

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	:	
	:	FINAL DECISION AND ORDER
JOSHUA M. DAVIS, D.D.S.,	:	
RESPONDENT.	:	ORDER 0008229

Division of Legal Services and Compliance Case No. 20 DEN 126

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

Joshua M. Davis, D.D.S.
Cedarburg, WI 53012

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. Joshua M. Davis, D.D.S. (Respondent), (Year of Birth 1974) is licensed in the state of Wisconsin to practice dentistry, having license number 5787-15, first issued on November 19, 2004. Respondent's license was set to expire on October 1, 2021.¹ Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Cedarburg, Wisconsin 53012.

¹ Respondent has applied for renewal. Pursuant to Wis. Stat. § 227.51(2), Respondent's license remains active pending Board action on the renewal application. In addition, 2021 Wisconsin Act 10 provides that, all health care provider credentials will not expire until thirty days after the end of the declared national emergency. Therefore, Respondent's license remains active.

2. At all times relevant to this matter, Respondent practiced dentistry primarily in Sheboygan, Wisconsin.

3. On April 9, 2020, the Cedarburg Police Department responded to a call that Respondent was passed out in his vehicle at the intersection of County Highway I and State Highway 60 and that when Respondent awoke he sprayed aerosol into his mouth from a can. The officer who responded to the call reported Respondent appeared "very confused and lethargic" and slurred his speech while answering questions. During the search of Respondent's vehicle, officers found three 10-ounce cans of cleaning dusters and a loaded gun. Respondent was arrested and charged with possession of a firearm while intoxicated and intentional abuse of a hazardous substance, both misdemeanors.

4. A supplemental report from the Cedarburg Police Department dated September 28, 2020, indicated Respondent's blood tested positive for difluoroethane which is used as a propellant in aerosol sprays and gas dusters. According to the lab report, when this substance is abused or inhaled, it produces intoxication and loss of muscular coordination.

5. On December 22, 2020, Respondent was convicted of Possessing a Firearm While Intoxicated (Misdemeanor A) in Ozaukee County Circuit Court Case Number 2020CM000169. Respondent was placed on probation for one (1) year and ordered to have an AODA assessment and to follow-up with any recommended treatment, maintain absolute sobriety, no possession/consumption of any intoxicants, no controlled substance or prescription medication unless prescribed by physician and in conformity with said prescription, no possession of drug paraphernalia, no use of inhalants unless used during the course of his employment, no firearms, forfeiture of firearm, and payment of fees. On that same date, the charge of Intentional Abuse of a Hazardous Substance was dismissed by the Court.

6. On December 29, 2020, the Department received Respondent's Report of Conviction for possessing a firearm while intoxicated.

7. Respondent complied with all conditions of his probation, which ended on December 22, 2021.

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

CONCLUSIONS OF LAW

1. The 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 committed unprofessional conduct by engaging in a practice which constitutes a substantial danger to the health, welfare or safety of the public within the meaning of Wis. Admin. Code § DE 5.02(1).

3. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 447.07(3)(a) and (g) and Wis. Admin. Code § DE 5.02.

ORDER

1. The attached Stipulation is accepted.
2. This Final Decision and Order (Order) is effective on the date of its signing.
3. Respondent is REPRIMANDED.
4. The license of Respondent to practice as a dentist in the state of Wisconsin is LIMITED as follows:

CONDITIONS AND LIMITATIONS

- A.1. Respondent shall enter into, and shall continue, drug and alcohol treatment with a treater acceptable to the Board or its designee (Treater). Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater. Enrollment shall occur within thirty (30) calendar days from the date of this Order. Anthony F. Werth, Jr., L.P.C., S.A.C., I.C.S., is approved to serve as Treater.
- A.2. Respondent shall immediately provide Treater with a copy of this Order and all other subsequent orders.
- A.3. Treater shall be responsible for coordinating Respondent's rehabilitation and treatment as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor. If Treater is unable or unwilling to serve as required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- A.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Board or its designee, after receiving a petition for modification as required by section 10, below.
- A.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in drug and alcohol treatment.
- A.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites, current releases complying with state and federal laws. The releases shall allow the Board, its designee, and any employee of the Department to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation with Treater, treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.
- A.7. Respondent shall abstain from all personal use of alcohol.

- A.8. Respondent shall abstain from all personal use of inhalants unless lawfully prescribed.
- A.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), unless lawfully prescribed, dispensed, or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner prescribing the controlled substance. Respondent shall, at the time the controlled substance is prescribed, immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee. Copies of these releases shall immediately be filed with the Department Monitor. Respondent shall disclose the name and address of such practitioner to the Department Monitor within five (5) business days of receipt of a prescription for controlled substances.
- A.10. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that he may take from time to time. Respondent shall abstain from all use of over-the-counter medications, products, or other substances (including but not limited to natural substances, such as poppy seeds or any products containing alcohol) which may mask consumption of controlled substances or alcohol, create false positive screening results, or otherwise interfere with Respondent's test results, treatment, or rehabilitation, unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in this section. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- A.11. Respondent shall provide the Treater and the Department Monitor with a list of all prescription medications and drugs currently being taken by Respondent within ten (10) business days from the date of this Order. If Respondent is prescribed a new medication or drug, he must report that fact to the Treater and the Department Monitor within twenty-four (24) hours of administration or fill of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered, or ordered said medications or drugs. Each time a new prescription is prescribed, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of the prescription to the Department Monitor.
- A.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
- A.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a violation of this Order. The requirements shall include:
- (a) Contact with the Approved Program as directed on a daily basis, including vacations, weekends, and holidays.

- (b) Production of a urine, blood, sweat, nail, hair, saliva, or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- A.14. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year (some of which may be an expanded hair panel at the Board's discretion), for at least the first year of this Order. No less than 20 of these tests shall be blood tests that are capable of detecting substances found in inhalants. Thereafter the Board may adjust the frequency of testing on its own initiative at any time, and/or Respondent may petition for modification of testing frequency per section B.5., below. Respondent may be exempted from this requirement for the period of time he is travelling outside of the United States, upon providing proof of planned travel, at the discretion of the Board or its designee. Respondent must submit documentation regarding travel plans at least 30 days prior to travel.
- A.15. If any urine, blood, sweat, nail, hair, saliva, or other specimen is positive or suspected positive for any controlled substances, alcohol, or inhalants, Respondent shall promptly submit to additional tests or examinations, as the Board or its designee shall determine to be appropriate, to clarify or confirm the positive or suspected positive test results.
- A.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- A.17. All confirmed positive test results shall be presumed valid. Respondent must prove, by a preponderance of the evidence, an error in collection, testing, fault in the chain of custody, or other valid defense.
- A.18. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- A.19. Respondent shall not work as a dentist in a setting in which Respondent has access to controlled substances. For the purposes of this order, nitrous oxide is not included as a controlled substance.
- A.20. Respondent shall practice under the direct supervision of a licensed dentist or other licensed health care professional, approved by the Board or its designee, who has received a copy of this Order, for at least 80% of his clinical time with patients. During periods of time that Respondent is not under direct supervision, a coworker must be on the premises who is aware of and accepts responsibility for reporting any concerns of potential impairment directly to the Department Monitor.
- A.21. Respondent shall practice only in a work setting pre-approved by the Board or its designee. Requests for pre-approval must be accompanied by a current job description, name and

contact information of the direct supervisor, and written acknowledgment from the employer that a copy of this Order and any subsequent orders modifying this original Order have been received and that the restrictions will be accommodated. Respondent's current employment at Endodontic Specialists of Wisconsin is an approved work setting, including their offices in Sheboygan, Milwaukee, Mequon, Janesville, Kenosha, Racine, and Oconomowoc, Wisconsin.

- A.22. Respondent shall provide a copy of this Order, and any subsequent order modifying this original Order, immediately to supervisory personnel at all settings where Respondent provides health care, currently or in the future. Within fourteen (14) days from the date of this Order, including any subsequent order modifying this original Order, Respondent shall provide the Department Monitor with written acknowledgment from the employer that a copy of this Order, and any subsequent order modifying this original Order, have been received.
- A.23. It is Respondent's responsibility to arrange for quarterly written reports to be submitted to the Department Monitor from his or her supervisor at each setting in which Respondent practiced dentistry in the previous quarter. These reports shall be submitted as directed by the Department Monitor, and shall assess Respondent's work performance, and shall include the number of hours of active dental practice worked during that quarter. If a report indicates less than satisfactory performance, the Board may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion. Reports shall include an accounting of total clinical hours worked and number of clinical hours Respondent was not under direct supervision.
- A.24. Respondent shall report to the Board any change of employment status, residence, mailing address, email address, or telephone number within five (5) business days of the date of a change. This report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

MISCELLANEOUS
Department Monitor

- B.1. Any requests, petitions, reports, payment of costs (made payable to Department of Safety and Professional Services), and other information required by this Order shall be submitted to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Respondent may also submit this information online at: <https://dpsmonitoring.wi.gov>.

Required Reporting by Respondent

- B.2. Respondent is responsible for compliance with all terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of Treater, the treatment facility, the Approved Program, or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent.
- B.3. Respondent shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter, Respondent's current mailing address, email address, and home telephone number. The self-report shall not be considered formal change of address notification pursuant to Wis. Stat. § 440.11.

Change of Treater or Approved Program by Board

- B.4. If the Board, or its designee, determines Treater or the Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board, or its designee, may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- B.5. Respondent may petition the Board on an annual basis for modification of the terms of this Order; however, no such petition for modification shall occur earlier than one (1) year from the date of this Order. Any petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.
- B.6. Respondent may petition the Board for termination of this Order after demonstrating three (3) years of successful compliance with all terms, including at least 600 hours of approved dentistry practice each year. The Board may, on its own motion, grant a full Wisconsin license to practice dentistry at any time.

Costs of Compliance

- B.7. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision, and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

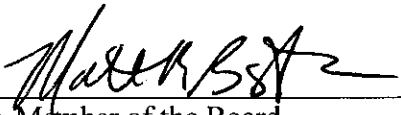
Costs of Proceeding

- B.8. Within one hundred twenty (120) calendar days from the date of this Order, Respondent shall pay COSTS of this matter in the amount of \$1,198.00.

Additional Discipline

- B.9. In addition to any other action authorized by this Order or law, the Board, in its discretion, may impose additional limitations or pursue separate disciplinary action for violation of any term of this Order.

WISCONSIN DENTISTRY EXAMINING BOARD

By: 
A Member of the Board

11-1-2022
Date

STATE OF WISCONSIN
BEFORE THE DENTISTRY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOSHUA M. DAVIS, D.D.S.,
RESPONDENT.

STIPULATION

ORDER 0008229

Division of Legal Services and Compliance Case No. 20 DEN 126

Joshua M. Davis, D.D.S. (Respondent), 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 Attorney Dean Laing.

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.

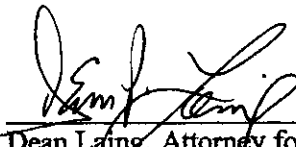
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. Respondent is further informed that should the Board adopt this Stipulation, the Board's Final Decision and Order will be reported as required by the National Practitioner Databank (NPDB) Guidebook and as otherwise required by any licensure compact or any other state or federal law.


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


Joshua M. Davis, D.D.S., Respondent
Cedarburg, WI 53012
License No. 5787-15

10/3/2022
Date


Dean Laing, Attorney for Respondent
O'Neil, Cannon, Hollman, Dejong & Laing
111 E. Wisconsin Ave., Ste. 1400
Milwaukee, WI 53202

10/3/2022
Date


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

10/3/2022
Date