

## 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

DANIEL P. WITKOWSKI, D.D.S.,  
RESPONDENT.

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**0005646**

FINAL DECISION AND ORDER

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Division of Legal Services and Compliance Case No. 16 DEN 005 and 16 DEN 020

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

Daniel P. Witkowski, D.D.S.  
P.O. Box 407  
Port Washington, WI 53074-0407

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

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

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 Daniel P. Witkowski, D.D.S., DOB June 20, 1954, is licensed by the State of Wisconsin to practice dentistry, having license number 2328-15, first issued on June 25, 1979, and current through September 30, 2019. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is P.O. Box 407, Port Washington, Wisconsin 53074-0407.

2. At all times relevant to this proceeding, Respondent was employed as a dentist in solo practice in Port Washington, Wisconsin.

Case No. 16 DEN 005

3. Between approximately April 1985 and March 2015, Respondent provided dental care to Patient A (DOB November 1, 1962).
4. Respondent performed seven root canals on Patient A.
5. At the time Respondent's treatment of Patient A concluded, Respondent was unaware of any issues with her teeth because, he says, Patient A was asymptomatic.
6. On December 9, 2015, Patient A saw a subsequent treater, a general dentist, who found caries on three teeth and significant endodontic issues. The subsequent treater referred Patient A to an endodontist.
7. On December 28, 2015, the endodontist examined Patient A and found previously undiagnosed periapical pathology or incomplete endodontic obturation. Of the seven teeth on which Respondent performed endodontic therapy, all were either underprepared or not completely obturated. The endodontist conservatively recommended endodontic retreatment of five teeth, monitoring of three teeth and extraction of one tooth due to extensive destruction of the furcation during endodontic access.
8. Respondent used a poor endodontic preparation and fill technique: short of the apex and thinly obturated.
9. The standard of minimal competence in the practice of dentistry requires that root canals be adequately prepared and completely obturated. In failing to do so, Respondent created the unacceptable risk that the root canals would fail and Patient A would unnecessarily lose teeth.
10. Respondent failed to meet the minimum standard of care by not taking sufficient radiographs on regular intervals. He most recently ordered a panoramic x-ray on February 18, 2008, although he continued to treat Patient A through March 2015.
11. The standard of minimal competence in the practice of dentistry requires radiographic evaluation of every tooth on which a root canal is to be performed. Respondent's failure to take radiographs of each tooth on which he performed endodontic therapy, created the unacceptable risk that Respondent would not adequately assess the crown, pulp chamber, root(s) and periradicular area of the particular tooth. Therefore, Respondent created the unacceptable risk that Respondent did not have the skill to perform the required procedure, that the root canal would fail and that Patient A would unnecessarily lose teeth.
12. Respondent's documentation of the procedures was substandard. The records lacked necessary detail, critical diagnostic information and critical procedural information. The notes lacked reference to definitive symptoms, working lengths, file sizes, and fill materials used.
13. The standard of minimal competence in the practice of dentistry requires a dentist to fully document critical diagnostic and procedural information for every endodontic procedure performed. In failing to document critical diagnostic and procedural information, Respondent created the unacceptable risk that subsequent treaters would be unable to obtain an accurate status

of the condition of Patient A's teeth and would not have the information necessary to provide further treatment.

Case No. 16 DEN 020

14. Between March 17, 2006 and December 22, 2015, Respondent provided dental and orthodontic care to Patient B, DOB January 27, 2001. Patient B is Patient A's daughter.

15. Respondent has voluntarily elected to refrain from providing orthodontic care.

16. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Dentistry Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 447.07, 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 Daniel P. Witkowski, D.D.S., engaged in unprofessional conduct as defined by Wis. Admin. Code § DE 5.02(1) by practicing engaging in a practice which constitutes a substantial danger to the health, welfare or safety of a patient.

3. By the conduct described in the Findings of Fact, Respondent Daniel P. Witkowski, D.D.S., engaged in unprofessional conduct as defined by Wis. Admin. Code § DE 5.02(5), by practicing substantially below the standard of care ordinarily exercised by a dentist, which could have or did harm a patient.

4. As a result of the above violations, Respondent Daniel P. Witkowski, D.D.S., is subject to discipline pursuant to Wis. Stat. § 447.07(3)(a).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Daniel P. Witkowski, D.D.S., is hereby REPRIMANDED.

3. The license to practice dentistry issued to Respondent Daniel P. Witkowski, D.D.S., license number 2328-15, is LIMITED to require a professional mentor as follows.

- a. Within ninety days (90) days from the date of this Order, Respondent shall submit to the Department Monitor, at the address below, a written request for approval of a proposed mentor. The request for approval shall be accompanied by the mentor's current curriculum vitae and a letter from the professional mentor confirming that he or she has read this Order and agrees to undertake the duties of a professional mentor as set out in this paragraph.

- b. Unless otherwise authorized by the Board or its designee, the professional mentor shall not have any personal or professional relationship with Respondent, past or present that could reasonably be expected to compromise the proposed mentor's ability to render fair and unbiased reports to the Department.
- c. The Board or its designee has the full and final authority to approve or reject a proposed mentor. This decision is based on an exercise of discretion and is not reviewable. The Board or its designee may, upon request of Respondent and for good cause, approve or direct a change in the professional mentor at any time.
- d. Respondent shall meet with the professional mentor at least monthly for at least eighteen (18) months from the date the Board or its designee approves the mentor. Every month, the professional mentor shall meet with Respondent and shall randomly select and review the charts of at least ten (10) patients that have presented to Respondent in the preceding month. The meeting and record review shall be for the purpose of determining whether or not Respondent: maintains adequate treatment records consistent with the standards of the profession, uses radiography as required by the standards of the profession, and provides treatment as required by the standards of the profession. Particular attention should be given to endodontic work.
- e. The professional mentor shall offer feedback and direction to Respondent as necessary for the purposes of assisting Respondent in improving the quality of care provided to clients and record-keeping. Respondent shall follow the appropriate guidance of the professional mentor. Whether or not guidance of the professional mentor is appropriate and whether or not Respondent has complied with the guidance shall be in the sole discretion of the Board or its designee. These discretionary determinations are not reviewable.
- f. The professional mentor shall submit a written and thorough quarterly report identifying the number of charts reviewed in the previous quarter and identifying any concern with Respondent's practice, records and care of clients. It is Respondent's responsibility to ensure the quarterly reports are submitted when due.
- g. The professional mentor shall immediately report any unprofessional conduct or suspected violation of this Order to the Department Monitor.
- h. After the timely submission of six (6) consecutive satisfactory quarterly reports, with a written recommendation from the professional mentor expressly supporting the request, Respondent may petition the Board for termination of the requirement of a professional mentor. The Board shall terminate the requirement of a professional mentor if it determines that Respondent is independently capable of practicing with reasonable skill and safety.

- i. Respondent is responsible for any and all costs associated with the services of the professional mentor.

4. The license to practice dentistry issued to Respondent Daniel P. Witkowski, D.D.S., license number 2328-15, is further LIMITED to require remedial education. Within six (6) months of the date of this Order, Daniel P. Witkowski, D.D.S., shall at his own expense take and successfully complete four (4) hours of remedial education on the topic of the of radiography in pediatric dentistry, four (4) hours of remedial education on the topic of patient health care record keeping, and eight (8) hours of remedial education on the topic of treatment planning. In addition, Respondent shall take and successfully complete twelve (12) hours of remedial education on the topic of endodontics, at least six (6) hours of which shall be hands on.

- a. The course(s) must be pre-approved by the Board's designee. Successful completion requires that Respondent take and passes any exam offered for the course(s). Courses taken without preapproval may NOT be used to satisfy the remedial education requirements of this Order.
- b. Education taken in fulfillment of this requirement must be taken live and in-person; webinars and other on-line activities will not be approved.
- c. Within thirty (30) days of completion of preapproved remedial education, Respondent shall submit proof of successful completion in the form of verification from the institution or organization that provided the education.
- d. None of the remedial education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or Department.
- e. The Department shall remove this limitation from Respondent's license when Respondent has petitioned the Board and satisfied the Board's designee that Respondent has successfully completed the preapproved education.

5. The license to practice dentistry issued to Respondent Daniel P. Witkowski, D.D.S., license number 2328-15, is further LIMITED to prohibit Respondent from engaging in the practice of orthodontia or providing any orthodontic treatment. Effective the date of this Order, Respondent shall not commence any orthodontic treatment on any person for whom he is not currently providing orthodontic treatment. Respondent may, while working with his professional mentor, work to complete or transition current orthodontic cases until April 30, 2018. Respondent shall not apply for any extension of time in which to complete or transition cases. This limitation is permanent. This limitation does not prevent Respondent from referring his general dentistry patients to an orthodontist if Respondent believes there may be a treatment issue, however Respondent shall not first make any particular diagnosis pertaining to orthodontia.

6. No later than one-hundred twenty (120) days from the date of this Order, Respondent shall pay the Department's COSTS in the investigation of these matters, in the amount of \$2,516.02.

7. Respondent shall send requests for approval of the professional mentor and remedial education courses, reports, petitions, proof of successful course completion, and costs (payable to the Wisconsin Department of Safety and Professional Services) to the Department Monitor at the address below:

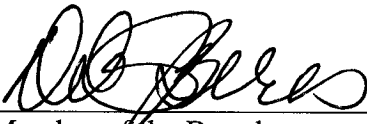
Department Monitor  
Division of Legal Services and Compliance  
Department of Safety and Professional Services  
P.O. Box 7190, Madison, WI 53707-7190  
Telephone (608) 267-3817; Fax (608) 266-2264  
DSPSMonitoring@wisconsin.gov

8. In the event that Respondent violates any term of this Order, Respondent's license (no. 2328-15) to practice dentistry in the state of Wisconsin may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

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

WISCONSIN DENTISTRY EXAMINING BOARD

by:

  
A Member of the Board

3/7/2018  
Date

STATE OF WISCONSIN  
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

DANIEL P. WITKOWSKI, DDS,  
RESPONDENT.

0005646  
STIPULATION

Division of Legal Services and Compliance Case Numbers 16 DEN 005 and 16 DEN 020

Respondent Daniel P. Witkowsky, DDS, 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 has been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondent is represented by M. Susan Maloney.
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.

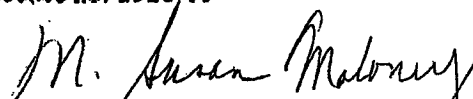
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or Respondent's attorney, 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.

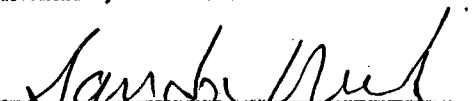
8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

  
Daniel P. Witkowski, DDS, Respondent  
P.O. Box 407  
Port Washington, WI 53704-0407  
License no. 2328-15

2/1/18  
Date

  
M. Susan Maloney, Esq., Attorney for Respondent  
Siesennop & Sullivan Attorneys at Law  
111 West Pleasant Street—Suite 110  
Milwaukee, WI 53212

2-2-18  
Date

  
Sandra L. Nowack, Prosecuting Attorney  
State Bar Number 1025643  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190  
Tel. (608) 266-8098  
[sandra.nowack@wisconsin.gov](mailto:sandra.nowack@wisconsin.gov)

2/6/18  
Date