

**BEFORE THE BOARD OF DENTISTRY  
OF MONTANA**

_____	)	<b>Docket No. CC-02-0290-DEN</b>
<b>IN THE MATTER OF THE DISCIPLINARY</b>	)	<b>Hearings Bureau Case No. 2292-2002</b>
<b>TREATMENT OF THE LICENSE OF</b>	)	
<b>R. BRENT KANDARIAN,</b>	)	<b>FINDINGS OF FACT;</b>
<b>License No. 2.</b>	)	<b>CONCLUSIONS OF LAW;</b>
_____	)	<b>AND ORDER</b>

**I. INTRODUCTION**

The Montana Board of Dentistry is considering the imposition of sanctions against R. Brent Kandarian's denturist license, License No. 2. Hearing Examiner Gregory L. Hanchett held a contested hearing in this matter on November 6, 2002. John Atkins, agency legal counsel, appeared to prosecute. Jonathan Motl, attorney at law, appeared on behalf of the Licensee. The hearing examiner admitted Exhibits 1, 2, 3, 4, 5, and 6 into evidence.

Prior to the hearing in this matter, Licensee's counsel moved to dismiss the instant administrative proceeding and further moved to compel disclosure of previous administrative complaints against both the Licensee and other denturists and dentists. The hearing examiner denied both requests for the reasons stated in his written ruling issued on October 4, 2002. At the time of the hearing, the Licensee renewed his motions to dismiss and compel disclosure, alleging the very same basis previously cited by the Licensee. For the same reasons stated in the hearing examiner's October 4, 2002 ruling, the hearing examiner again denies the motions.

The Board's Screening Panel concluded that there was reasonable cause to believe that the Licensee committed unprofessional conduct by failing to disclose on his Montana license renewals for the years of 2001 and 2002 that his Washington denturist license had been sanctioned, and this hearing ensued. Based on the evidence and arguments adduced at the hearing, the hearing examiner makes the following findings of fact, conclusions of law and proposed order recommending a fine be imposed against the licensee.

**II. FINDINGS OF FACT**

1. Since February 1985, the Licensee has held a denturist license issued by the Montana Board of Dentistry, License No. 2.

2. In 1998, the Licensee obtained a license to practice as a dentist from the dentist program of the Department of Health of the state of Washington (hereinafter Washington dentist program).

3. On November 12, 1999, the Washington dentist program filed charges against the Licensee's Washington license, seeking sanctions against the license for unprofessional conduct.

4. On February 8, 2000, the Licensee entered into a consent order (Exhibit 6) with the Washington dentist program whereby the Licensee admitted to the unprofessional conduct alleged in the November 12, 1999 charges. As a result of the consent order, the Licensee's Washington dentist license was suspended for a period of five years, he was ordered to pay restitution to two former patients, he was ordered to provide a full accounting to the Washington dentist program of certain fees he charged to these two patients, and he was fined \$1,500.00.

5. The Licensee failed to pay the restitution, provide the accounting, or pay the fine. New charges were filed against the Licensee alleging unprofessional conduct based on his failure to abide by the conditions of the February 8, 2000 consent order. The Licensee did not answer these new charges. By default, the Licensee was found to have engaged in unprofessional conduct and his Washington dentist license was revoked for ten years (Exhibit 4).

6. The Licensee completed renewal forms to maintain his Montana dentist license in 2000, 2001, and 2002. The renewal form for each of these years is identical (Exhibit 5). At the bottom of the form plainly set out is the following question in the following format:

**Yes\_\_ No\_\_ Have any legal or disciplinary actions been instituted against you since you last renewed which relate to the propriety of your fitness to practice? If so, please attach copies of the document that initiated each action and all final orders. Mont. Code Ann. Sec. 37-1-105 requires that you report this information. Failure to accurately furnish the information is grounds for denial or revocation of your license.**

7. Despite the plain wording of the question, the Licensee checked "No" on his 2000 renewal form that he submitted on March 20, 2000. He also checked "No" on his 2001 and 2002 renewal forms submitted on February 14, 2001 and February 15, 2002, respectively.

8. In June 2001, the Washington dentist program notified the Montana Board of Dentistry about the action taken against the Licensee's Washington license. On June 12, 2001, the Montana Board of Dentistry notified the Licensee that it had received notice of the action taken against his Washington license. The Licensee responded to the letter on August 9, 2001, indicating that he understood the allegations against his license in Washington and that he was "dealing with those allegations in the State of Washington." (Exhibit 2)

### **III. CONCLUSIONS OF LAW**

1. Jurisdiction of this matter is vested in the Montana Board of Dentistry under § 37-29-201(4), MCA.

2. In order to impose sanctions, the Board must find that the preponderance of the evidence supports the allegations contained in the complaint. Mont. Code Ann. § 37-3-311; *Ulrich v. ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126.

3. Mont. Code Ann. § 37-1-105 provides that all licensing boards require all licensees to report any legal or disciplinary actions against a license when applying for a new license or seeking license renewal.

4. Mont. Code Ann. § 37-1-316 provides in pertinent part:

The following is unprofessional conduct for a licensee . . . governed by this chapter:

\* \* \*

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or reasonably ought to know contains a false or misleading statement;

\* \* \*

(17) failing to report the institution of or final action . . . of an action against the licensee by a:

\* \* \*

(c) local, state, federal, territorial, provincial, or Indian tribal Government

\* \* \*

5. Mont. Code Ann. § 37-1-312 provides that upon a determination that the licensee has violated Title 37, Chapter 1, Part 3, the board may issue an order providing for, among other things, payment of a fine not to exceed \$1,000 per occurrence, and imposition of suspension of the licensee's license.

6. The uncontroverted evidence at hearing shows that the Licensee has committed unprofessional conduct under Mont. Code Ann. § 37-1-316(4), and Mont. Code Ann. § 37-1-316(17)(c). At a minimum, at the time he applied for his 2001 Montana license renewal on February 15, 2001, he knew that his Washington license had been suspended for unprofessional conduct by consent decree. The Licensee's testimony at hearing that he did not understand the question on his 2001 renewal form to relate to sanctions against his out of state license is simply

not credible. The question clearly asks "Have *any* legal or disciplinary actions been instituted against you . . . ?" There is no limitation whatsoever in the question. Furthermore, given this Licensee's thorough familiarity with the requirements for renewal applicable to denturists (the Licensee admitted that he was familiar with the statutes governing denturists), he cannot credibly suggest that he was unaware that he needed to report the proceeding against his Washington license to the Montana Board of Dentistry.

7. The Licensee's failure to disclose the Washington proceeding on his 2002 renewal should not constitute a basis upon which sanctions should be levied in this case. By the time of the 2002 renewal, the Licensee had complied with the intent of Chapter 37 because he had already revealed the Washington proceeding to the Montana Board of Dentistry in June 2001. Nothing about the nature of the Washington proceeding had changed between June 2001 and the February 2002 renewal. To find a violation with respect to the 2002 renewal would be hypertechnical.

8. There are certain mitigating factors to take into account in deciding the appropriate sanction to be levied. No sanctions have ever been levied against the Licensee by the Montana Board of Dentistry during the Licensee's 17 year licensing history in the state of Montana. There is no credible evidence to suggest that the Licensee has engaged in any malfeasance of duties or malpractice in the state of Montana. The Department has not sought imposition of any specific sanction, and has indicated that it does not seek revocation of the Licensee's license for this conduct. Furthermore, based on the testimony of the Licensee at the hearing, it does not appear that he will engage in such conduct again. Based on all of these factors, the Licensee's counsel's suggestion of the imposition of a fine seems appropriate.

9. The fine in this matter should not be a light amount. While it is true that strong mitigating factors exist in this case, and while it appears that the Licensee will not engage in such conduct again, it is nonetheless important to impress upon the Licensee that his failure to report discipline against his Washington license is serious. Accordingly, it is recommended that the Licensee be ordered to pay a fine of \$750.00 to impress upon him the need to report to the Montana Board of Dentistry any legal or disciplinary action which may be taken against him.

#### **IV. PROPOSED ORDER**

Based on the foregoing, it is recommended that the Montana Board of Dentistry impose a fine against the Licensee in the amount of \$750.00, to be paid by the Licensee within 30 days after the effective date of the final order issued in this matter. It is further recommended in the event that the Licensee fails to pay the fine within 30 days after the effective date of the final order issued in this matter, that his license to practice dentistry, License No. 2, be suspended until such time as the fine is paid in full.

DATED this 27th day of November, 2002.

DEPARTMENT OF LABOR & INDUSTRY

HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT

GREGORY L. HANCHETT  
Hearing Examiner

**NOTICE**

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.