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**Before the
State of Wisconsin**

In the Matter of Disciplinary Proceedings Against
Jeffrey T. Slavik, D.D.S., Respondent

FINAL DECISION AND ORDER

Order No. 0005864

Division of Legal Services and Compliance Case No. 16 DEN 086

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 5th day of September, 2018.


Member

Wisconsin Dentistry Examining Board



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

In the Matter of Disciplinary Proceedings Against
Jeffrey T. Slavik, D.D.S., Respondent

DHA Case No. SPS-18-0020
DLSC Case No. 16 DEN 086

PROPOSED DECISION AND ORDER

Jeffrey T. Slavik
1118 Michigan Street
Sturgeon Bay, WI 54235

Jeffrey T. Slavik
1325 North 3rd Avenue
Sturgeon Bay, WI 54235

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 Alicia M. Nall
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 when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Complaint against Respondent Jeffrey T. Slavik, D.D.S., (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. §§ 447.07(3)(a) and (f) because Respondent: (1) violated 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; and (2) violated Wis. Stat. § 440.03(13)(am) by failing to report a felony or misdemeanor conviction to the Department within 48 hours after the entry or the judgment of conviction.

The Division served Respondent on March 29, 2018, by sending a copy of the Notice of Hearing and Complaint by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4), and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on April 30, 2018.

The Division moved for default pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on April 30, 2018. Consistent with the notice, the Division filed a recommended proposed decision and order on May 21, 2018.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-18 are set forth in the Division's Complaint against Respondent filed in this matter.

1. Respondent Jeffrey T. Slavik, D.D.S., is licensed in the State of Wisconsin to practice dentistry, having license number 5001883-15, first issued on July 11, 1977 and current through September 30, 2019.

2. Respondent's most recent address on file with the Department is 1118 Michigan Street, Sturgeon Bay, Wisconsin 54235.

3. Upon the Department's information and belief, Respondent's current address is 1325 North 3rd Avenue, Sturgeon Bay, Wisconsin 54235.

Standard of care

4. In 2011, Respondent placed a crown on tooth #15 for Patient A.

5. Between 2011 and October of 2015, Patient A saw Respondent for periodic examinations and cleaning approximately every six months.

6. During examinations and cleaning appointments between 2011 and October of 2015, Patient A reported to Respondent foul drainage around tooth #15 and that she had to use a Waterpik to flush the area several times a day.

7. According to Patient A, she was last treated by Respondent a few days before October 2, 2015.

8. On October 2, 2015, Patient A sought a second opinion from Dr. B.

9. Dr. B took a radiograph which demonstrated an abscess at tooth #15.

10. Dr. B's examination of tooth #15 showed clinically inflamed tissue and the lingual portion of the root broken at the gum line.

11. Dr. B recommended an extraction of tooth #15 which was performed that same day.

12. Respondent's care and treatment of Patient A, as described above, fell below the standard of care ordinarily exercised by a dentist in Wisconsin.

13. The standard of care ordinarily exercised by a dentist in Wisconsin required diagnosis and treatment of Patient A's abscess and broken root associated with tooth #15, on or before October 2, 2015.

Failure to report conviction

14. On September 21, 2015, Respondent renewed his credential with the Department.

15. On November 8, 2016, Respondent was convicted in Door County Circuit Court case number 2016CF000073 of two counts of intentional or negligent mistreatment of animals, in violation of Wis. Stat. § 951.02, a class A misdemeanor.

16. Respondent did not report this conviction to the Department.

17. On October 2, 2017, Respondent renewed his credential with the Department. In the renewal application, Respondent answered "no" to the question: "Since your initial licensure or last renewal, do you have any pending charges and or have you been convicted of any crimes?"

18. Pursuant to Wis. Stat. § 440.03(13)(am), a person holding a credential under Wis. Stat. chs. 440 to 480 who is convicted of a felony or misdemeanor anywhere shall send a notice of the conviction by first class mail to the Department within 48 hours after the entry of the judgment of conviction.

Facts Related to Default

19. The Complaint and Notice of Hearing in this matter were served on Respondent on March 29, 2018, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: "If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you with further notice or hearing."

20. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

21. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a prehearing conference for April 30, 2018, at 10:30 a.m. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than April 25, 2018. The Notice informed

Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment entered against the Respondent."

22. Respondent failed to provide a telephone number at which he could be reached for the April 30, 2018 telephone conference.

23. At the prehearing conference held on April 30, 2018, the Division provided two telephone numbers for Respondent; however, Respondent was not available at either number. The first number was a business number for a business at which Respondent did not work and the other number was that of Respondent's son. Respondent's son provided a home telephone number for Respondent, stating that the number would likely be disconnected. The ALJ attempted to call the home number provided, but it was in fact disconnected.

24. The ALJ reconvened the telephone conference with the Division. Based on Respondent's failure to file an Answer to the Complaint and failure to appear at the prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

25. On April 30, 2018, the ALJ issued a Notice of Default and Order finding that Respondent was in default and requiring the Division to serve no later than May 30, 2018 a recommended proposed decision and order.

26. The Division timely filed its recommended proposed decision and order.

27. Respondent did not file a response to either the Notice of Default and Order or to the Division's submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the April 30, 2018, Notice of Default and Order, Respondent is in default for failing to file an Answer to the Division's Complaint and failing to appear at the telephone conference held on April 30, 2018. *See* Wis. Admin. Code §§ SPS 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations

Pursuant to Wis. Stat. § 447.07(3)(a), the Wisconsin Dentistry Examining Board (Board) may discipline dentists for engaging in unprofessional conduct or violating the standards of conduct established by the Board under Wis. Stat. § 447.02(2)(g). The Board may also discipline a dentist pursuant to Wis. Stat. § 447.07(3)(f) for violating Chapter 447 of the Wisconsin Statutes or any federal or state statute or rule that relates to the practice of dentistry.

The Division asserts that Respondent engaged in unprofessional conduct pursuant to Wis. Admin. Code § DE 5.02(5), which defines unprofessional conduct to include “[p]racticing in a manner which substantially departs from the standard of care ordinarily exercised by a dentist . . . which harms or could have harmed a patient.” The undisputed facts establish that in 2011, Respondent placed a crown on tooth #15 for Patient A. Between 2011 and October 2015, Respondent provided periodic examinations and cleanings every six months. During examinations and cleaning appointments, Patient A reported a foul drainage around tooth #15. Patient A last saw Respondent a few days before October 2, 2015. On October 2, 2015, Patient A sought a second opinion. The subsequent treater took a radiograph which demonstrated an abscess at tooth #15. By failing to diagnose the abscess on or before October 2, 2015, Respondent practiced in a manner which substantially departed from the standard of care ordinarily exercised by a dentist which harmed or could have harmed a patient, in violation of Wis. Admin. Code § DE 5.02(5).

The Division also asserts that Respondent violated Wis. Stat. § 440.03(13)(am), which requires credential holders to report a felony or misdemeanor conviction to the Department within 48 hours of the entry of the judgment of conviction. On November 8, 2016, Respondent was convicted in Door County Circuit Court case number 2016CF000073 of two counts of intentional or negligent mistreatment of animals, in violation of Wis. Stat. § 951.02, a class A misdemeanor. On October 2, 2017, Respondent renewed his credential with the Department. In the renewal application, Respondent answered “no” to the question: “Since your initial licensure or last renewal, do you have any pending charges and or have you been convicted of any crimes?” Respondent did not report this conviction to the Department within 48 hours after the entry of the judgment of conviction, in violation of Wis. Stat. § 440.03(13)(am).

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 447.07(3)(a) and (f).

Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent be reprimanded and that his license to practice dentistry be limited to require Respondent to complete, within 90 days of the entry of this Order, 16 hours of education, taken in person, on the topics of recognizing, diagnosing, treating, and prevention of oral infections, and to require Respondent to update his contact information with the Department within 14 days of entry of this Order. The recommended discipline is appropriate.

In addition to failing to meet the minimum standards of practice for his profession, Respondent has ignored the Department’s legitimate authority. Respondent did not disclose his conviction within the required time frame. Furthermore, Respondent has been nonresponsive throughout this proceeding. A reprimand and limitations on Respondent’s license to practice dentistry are appropriate responses to this disrespect for public welfare, the law, and the licensing

authority governing his profession. A reprimand is the Department's mechanism to publicly warn the credential holder and the public of a credential holder's wrongdoing. In addition, the limitations placed on Respondent's license will help ensure that Respondent will practice in a safe and effective manner.

In light of the facts of this case and the factors set forth in *Aldrich*, a reprimand and the proposed limitations are warranted.¹

Costs

As a result of Respondent being reprimanded and his license being limited by the Board, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See* Wis. Stat. § 440.22(2).

In exercising such discretion, the Board must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d. 237, 751 N.W.2d 385. Boards have also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, LS0802183 CHI (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts are particularly relevant to the instant case. First, the Division proved the counts it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondent's conduct is serious, resulting from his failure to meet the minimum standards required by his profession and his failure to report his convictions in a timely manner. Third, as a result of Respondent's serious conduct, the Division sought, and was granted, a reprimand as well as limitations on Respondent's license. The level of discipline sought and imposed is significant and recognizes the need to publicly warn Respondent and the public. Fourth, Respondent failed to participate in any way during these proceedings, demonstrating a lack of cooperation. Fifth, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all Dentistry Examining Board licensees in Wisconsin. Finally, Respondent has made no argument concerning whether costs should be assessed against him.

¹The Division states that the discipline imposed is also consistent with a decision issued by the Real Estate Examining Board, *In the Matter of Disciplinary Proceedings Against Timothy D. Russell*, Order No. 0004883 (Aug. 18, 2016). *Russell* involved revocation of a real estate broker's license because of his felony conviction for stealing \$20,000 from a military veterans' fund. It is unclear why the Division believes *Russell* is instructive here.

Therefore, all of the costs of this proceeding shall be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, it is hereby ORDERED that Respondent Jeffrey T. Slavik, D.D.S., is hereby REPRIMANDED.

IT IS FURTHER ORDERED that the license to practice dentistry issued to Respondent (license no. 5001883-15) shall be LIMITED as follows:

1. Within 90 days of the date of the final order in this matter, Respondent shall successfully complete 16 hours of education on the topic of recognizing, diagnosing, treating, and preventing oral infections, offered by a provider pre-approved by the Department's monitoring liaison, including taking and passing any exam offered for the courses.

- a. All education completed pursuant to this Order shall be taken in person. Education such as webinar, online, or self-study shall not be approved.
- b. Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education to the Department Monitor at the address stated below.
- c. None of the 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, and also may not be used in future attempts to upgrade a credential in Wisconsin.
- d. The Department shall remove this limitation from Respondent's license when Respondent has petitioned the Board and has satisfied the Board's monitoring liaison that Respondent has successfully completed the preapproved education.

2. Within 14 days of the date of this Order, Respondent shall provide the Department with his current contact information, including his physical address, his mailing address, and his telephone number.

IT IS FURTHER ORDERED that in the event Respondent fails to comply with the terms of this Order, as set forth above, Respondent's license (no. 5001883-15) or Respondent's right to renew his license, 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 this Order.

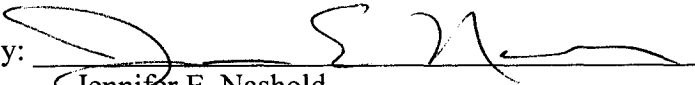
IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional 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

IT IS FURTHER ORDERED that the terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on June 5, 2018.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor
Madison, Wisconsin 53705
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By: 
Jennifer E. Nashold
Administrative Law Judge