

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ROBERT A. KAY, D.D.S.,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
:

ORDER 0006608

Division of Legal Services and Compliance Case No. 17 DEN 104

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

Robert A. Kay, D.D.S.

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 Robert A. Kay, D.D.S., is licensed in the state of Wisconsin to practice dentistry, having license number 4001893-15, first issued on June 22, 1963, and current through September 30, 2021.
2. At all times relevant to this proceeding, Respondent was employed as a dentist at a dental clinic (Clinic) he owned, located in Marshfield, Wisconsin.
3. On November 30, 2017, a Department investigator sent Respondent a letter to the address on file with the Department. No response was received.
4. On April 4, 2018, a Department investigator sent Respondent a letter to the address on file with the Department. No response was received.

5. On April 5, 2018, a Department investigator sent Respondent an email to the address on file with the Department. The email was returned undeliverable.

6. On April 23, 2018, a Department investigator called Respondent at the number listed online for the Clinic. A staff member explained that a response and records were sent to a separate, unknown clinic and that all items would be sent to the Department via mail the next day. Neither the records nor a response were received.

7. On June 13, 2018, a Department investigator called Respondent at the number on file with the Department, sent Respondent a letter to the address listed for Respondent on Lexis Nexis®, and called Respondent at the “emergency phone number” listed on the clinic’s answering machine. No response was received.

8. On August 16, 2018, the Department received the records but did not receive a narrative response.

9. On June 10, 2019, a Department investigator called Respondent at the number listed online for the Clinic to request a narrative response. No response was received.

10. On June 25, 2019, a Department investigator sent Respondent a letter to the address on file with the Department. No response was received.

11. On June 25, 2019, a Department investigator sent Respondent an email to the address on file with the Department. The email was returned undeliverable.

12. On June 25, 2019, a Department investigator called Respondent at the number listed online for the Clinic. No response was received.

13. On July 8, 2019, a Department attorney called Respondent at the number listed online for the Clinic three (3) times. No response was received.

14. On July 9, 2019, a Department attorney called Respondent at the number listed online for the Clinic. No response was received.

15. 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, Robert A. Kay, D.D.S., engaged in unprofessional conduct as defined by Wis. Admin. Code § DE 5.02(25), by failing to cooperate in a timely manner with the board’s investigation of complaints filed against the licensee.

3. As a result of the above violations, Robert A. Kay, D.D.S., is subject to discipline pursuant to Wis. Stat. § 447.07(3)(a).

ORDER

1. The attached Stipulation is accepted.
2. Respondent Robert A. Kay, D.D.S., is REPRIMANDED.
3. The license to practice dentistry issued to Robert A. Kay, D.D.S., (license number 4001893-15) is LIMITED as follows:
 - a. Within ninety (90) days of the date of this Order, Respondent shall successfully complete four (4) hours of education on the topic of ethics or risk management offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses.
 - b. All education completed pursuant to this Order shall be taken in-person. Education, such as webinar, online, or self-study shall not be approved.
 - c. 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.
 - d. 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.
 - e. This limitation shall be removed from Respondent's license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.
4. Within ninety (90) days from the date of this Order, Robert A. Kay, D.D.S., shall pay COSTS of this matter in the amount of \$1,114.00.
5. Request for approval of courses, 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 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

You may also submit this information online via DSPS' Monitoring Case Management System, here:

<https://app.wi.gov/DSPSMonitoring>

6. In the event that Respondent violates any term of this Order, Respondent's license (no. 4001893-15) 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.

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

WISCONSIN DENTISTRY EXAMINING BOARD

by:


A Member of the Board

01/08/2020
Date

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ROBERT A. KAY, D.D.S.,
RESPONDENT.

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STIPULATION
ORDER 0006608

Division of Legal Services and Compliance Case No. 17 DEN 104

Respondent Robert A. Kay, 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 has been provided an opportunity to obtain legal counsel before signing this Stipulation.

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.

Robert Kay DDS MSP.
Robert A. Kay, D.D.S., Respondent
License no. 4001893-15

11/7/19
Date

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

11/11/19
Date