistry in Wisconsin (license no. 7189-15) is revoked.

2. Respondent 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.

IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Allen W. Knox, D.D.S.

Dated at Madison, Wisconsin on March 18, 2015.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

Jennifer E. Nashold  
Administrative Law Judge