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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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CHRISTOPHER A. WODJA,

Appellant,

v.

DEPARTMENT OF HEALTH,  
DENTAL QUALITY ASSURANCE COMMISSION,  
an agency of the state of Washington,

Respondents.

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**RESPONDENTS' BRIEF ON APPEAL**

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ROBERT M. MCKENNA  
Attorney General

CINDY C. GIDEON  
Assistant Attorney General  
WSBA No. 28365  
P.O. Box 40100  
Olympia, WA 98504  
360-664-0083

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## I. INTRODUCTION

Dr. Wodja is a licensed dentist in the state of Washington. He is expected to treat his patients within the standard of care, with dignity and respect, and to protect them from being placed in vulnerable situations when potent sedative medications are prescribed. Dr. Wodja violated these basic and fundamental principles on October 17, 2007 when “Patient A”<sup>1</sup> was discovered in his office after hours, with no other staff present, highly sedated, and naked from the waist down.

Upon learning about Dr. Wodja’s treatment of Patient A, the Dental Quality Assurance Commission (“Commission”) immediately took action to investigate and ensure that the public is adequately protected. The Commission followed all procedural requirements during both the summary suspension of Dr. Wodja’s dental license on November 30, 2007, and the full administrative hearing held on January 16-17, 2008. Dr. Wodja challenges the Commission’s ultimate determination of unprofessional conduct and seeks to have this Court overturn *Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 663 P.2d 457 (1983), which allows the summary suspension panel to be the same as the hearing panel. Dr. Wodja claims that his due process rights were violated when the Commission reviewed non-adjudicatory facts prior to summarily

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<sup>1</sup> In health professional licensing matters, the patient’s identity is protected. RCW 70.02.010; and see PROTECTIVE ORDER, dated December 13, 2007. AR 260.

suspending his license. The summary suspension was merely a probable cause determination that Dr. Wodja posed an immediate danger to the public pending a full and final hearing. Ultimately, Dr. Wodja fails to meet his burden to overcome the presumption that the hearing panel members sitting, as judges, properly and legally performed their duties when evaluating only that evidence introduced at hearing, and before entering a final order suspending his license for a minimum of five years. The Respondents, Department of Health (“Department”) and the Commission, respectfully request that this Court affirm the Commission’s February 2008 Findings of Fact, Conclusions of Law, and Final Order (“Final Order”).

## **II. COUNTER STATEMENT OF THE ISSUES**

1. Can the panel that signed the ex parte order of summary suspension and reviewed nonadjudicatory facts also be the same panel that sits at the administrative hearing, where there is no evidence of prejudice or bias?
2. When determining sanctions, can the Commission decline to hold a second hearing on the sole issue of whether a 1999 misdemeanor assault conviction should be considered an aggravating circumstance?
3. Is there substantial evidence to support the Commission’s findings?

### III. COUNTER STATEMENT OF THE CASE

#### A. The Events That Lead Up To The Summary Suspension Of Dr. Wodja's License To Practice Dentistry.

On October 16, 2007, Dr. Wodja diagnosed Patient A with a severe infection that extended from her upper right canine tooth (Tooth #6) into the nerve of the tooth and up to the sinus cavity and toward her eye. AR 1227; AR 1642.<sup>2</sup> On October 17, 2007, Dr. Wodja prescribed a sedative, Triazolam, to Patient A prior to having her come into the office for a simple procedure called an "incision and drain." AR 1209; AR 1227; AR 1642-47; AR 1722-23. Dr. Wodja also prescribed her another narcotic, Tylenol #3, despite knowing that Patient A was also taking Vicodin. AR 1209; AR 1227; AR 1640-41.

When properly prescribed, Triazolam is used to reduce anxiety before a dental procedure, and provide amnestic effect after treatment. AR 1507; AR 1518; AR 1637. The manufacturer's maximum recommended dose for this purpose is 0.5 mg. AR 1520; AR 1585; AR 1588. In larger doses, the drug has the potential to heavily sedate and incapacitate a patient, which requires that someone trained in anesthesia competently and constantly assess the patient. AR 1507-34.

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<sup>2</sup> The complete certified agency record ("AR") is located at CP 24A, and Bates numbered 1-1861. The hearing transcript is included in CP 24A (Bates Nos. 1322-1861). For purposes of citation, the agency record will be referred to as "AR \_\_\_\_."

Patient A filled a prescription for six tablets of 0.25 mg of Triazolam (1.5 mg total). AR 1209; AR 1229. Over approximately a two-hour time period, and after clinic hours, Dr. Wodja directed Patient A to ingest at least 1.25 mg of Triazolam. AR 1482-83; AR 1536; AR 1646; AR 1656-57; AR 1662-64. The patient was discovered by her roommates in Dr. Wodja's office in a heavily sedated state, with no clothes on except a tank top and a sheer medical gown. AR 1377-81; AR 1407-08.

At the conclusion of the appointment, and as soon as the roommates escorted Patient A out of the clinic, they immediately contacted law enforcement officers who transported Patient A from Dr. Wodja's parking lot to Harborview Medical Center, where she remained so markedly sedated by the medications provided by Dr. Wodja that she could not care for herself or consent to treatment for nearly 15 hours after admittance. AR 1385-86; AR 1417-19; AR 1265-88. The following day, an emergent care dentist at the hospital actually performed the incision and drain for the abscess at the upper canine tooth. AR 1288.

On October 26, 2007, Department Investigator Reed was invited by the King County Sheriff's Office to observe the police's investigation and collection of patient records at Dr. Wodja's office. AR 1480-82. Dr. Wodja was not under arrest by the King County Sheriff's Office, nor

does he claim that he was.<sup>3</sup> *Id.* He was free to leave, after providing a DNA swab, while the police executed the search warrant on his office. AR 1482. He was advised that he could seek the advice of an attorney. *Id.* Dr. Wodja chose to stand around and discuss the events of October 17, 2007. AR 1482-87. He informed Investigator Reed that he called in a prescription for six tablets of 0.25 mg of Triazolam, and that he had the patient take four of the prescribed tablets, plus two sample tablets of 0.125 mg each (total of 1.25 mg). AR 1482-83. Dr. Wodja further stated that the reason he gave the patient a see-through gown was because she wore tight jeans and he told her to wear loose fitting clothing to the dental appointment. AR 1483. He also told the investigator that he did not ask the patient to put her clothes back on because he thought the procedure would only take a few minutes. AR 1484. On October 31, 2007<sup>4</sup> and November 5, 2007<sup>5</sup>, Investigator Reed sent Dr. Wodja requests for additional information and never received a response. AR 1290-94; AR 1488-90.

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<sup>3</sup> At the hearing, if needed, the Department offered to present testimony from Detective Schneider from the King County Sheriff's Office that Dr. Wodja was not under arrest when a search warrant was issued for items from his dental office. AR 1468; 1473.

<sup>4</sup> The October 31, 2007 letter requested three categories of documents, a written response to the complaint, and responses to 15 questions. AR 1292-94.

<sup>5</sup> The November 5, 2007 letter requested three categories of documents. AR 1290-91.

**B. Dr. Wodja's License Was Summarily Suspended Because He Rendered Patient A Vulnerable And Without Complete Control Over Her Treatment And The Situation.**

The Commission summarily suspended Dr. Wodja's dental license on November 30, 2007 based on the determination that Dr. Wodja was an immediate danger to the public. AR 1-5 (Attachment 1). The Commission identified nine categories of conduct relating solely to Dr. Wodja's treatment of Patient A. AR 1-5. These findings included that Dr. Wodja evidenced a callous disregard for Patient A's dignity and well being; that he rendered Patient A vulnerable by over prescribing a sedative that left without complete control over the situation; and that he failed to fully assess the patient's state of sedation during the appointment and upon discharging her. *Id.* In conclusion, the Commission found

“[Dr. Wodja]’s transgressions were so wide ranging as to implicate all aspects of his decision making, including scheduling, charting, medication protocols, auxiliary staffing, professional boundaries, and cooperation with the disciplining authority.”

AR 3-4.

Included with the Commission's summary suspension order were the Department's Statement of Charges and the motion in support of summarily suspending Dr. Wodja's license. AR 1-139. He filed his answer on December 10, 2007. AR 241-45. A hearing on the merits of the case was scheduled for December 20, 2007. AR 20; AR 256; AR 262.

Dr. Wodja waived the right to a prompt hearing and requested an expedited hearing, which was scheduled for January 16-18, 2008. AR 517; AR 683-84.

**C. Prehearing Motions Relating To Dr. Wodja's Criminal History**

Prior to the administrative hearing, Dr. Wodja made a motion to redact Paragraph 1.18<sup>6</sup> from the Statement of Charges, which referenced his 1999 misdemeanor assault conviction in Boston, Massachusetts. AR 473-79. The Department argued that the information about the assault conviction was permissible under ER 404(b) to show that Dr. Wodja uses time and location to dominate and control young, vulnerable, female victims. AR 422-424. The presiding officer granted Dr. Wodja's motion, and further ruled that the parties could submit documentation about the criminal conviction for the sole purpose of sanctions after the Commission made a finding of unprofessional conduct. AR 680.<sup>7</sup> Dr. Wodja did not object to this ruling. He then made a motion to disqualify the panel members because they had knowledge of his criminal conviction data, and, therefore, were biased. AR 688-93. The Department responded that

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<sup>6</sup> Allegation 1.18 reads: Respondent has a history of assaultive behavior toward young women. On August 19, 1999, he pleaded guilty to assault and battery (misdemeanor) of a sixteen-year-old female in Boston, Suffolk County, Massachusetts. He served time in jail for that criminal offense and was placed on probation. The probationary requirements were transferred to Washington when he changed his residence in 2000. AR 14.

<sup>7</sup> Prehearing Order No. 3 (PHO No. 3) states "Reference to the Respondent's prior conviction will be redacted from all exhibits which will be offered to the Commission prior to deliberations." AR 680.

the structure of this administrative proceeding did not violate the appearance of fairness, and Dr Wodja failed to assert any facts evidencing bias towards his case. AR 703-13. On the first day of the hearing, the presiding officer ruled that *Med. Disciplinary Bd. v. Johnston, supra*, allows the panel that decided to summarily suspend Dr. Wodja to sit as the finders of fact at the hearing, absent the showing of actual bias. AR 1328-31.<sup>8</sup> Paragraph 1.18 was redacted from the Statement of Charges prior to being given to the panel members. AR 730-737 (Attachment 2); AR 1344.

**D. The Evidence The Department Introduced At Hearing Related Solely To Dr. Wodja's Treatment of Patient A.**

At the administrative hearing, the timeline for the events on the evening October 17, 2007 and amount of medication dispensed to Patient A was fully established. At approximately 6:30 pm, and at the direction of Dr. Wodja, Patient A ingested two of the 0.25mg tablets of Triazolam (maximum dose of 0.5mg) before coming for her dental appointment. AR 1444; AR 1646. At approximately 7:00 p.m., Patient A was described as loopy, giddy, happy, and relaxed. AR 1401. At approximately 7:15 p.m., Dr. Wodja escorted Patient A alone, through the back entrance, into

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<sup>8</sup> Dr. Wodja requested that the panel be given a limiting instruction. AR 1343. The Department did not object to Dr. Wodja's proposed language. *Id.* The panel was instructed "that none of the evidence that you became aware of in that proceeding has any effect on this proceeding today. You're only to consider evidence that is submitted evidence at this hearing today in reaching a determination." AR 1363-64. The limiting instruction did not specifically identify the 1999 assault on the young girl, nor were the hearing panel members reminded of the prior criminal assault conviction. *Id.*

his dental clinic. AR 1402-03. After the patient arrived, he gave her two 0.125 mg tablets of Triazolam (0.25 mg). AR 1229; AR 1446; AR 1657; AR 1702. These tablets came from his personal stock kept at the dental clinic. AR 1656-57; AR 1704; AR 1707. At approximately 7:45 p.m., Dr. Wodja called Patient A's roommates and asked them to bring the remainder of her Triazolam prescription (1.0 mg). AR 1405; AR 1660-61.

When the roommates arrived with the medication at approximately 8:00 p.m., they insisted on being allowed up to see Patient A. AR 1374-76; AR 1405-06. While speaking with Dr. Wodja, the roommates observed Patient A wandering around the clinic wearing only a tank top and a sheer medical gown. AR 1377; AR 1407-08. The roommates described Patient A as being incoherent, loopy, groggy, very out of it, with her eyes being barely open. AR 1377; AR 1407. Patient A asked Dr. Wodja if she could put her clothes back on and he agreed. AR 1377; AR 1408. The roommates left the office, called a family member to report the odd appointment, and then immediately demanded to be let back into the dental clinic. AR 1378; AR 1409-11.

After the roommates re-entered the clinic, Dr. Wodja gave Patient A two more tablets of the sedative medication.<sup>9</sup> AR 1663; AR 1704. At approximately 9:00 p.m., one of the roommates noticed that Patient A's clothes were still on the floor of the clinic restroom. AR 1382. About this time, Dr. Wodja claimed to have finished the dental procedure, and started to assist Patient A into the restroom to dress. AR 1382-83; AR 1416. The roommates maneuvered Patient A away from him and dressed her. *Id.* They described Patient A's affect as being even more sedated than before. AR 1381; AR 1386; AR 1414; AR 1419-20. Both roommates testified that when the pill bottle was asked for at the end of the appointment, Dr. Wodja stated that he had given all of them to Patient A (total of 1.5 mg). AR 1413; AR 1384-85.

The Department presented testimony from Dr. Bart Johnson, a dentist who taught sedation for 16 years at the University of Washington School of Dentistry. Dr. Johnson testified extensively to the standard of care for record keeping; safe prescribing practices; medication administration and assessment; the use of Triazolam in the dental setting

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<sup>9</sup> Contrary to Dr. Wodja's hearing testimony in January 2008 where he claims Patient A ingested a total of six pills amounting to less than 0.75 mg of Triazolam, Dr. Wodja admitted to Investigator Reed in October 2007 that he had Patient A ingest a total of six pills, including four of the prescribed tablets (0.5 mg each) plus two sample tablets (0.125 mg each) for a total of 1.25 mg of Triazolam. AR 1482-83; AR 1647-63. The Commission weighed the testimony of Investigator Reed and found him to be credible. AR 1188-89.

to reduce anxiety; the maximum recommended dose for Triazolam of 0.5 mg; the effects of Triazolam; patient safety; and patient nudity in a dental setting. AR 1502-71. Dr. Wodja presented testimony from Dr. Isackson, an anesthesiologist, who agreed that the maximum recommended dose for Triazolam is 0.5 mg. AR 1585; AR 1588. Dr. Isackson testified about appropriate larger doses related to deeper sedation, and what effect would be expected from 0.75 mg to 2.0 mg during such sedation. AR 1578; AR 1590. Dr. Wodja demonstrated his incompetence by testifying that for a general dentist, without a permit for sedation, that there was no maximum recommended dosage. AR 1693.

Dr. Wodja also presented testimony from Dr. Judd, a psychologist, who had no opinion and admitted that his sexual deviancy evaluation of Dr. Wodja was incomplete. AR 1747, ll. 7-8; AR 1749. Finally, Dr. Julien, who identified himself as a pharmacologist who is familiar with the effects of Triazolam, testified that he does not currently hold any active licenses to practice medicine. AR 1768-69. He did, however, opine that Patient A was not under the influence of methamphetamines on October 17, 2007. AR 1772.

**E. The Dental Commission Suspended Dr. Wodja's License After Making 48 Findings of Facts Detailing How Dr. Wodja Violated The Standard of Care When Treating Patient A.**

The Commission found by clear and convincing evidence that Dr. Wodja breached all professional standards of care in treating Patient A. AR 1182-1205 (Attachment 3: Final Order). In summary, Dr. Wodja violated the standard of care and created an unreasonable risk of harm to Patient A when:

- He initially agreed to treat Patient A's severe decay into a nerve and severe infection, a condition beyond his expertise and knowledge, rather than referring her to an emergent care expert. (¶ 1.19).
- He prescribed six tablets of 0.25 mg of Triazolam, which is well beyond the 0.5 mg maximum dose recommended unless a practitioner is trained in sedation. (¶ 1.20).
- He administered over 1.0 mg of Triazolam, which is well beyond the 0.5 mg maximum dose, and failed to recognize the drugs obvious sedative effect as exhibited by the patient's incoherence and state of undress. He then failed to monitor the patient, have sufficient emergency equipment, or have staff present in the event of an emergency. (¶ 1.21).
- He released the patient from his care while she was still in an obvious state of heavy sedation. (¶ 1.22).
- He failed to inventory his office supply of Triazolam and further failed to document any claimed wastage or disposal of the medication. (¶ 1.23).
- He failed to adequately chart the patient's condition, treatment, observations, and time, dosage, and reason for medications administered. (¶¶ 1.32 and 1.41).

AR 1189-1193.

After making its findings of unprofessional conduct related to Patient A, the Commission considered, as aggravating factors, the fact that Dr. Wodja had previously entered into an agreement (“STID”)<sup>10</sup> with the Commission earlier in 2007, and had a 1999 criminal conviction for assaulting a sixteen-year old female in Boston. AR 1196-1197. The Commission found no mitigating factors. AR 1197, ¶ 1.53. Ultimately, given the egregious nature of the conduct, Dr. Wodja’s demonstrated incompetence and extreme negligence in medication and patient management, and aggravating factors related to his criminal and professional history, the Commission suspended Dr. Wodja’s license for a minimum of five years.

On March 10, 2008, Dr. Wodja sought judicial review of the Dental Commission’s Final Order. CP 1. On April 2, 2009, King County Superior Court affirmed the Dental Commission’s final order. CP 41. Dr. Wodja filed this appeal on April 13, 2009 whereupon he makes 54 assignments of error to the final order, and at least two additional assignments of errors to procedural matters.

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<sup>10</sup> Stipulation To Informal Disposition, Department of Health / Dental Quality Assurance Commission, Docket No. 05-11-1028DE (master case no. M2005-54999), dated February 9, 2007. This order is a public record and can be read at [www.doh.wa.gov](http://www.doh.wa.gov) – left-side Provider Credential Search link.

#### IV. STANDARD OF REVIEW

The standard of review is very deferential to the Commission's decision, and Dr. Wodja has the burden to demonstrate that the Commission's order should be vacated. In reviewing an administrative action, the appellate court sits in the same position as the superior court, applying the Administrative Procedure Act ("APA") to the record before the agency. RCW 34.05.510; RCW 34.05.574(1); RCW 34.05.558; *DaVita, Inc. v. Dep't of Health*, 137 Wn. App. 174, 180, 151 P.3d 1095 (2007); *Clausing v. Dep't of Health*, 90 Wn. App. 863, 878, 955 P.2d 394 (1998). A party challenging the validity of an agency's action bears the burden of showing the action was invalid. RCW 34.05.570(1); *Lang v. Dep't of Health*, 138 Wn. App. 235, 243, 156 P.3d 919 (2007). The court may grant relief only if it determines that the agency's order is deficient in one of the ways stated in the statute. RCW 34.05.570(3); *Brown v. Dep't of Health*, 94 Wn. App. 7, 11, 972 P.2d 101 (1998), *review denied* 138 Wn.2d 1010, 989 P.2d 1136 (1999).

The Commission's findings of fact will be upheld if they are supported by "substantial evidence," which is evidence sufficient to persuade a fair-minded person of the truth of the matter. RCW 34.05.570(3)(e); WAC 246-11-520; *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 607, 903 P.2d 433 (1995). On a sufficiency challenge,

the court takes the Department's evidence as true, and draws all inferences in the Department's favor. *Ancier v. Dep't of Health*, 140 Wn. App. 564, 573, 166 P.3d 829 (2007). The reviewing court does not weigh the evidence or substitute its judgment for the Commission regarding issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence, even if it sees the evidence differently. *Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d at 483; *Premera v. Kreidler*, 133 Wn. App. 23, 32, 131 P.3d 930 (2006).

The court reviews the Commission's legal conclusions *de novo* under an error of law standard. *Haley v. Med. Disciplinary Bd.*, 117 Wn.2d 720, 728, 818 P.2d 1062 (1991); *Lang*, 138 Wn. App. at 243. On mixed issues of law and fact, the court determines the law independently and then applies it to the facts. *Lawrence v. Dep't of Health*, 133 Wn. App. 665, 672, 138 P.3d 124 (2006). Notwithstanding the *de novo* standard of review, courts grant substantial weight to an agency's interpretations of the statutes and rules the agency administers. *Lang*, 138 Wn. App. at 243.

An agency's determination of sanctions should be accorded considerable judicial deference as it is peculiarly a matter of administrative competence. *Brown*, 94 Wn. App. at 16. The Commission is free to impose any sanction authorized under RCW 18.130.160 so long as it is not arbitrary or capricious. RCW 18.130.160;

*Heinmiller*, 127 Wn.2d at 609-610. An action is arbitrary and capricious if it is a willful and unreasoning action, without consideration and in disregard of the facts or circumstances. *See* RCW 34.05.570(i); *Heinmiller*, 127 Wn.2d at 609; *Johnston*, 99 Wn.2d at 482; and *Brown*, 94 Wn. App. at 16. The scope of review of an order alleged to be arbitrary and capricious is narrow, and the challenger carries a heavy burden. *Brown*, 94 Wn. App. at 16. The “harshness” of an agency’s discipline or sanction is not the test for arbitrary and capricious action. *Id.* at 17.

## V. POINTS AND AUTHORITY

### A. **The Commission Has The Authority To Summarily Suspend A Dentist’s License When He Poses An Immediate Risk To The Public And Later Enter A Final Order After A Hearing On The Merits.**

There is no basis for overturning or remanding the Commission’s Final Order because the record before the Court does not support Dr. Wodja’s arguments. The legislature has designated the Commission to act as a disciplining and regulatory body for dentists in the state of Washington. RCW 18.32; RCW 18.130; WAC 246-817. When the Commission considers whether to investigate a licensee, the following may be considered even if not introduced at hearing: “a pattern of complaints, arrests, or other actions that may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate a

pattern of similar conduct that, without investigation, likely poses a risk to the safety of the license holder's patients." RCW 18.130.080(3)(b). The Commission has the authority to summarily suspend a dentist's license prior to a full adjudication of the matter, if they determine that there is an immediate danger to the public's health, safety and welfare. RCW 34.05.422(4); RCW 34.05.479; RCW 18.130.050(8) (formerly RCW 18.130.050(7)); WAC 246-11-300. At the time Dr. Wodja was summarily suspended, he was entitled to a prompt hearing on the merits within 20 days; however he could waive the prompt hearing, and request an expedited or regularly scheduled hearing. WAC 246-11-340(4);<sup>11</sup> WAC 246-11-330(2); WAC 246-11-340(2), (5).

At the hearing, the Department proves the allegations in the Statement of Charges by clear and convincing evidence. *Bang Nguyen v. Dep't of Health*, 144 Wn.2d 516, 29 P.3d 689 (2001) (property right in a medical license requires higher standard of proof before sanctions can be assessed against the license). A presiding officer issues rulings on evidentiary and procedural objections. RCW 18.130.095(3); *see also*

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<sup>11</sup> This rule was amended on February 20, 2009. Now, a licensee is entitled to a show cause hearing within 14 days of a show cause hearing request. A full hearing is held within 45 days of the board's determination or request for a hearing, unless otherwise stipulated. WAC 246-11-340 (2009); RCW 18.130.050(8) and (9) (2008); RCW 18.130.135 (2008); Substitute H.B. 1103, 60<sup>th</sup> Leg., Reg. Sess. (2008). If a licensee requests a show cause hearing after the issuance of a summary suspension order, the Department must prove that it is more probable than not that the license holder poses an immediate threat to the public for the summary suspension to remain in effect until the hearing. *Id.*

WAC 246-11. The hearing panel of the Commission sits in the same role as a judge and makes the final determinations of unprofessional conduct. RCW 18.130.050(10) (formerly RCW 18.130.050(8)); *Faghih v. Dep't of Health*, 148 Wn. App. 836, 845, 202 P.3d 962 (2009).<sup>12</sup> After a full adjudicative hearing, the Commission shall assess sanctions if unprofessional conduct is found. RCW 18.130.160. These sanctions can include revocation or suspension of the license; restriction on the practice or other corrective actions; and fines. *Id.*<sup>13</sup> The Commission can consider mitigating and aggravating circumstances when determining the most appropriate sanctions. WAC 246-16-800(3)(d); WAC 246-16-890.

**B. There Is No Violation Of The Appearance Of Fairness Doctrine When The Same Commission Members Participate In The Summary Suspension Proceedings And The Final Adjudicative Hearing.**

The Washington Supreme Court has applied the appearance of fairness doctrine to administrative tribunals acting in a quasi-judicial capacity in two circumstances: (1) when the agency has employed procedures that created the appearance of unfairness, and (2) when one or more acting members of the decision making bodies have apparent

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<sup>12</sup> Dr. Wodja's reliance upon *State v. Johnson*, 90 Wn. App. 54, 62, 950 P.2d 981 (1980) for the argument that the Dental Commission is analogous to a jury is without precedential value to this administrative matter. Contrary to Dr. Wodja's briefing, the Commission is presumed to know the law and correctly apply it to these proceedings. *Lang*, 138 Wn. App. at 243; see Pet. Brief, p. 32.

<sup>13</sup> Effective July 26, 2009, the legislature also implemented a cost recovery requirement in dental disciplinary proceedings. H.B. 5752, 61<sup>st</sup> Leg., Reg. Sess. (2009).

conflicts of interest. *Faghih*, 148 Wn. App. at 842; *See also Sherman v. State*, 128 Wn.2d 164, 188, 905 P.2d 355 (1995) (physician could not disqualify presiding officer at a termination hearing because no appearance of unfairness where the presiding officer was also designated representative for the university in a civil matter involving respondent); *State v. Post*, 118 Wn.2d 596, 619, 837 P.2d 599 (1992) (no appearance of unfairness where pre-sentence report was prepared by an allegedly biased person because there was no evidence of the judge's actual or potential bias).

“[T]he concentration of functions in a single agency may be unfortunate and open to criticism, but where the legislature has explicitly approved such organization, it will be upheld.” *Johnston*, 99 Wn. 2d at 477; *see* RCW 34.05.425(1)(b). The fairness of a decision-making body is measured by how the legislature chose to structure the administrative body. *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation Council (EFSEC)*, 165 Wn.2d 275, 197 P.3d 1153, 1172 (2008) (doctrine did not override legislature’s intention for interested parties to participate in EFSEC). The appearance of fairness doctrine only applies to individuals, and not a panel as a whole. *Id.* at 1173 (commissioner’s emails taken out of context did not demonstrate bias or prejudice). The test is whether a disinterested person, having been

apprised of the totality of a commission member's personal interest in a matter being acted upon, would be reasonably justified that partiality may exist. *Faghih*, 148 Wn. App. at 843. The presumption is that public officers will properly and legally perform their duties until the contrary is shown. *Id.*

There is no violation of the appearance of fairness doctrine in this dental disciplinary matter. The agency's investigation, summary suspension, and administrative hearing procedures require an independent review at each stage. Initially, a Reviewing Commission Member, assisted with the investigation and charging, but did not sit on either the summary suspension panel or the hearing panel. RCW 18.130.050(9); *see also* RCW 34.05.458(1).<sup>14</sup> Once charges were determined, a panel of three Commission members sat to determine whether summary suspension pending further adjudicatory action was warranted. RCW 18.130.050(8). The summary suspension panel was composed of Dr. Timms, Dr. Achterberg, Dr. Alkezweeny, and Dr. Quarnstrom. AR 1. Thereafter, the Commission held a separate evidentiary hearing to determine whether Dr. Wodja violated the Uniform Disciplinary Act ("UDA") by acting unprofessionally in the course of treating Patient A. The hearing panel

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<sup>14</sup> Dr. Wodja's attempts to mislead this court by suggesting the hearing panel members were involved in the investigation is without any factual basis. Here, the Reviewing Commission Member ("RCM") was Dr. Koday.

members consisted of Dr. Timms, Dr. Achterberg, Dr. Alkezweeny, and Dr. Knutson. AR 1182.<sup>15</sup> Dr. Wodja fails to cite to any specific evidence which leads to the overly broad conclusion that any of these procedures were unfair, or that the individual hearing panel members were unable to make fair procedural and evidentiary decisions during the administrative hearing.

Ultimately, the boards and commissions in the state of Washington are comprised of a limited number of individuals. If a commission member could be disqualified every time he knew something about a respondent, then the process would be overly burdened. The legislature and the courts have taken all of that into consideration in its implementation and interpretation of the APA and the UDA. There is no basis for determining that the appearance of fairness doctrine was violated in this case.

- 1. In health disciplinary matters, the panels are presumed not to have prejudged the issues, even where the same members sat on both the summary suspension panel and the adjudicative panel.**

In 1983, the Washington Supreme Court specifically ruled that, absent a specific showing of bias or prejudice, a Commission member

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<sup>15</sup> Dr. Wodja, initially, wanted the hearing panel to be different from the summary suspension panel, and yet when forced to acknowledge that the composition of the hearing panel varied from the summary suspension panel he wanted the new member replaced with the previous member. AR 1609-12. In fact, counsel stated “And I’m not suggesting that this panel is not fair, not unbiased, or not capable.” AR 1612.

in a health disciplinary proceeding can sit to decide whether to summarily suspend a practitioner and still properly sit on the hearing panel. *Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d at 474-80. In *Johnston*, a member of the Board contacted one of the patient's doctors during the investigation and before the hearing. The court stated that since the investigative reports were not entered into the record, nor relied upon during the hearing, then there was no due process violation. *Id.* at 481-82. That same member commented at hearing on Dr. Johnston's unorthodox treatment as the reason for the summary suspension of his license pending the hearing. *Id.* at 475. The court found no prejudgment of the issues, and that the statement was merely an elaboration of why the summary suspension would protect the public. *Id.* at 475-76. In fact the court stated "that given the [Commission]'s duty to take emergency action to summarily suspend a physician's license if necessary to protect the public, its general predilection toward respondent's case is understandable and defensible." *Id.* at 475.<sup>16</sup>

The courts in Washington have adhered to the *Johnston* holding in two subsequent health professional disciplinary licensing matters: *Clausing v. Dep't of Health*, 90 Wn. App. at 875 (there was no

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<sup>16</sup> See also *Smith v. Mount*, 45 Wn. App. 623, 726 P.2d 474 (1986), whereby this Court subsequently found that a sheriff's role as the finder of a probable cause determination was insufficient to disqualify him from participating in the forfeiture proceedings for the property.

prejudgment or violation of the appearance of fairness doctrine where the same panel members deciding the summary suspension also ruled on the final order) and *Olmstead v. Dep't of Health*, 61 Wn. App. 888, 893, 812 P.2d 527 (1991) (even though there was insufficient evidence to support the board's final order, the prior consideration of the summary suspension did not disqualify the board members from further proceedings in the matter). Ultimately, a showing of actual bias or ulterior motive must be shown in order to seek disqualification of panel members. *Clausing*, 90 Wn. App. at 874. As shown herein, Dr. Wodja has failed to demonstrate why the holdings in *Johnston, supra*; *Clausing, supra*; and *Olmstead, supra*, should not be followed in this matter.

2. **Any information made known during the summary suspension stage is a nonadjudicatory fact similar to that considered in a probable cause determination, which cannot later be used as a basis for disqualifying the judges from ultimately hearing the matter.**

A person who has participated in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding can serve in the same and subsequent adjudicative proceedings unless a party demonstrates ground for disqualification. RCW 34.05.458(2) and (3). All decisions, including summary suspension determinations, prior to the final order are nonadjudicatory decisions, and,

thus, do not involve adjudicative facts. *Christensen v. Terrell*, 51 Wn. App. 621, 632, 754 P.2d 1009 (1988) (no appearance of unfairness simply because university president participated in termination proceeding both at nonadjudicatory and adjudicatory stage); see *Withrow v. Larkin*, 421 U.S. 35, 54-55, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975) (summary suspension of physician's license was a probable cause determination that did not establish prejudice and prejudgment on part of the board so as to prohibit the board from holding a hearing on the issues); *Clausing*, 90 Wn. App. at 875, citing to *Hartwig v. Bd. of Nursing*, 448 N.W.2d 321, 324 (Iowa 1989) (a board's summary suspension order was merely a probable cause determination, and does not constitute prejudgment because the agency is acting as a court issuing a temporary injunction before a hearing on the merits). Furthermore, if the licensee does not immediately appeal the summary suspension order, all issues related to that order are moot since the final order dissolves the summary order. *Olmstead*, 61 Wn. App. at 892.

Here, the Commission made a preliminary determination to summarily suspend Dr. Wodja's license pending a full adjudication of the allegations. Dr. Wodja suggests that the eighteenth allegation in the Statement of Charges referencing his 1999 plea to misdemeanor assault was the basis for the summary suspension so as to taint the rest of the

proceedings. AR 14. The motion in support of the summary suspension does not use his criminal history as a basis for finding that he was an immediate danger to the public. AR 28-33. The order of summary suspension focused solely on the events that transpired on or about October 17, 2007 and did not indicate that Dr. Wodja's past criminal record was even a consideration for the summary suspension. AR 1-5.

Any information made known during the summary suspension process is similar to a judge hearing a determination of probable cause, motion in limine, or motion for a temporary restraining order and then later ruling on the merits after a full hearing. In such cases, judges are not disqualified from hearing the final matter based upon their earlier knowledge of potential evidentiary matters, nor is a commission member in the administrative proceedings. The administrative hearing gave Dr. Wodja the protection of any erroneous preliminary determination.

**3. Dr. Wodja failed to affirmatively demonstrate that any hearing panel member was biased against him.**

A finder of fact may be disqualified upon a showing of bias, prejudice, interest, or for any reason that a judge can be disqualified. RCW 34.05.425(3) and (4); WAC 246-11-230(4).<sup>17</sup> Fact-finders, however,

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<sup>17</sup> *Org. to Preserve Agric. Lands v. Adams County*, 128 Wn.2d 869, 890, 913 P.2d 793 (1996) (evidence that commissioner received 63 phone calls during the prior year from a waste management company insufficient to demonstrate actual or potential bias because the commissioner had other matters pending with the company unrelated to

are presumed to be unbiased, and one alleging bias bears the burden of making an affirmative showing to such effect. *Faghih*, 148 Wn. App. at 842.<sup>18</sup> As already established by the courts, mere exposure to nonadjudicative facts is not a basis for disqualification. *Ritter*, 96 Wn.2d at 513; *Clausing*, 90 Wn. App. at 875. There is no prejudgment or bias if the Commission relies upon established guidelines in order to enforce consistent standards of practice. *Ancier*, 140 Wn. App. at 578-79. Where there is merely a general predilection toward a given result, which does not prevent the Commission from deciding the case fairly, there is no deprivation of due process. *Johnston*, 99 Wn.2d at 475; *Clausing*, 90 Wn. App. at 875.

Dr. Wodja had the burden to demonstrate that each individual hearing panel member was biased toward his case. He has not established that any Commission member had some ulterior motive or predisposition during the hearing. Prior to the hearing, Dr. Wodja was successful in having the eighteenth allegation struck from the Statement of Charges. *Compare* AR 14 and AR 733. The hearing panel was given a limiting instruction that reminded them that they could only consider evidence

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the adjudicative proceeding); *Ritter v. Bd. of Comm'r of Adams County Public Hosp. Dist. No. 1*, 96 Wn.2d 503, 512, 637 P.2d 940 (1981) (no bias of witness who testified at the hearing, and then sat on the post-suspension review board)

<sup>18</sup> Commission members sit in the same role as a judge during an administrative hearing. *Faghih*, 148 Wn. App. at 845.

introduced at the hearing. AR 1343; AR 1363-64. At hearing, the only evidenced considered related solely to Dr. Wodja's treatment of Patient A. AR 1208-1861. This evidence supported the Departments first 17 allegations in the Statement of Charges. AR 730-36. At the conclusion of the hearing, and after unprofessional conduct was found, the criminal conviction was considered solely for the purposes of determining the most appropriate sanction in order to protect the public's health, safety, and welfare. AR 1196 n.6.

The mere knowledge of a criminal history is an insufficient basis for disqualification. This case fits squarely with the bias and prejudgment concerns raised in *Johnston* and *Clausing, supra*. Any possible predilection toward Dr. Wodja's case that may have arisen from deciding the summary restriction is likewise understandable and defensible. Regardless of the composition of the hearing panel, no testimony or evidence was presented at the hearing about Dr. Wodja's criminal record. Dr. Wodja has not demonstrated that any of the facts from the summary suspension proceeding were considered when the Commission entered its final order after a two-day hearing. The burden was on Dr. Wodja to establish bias and prejudgment, and he neglected to satisfy this basic and fundamental requirement.

**4. The case law cited to by Dr. Wodja is not dispositive to this matter and is without precedential value.**

Dr. Wodja's reliance upon two Supreme Court cases, *Marshall v. Jerrico*, 446 U.S. 238, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980) and *Ohio Bell Tel. Co. v. Pub. Util. Comm'n of Ohio*, 301 U.S. 292, 57 S. Ct. 724, 81 L. Ed. 1093 (1937) have no precedential value. In *Marshall*, the court found that a prosecutor's direct pecuniary interest in the outcome of a case may have an impact on the prosecutor's decision whether or not to enforce a particular statute, and could likely have constitutional ramifications. In *Ohio Bell*, the commission's findings of facts about retroactive rate determinations were based on the commission's judicial notice of price trends which had not been admitted into the record. The issues decided in those cases are unrelated to this matter.

Dr. Wodja also mischaracterizes the facts of *State ex rel. Beam v. Fulwiler*, 76 Wn.2d 313, 456 P.2d 322 (1969) and *Devous v. Wyoming State Bd. of Medical Examiners*, 845 P.2d 408 (Wyo. 1993) as a basis for disqualifying the hearing panel members in this case. In both cases, members of the hearing panel fully participated and directed the investigation of the employee or licensee, respectively. His citation to *Veksler v. Bd. of Registration in Dentistry*, 429 Mass. 650, 711 N.E.2d 562 (Mass. 1999) is equally not dispositive where the dentists license in that

mater was revoked *without a hearing* based on her convictions for Medicaid fraud, welfare fraud, and larceny. Dr. Wodja has neither alleged nor shown that any of the hearing panel members had a pecuniary interest or that he was denied an opportunity to present a defense. Furthermore, Dr. Wodja's reliance upon *Bd. of Dental Examiners v. King*, 364 So.2d 319 (Ala. 1978) is misplaced as that case can also be distinguished factually, where the hearing panel admittedly reviewed a file containing previous charges *while* deliberating on the present charges. This is not the case here. Ultimately, the *King* court rejected the stringent proposition that "any knowledge" of previous charges or bad acts is a basis for a panel member's disqualification. *Id.* at 321-322.

Dr. Wodja further goes astray with his continued insistence that *Chicago Milwaukee St. Paul and Pacific Railroad v. Human Rights Comm'n*, 87 Wn.2d 802, 807, 557 P.2d 307 (1977) stands for the sole proposition that a "mere suspicion of irregularity or appearance of fairness" is a basis for disqualification. There, a commission member had a job application pending with a party to the hearing. This Court in *Faghih*, 148 Wn. App. at 844, factually distinguished that case from health disciplinary matters. Neither the facts, nor the reasoning of any of the cases cited to by Dr. Wodja require this Court to remand the matter to a new panel.

**C. In An Administrative Proceeding, There Is No Legal Requirement For The Commission To Hold A Bifurcated Hearing and Dr. Wodja Has No Criminal Right Of Allocution For Purposes Of Sanctions.**

Allocution is a statutory right afforded to criminal offenders who have been found guilty of a crime. *State v. Hatchie*, 161 Wn.2d 390, 405, 166 P.3d 698 (2007). The Department's Model Procedural Rules do not provide for a bifurcated hearing for the purposes of allowing a respondent to explain away his past bad acts before sanctions are determined. WAC 246-11-470 through -610. The Department's rules on Standards For Professional Conduct allow the trier of fact to consider aggravating and mitigating circumstances when determining sanctions, but do not require a separate hearing on the issues. WAC 246-16-800(3)(d); WAC 246-16-890. In civil matters, the decision to hold separate trials on the issues of liability and damages is a matter within the sound discretion of the trial judge, and unless prejudice is shown, the decision will not be reversed on appeal. *Del Rosario v. Del Rosario*, 116 Wn. App. 886-902, 68 P.3d 1130 (2003); *Domingo v. Boeing Employees' Credit Union*, 124 Wn. App. 71, 86, 98 P.3d 1222 (2004). Here, there was no violation of an appearance of fairness when the Commission decided not to hold a bifurcated hearing on the issue of sanctions, and allow Dr. Wodja to come in and present his version of the 1999 conviction for assault.

Where the public's health, safety, and welfare are of paramount importance, there is no justification for delaying the entry of a final order. A second hearing on the sole issue of whether a 1999 misdemeanor assault conviction should be considered an aggravating circumstance was not necessary. Dr. Wodja was not entitled to retry the facts from his criminal conviction, in order to exonerate himself in this proceeding. *See In re Perez-Pena*, 161Wn.2d 820, 168 P.3d 408 (2007) (a lawyer's criminal conviction provided conclusive evidence of his guilt on an assault charge). The facts of the other tribunal's determination were final, and the Commission was entitled to be informed of the criminal convictions for the purposes of sanctions only.

After the Commission made 48 findings of fact that supported the determination that Dr. Wodja violated numerous provisions of the UDA and many of the Commission's own rules, the Commission ordered that sanctions be imposed under RCW 18.130.160. Dr. Wodja introduced testimony from Dr. Judd about an incomplete sexual deviancy evaluation, which was the basis for the Commission's sanction to have a complete evaluation prior to his return to practice. AR 1203; AR 1749. The Commission also outlined six factors that were all aggravating factors, and only one of the factors was Dr. Wodja's conviction in Massachusetts in 1999 for misdemeanor assault. AR 1182-1204. Dr. Wodja does not take

issue that the Commission was reminded of his prior order (“STID”) with the Dental Commission. In fact, with regard to the assault conviction, Dr. Wodja’s counsel stated “the conviction itself speaks for itself. Misdemeanor assault.” AR 530. The Commission was entitled to use its own knowledge and expertise to determine what were aggravating and mitigating circumstances when determining how to best protect the public.

Other than the assignment of error, Dr. Wodja fails to identify with specificity how he was prejudiced. A second hearing on the sole issue of whether his 1999 misdemeanor assault conviction and a previous order with the Commission should be considered an aggravating circumstance was not necessary. The conviction speaks for itself, and is an aggravating circumstance to be considered after findings of unprofessional conduct have been made and before sanctions are determined. The court gives greater weight to the Board because the Board is the only body to hear the full range of disciplinary matters and has a unique experience and perspective in the administration of sanctions. The Commission’s sanctions were within its statutory authority and should be affirmed.

**D. There Is Substantial Evidence In The Record To Support The Commission’s Findings Of Unprofessional Conduct.**

There was substantial evidence to support the Commission’s findings of fact and conclusions of law. As an initial matter, Dr. Wodja

challenges 46 of the 54 findings of fact and nine of the conclusions of law entered by the Commission, but does not support those assignments of error with legal argument and citation to authorities as a basis for error. Rather, he asks this reviewing court to reweigh the evidence in its appellate capacity by claiming a “controversy” where two experts provided differing opinions with respect to the appropriate amount of medication for anxiety versus deep sedation.

“Courts do not review a challenge to findings that does not cite to the records showing why the findings are not supported by the record. Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration. An assignment of error will not be considered unless its merit is apparent on its face.” *Green v. McAllister*, 103 Wn. App. 452, 469 14 P.3d 795 (2000) (citations omitted). If there is substantial evidence in the record, then the challenged findings still become verities upon appeal. *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). It is appropriate for the Commission to draw its own conclusions as to the appropriate standard of care, and courts give deference to the Commission’s administrative expertise. *Ames v. Dep’t of Health*, 166 Wn.2d 255, 261-62, 208 P.3d 549 (2009).<sup>19</sup> A single act of

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<sup>19</sup> “When some expert testimony has been offered to an adjudicative board, as in this case, and the board issued findings of facts based on the expert testimony, this court

misconduct may violate more than one duty. *In re Vanderveen*, 166 Wn.2d 594, 211 P.3d 1008 (2009) (attorney discipline). Accordingly, the court cannot consider all 54 assignments of error to the Commission's findings of fact and conclusions of law. *State v. Lee*, 147 Wn. App. 912, 915, 199 P.3d 445 (2008). Therefore, all of the Commission's findings of fact become verities upon appeal. *Id.*

1. **Dr. Wodja's sedation of a naked female patient after hours relates to his profession and is a violation of RCW 18.130.180(1) and paragraph 2.5 must be affirmed.**

The record contains substantial evidence to support the Commission's conclusion that Dr. Wodja violated RCW 18.130.180(1), which defines unprofessional conduct as the "commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not." A medical disciplinary proceeding is taken for two purposes: To protect the public and to protect the standing of the profession in the eyes of the public. *Haley*, 117 Wn.2d at 732; *Heinmiller*, 127 Wn.2d at 605. The need to protect the public is directly related to protecting the profession. *Haley*, 117 Wn.2d at 733. Conduct that lowers the public's trust in health care providers erodes the trust and confidence necessary to

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does not inquire whether the expert testimony fits into some preconceived formulation." *Ames*, 166 Wn.2d at 262.

carry out their vital role. *Haley*, 117 Wn.2d at 734. “To be sanctionable, misconduct does not have to be committed during the actual diagnosis or treatment of an actual patient.” *Johnson v. Dep’t of Health*, 133 Wn. App. 403, 409, 136 P.3d 760 (2006); see *Haley*, 117 Wn.2d At 733. Thus, RCW 18.130.180(1) must be interpreted so as to preserve the integrity of the notion that a professional is subject to discipline for misconduct irrespective of the professional’s actual knowledge of the impropriety of the conduct. *Heinmiller*, 127 Wn.2d at 603. The common knowledge and understanding of the member of a particular profession is determinative of whether the conduct renders the professional unfit to practice. *Heinmiller*, 127 Wn.2d at 605.

Dr. Wodja’s actions lower the profession in the eyes of the public. No patient should have to ever worry that they could be placed in a compromising position with no way to defend themselves or protect their airway. Patient A was observed without pants and underwear while in an obviously sedated state. This took place in Dr. Wodja’s office, after hours, with no professional staff present. The Commission has the authority to protect the reputation of the profession, in addition to protecting the health, safety and welfare of the people in the state of Washington. Thus, the Commission’s findings of facts in paragraphs 1.24 through 1.31, and its legal conclusions in paragraphs 2.5 must be affirmed.

2. **The Commission correctly determined that Dr. Wodja's treatment of Patient A was below the standard of care and therefore violated RCW 18.130.180(4), and paragraph 2.6 must be affirmed.**

Dr. Wodja's discontentment with the Commission's findings of fact shows no legal error. The Commission was presented with sufficient evidence to correctly determine that Dr. Wodja's treatment practices were substandard and unprofessional. "The Commission acts to assure the public of the adequacy of professional competency and conduct in the healing arts." RCW 18.130.010. In health disciplinary matters, a breach of the standard of care is a violation of RCW 18.130.180(4). The failure to exercise the minimal degree of skill, care, and learning expected of a reasonably prudent practitioner constitutes a breach of the standard of care, and is negligence or incompetence. *See Seybold v. Neu*, 105 Wn. App. 666, 677, 19 P.3d 1068 (2001) (definition of standard of care); RCW 7.70.040 (definition of standard of care in civil cases for medical malpractice); Washington Pattern Jury Instructions, Civil, WPI 105.01 and 105.02.

As the disciplinary body for the profession, the Dental Commission may use their collective experience, expertise and knowledge to evaluate and draw inferences from the evidence when determining unprofessional conduct. RCW 34.05.452(5)(b); RCW 34.05.461(5);

WAC 246-11-160(2); *Ames*, 166 Wn.2d at 261. The trier of fact is perfectly capable of determining what weight to give to an expert's opinions about dental treatment and medication management when it is the type of information that practitioners rely upon everyday in their practices. *Reese v. Stroh*, 128 Wn.2d 300, 309, 907 P.2d 282 (1995). Likewise, credibility determinations are for the trier of fact and cannot be reviewed on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Dr. Wodja's snippets of citations to the record without any analysis as to why the Commission's findings are unsupported by records is not a basis for overturning the Commission's well reasoned findings of fact and conclusions of law. Dr. Wodja fails to acknowledge that the Department's expert testified to the issues that he claims are unsupported by the evidence. Dr. Bart Johnson estimated that Dr. Wodja instructed Patient A ingest approximately 1.25 mg of Triazolam. AR 1536.<sup>20</sup> He testified that the starting dose for Triazolam is 0.125 to 0.25 mg and the manufacturer's maximum recommended dose is 0.5 mg. AR 1519-20. Dr. Isackson agreed. AR 1585; AR 1588. Dr. Johnson testified that if a patient is evidencing droopy eyes, slower speech, and delayed movement then this is evidence that the patient is sedated. AR 1532-33. Dr. Isackson agreed that when a patient exhibits this relaxed behavior, then no more

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<sup>20</sup> Dr. Wodja's expert witness, Dr. Isackson, provided an imprecise estimate of 0.75 mg to 1.5 mg. AR 1577.

medication is indicated. AR 1585-86. Dr. Johnson testified that the standard of care requires a dentist to document all medications given and prescribed. AR 1534-38. He testified that the standard of care requires documentation when medication is “wasted” or disposed of. AR 1538. The standard of care requires documentation of any anesthetics injected. AR 1538-39.<sup>21</sup> Dr. Isackson agreed that Dr. Wodja’s recordkeeping was below the standard of care. AR 1583-84. Dr. Johnson further opined that the standard of care requires understandable post-operative instructions be given for surgical procedures. AR 1539.

Dr. Wodja also hints about a “controversy” related to an article about the cumulative effect of sedation medications. AR 1788. However, Dr. Johnson did not change his opinion that the current guidelines set the maximum recommended dose of Triazolam at 0.5 mg. *Id.* Additionally, Dr. Wodja’s own expert witness, Dr. Isackson, testified that that a patient who had ingested 1.25 mg of Triazolam by 8:30 p.m. was not at her peak point of sedation when being discharged at 9:00 p.m. AR 1587. Dr. Johnson testified that Dr. Wodja should not have discharged Patient A while in an obviously sedated state, the risk of harm was huge because it was an uncontrolled situation where the patient was becoming

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<sup>21</sup> It should be noted that pain medications, anesthetics for numbing a location, and sedatives have three distinct purposes and the medications are not used interchangeably. AR 1516-17; AR 1518, ll.5-7.

increasingly more sedated and had no ability to protect her own airway. AR 1541-44.<sup>22</sup> Furthermore, Dr. Johnson testified that it is important to have staff present in case of an emergency if the patient should vomit, become combative or disoriented, or lose an airway. AR 1515; AR 1549. Ultimately, the dentist is responsible for the patient's well-being. AR 1515.

The Commission also made at least four specific findings that Dr. Wodja lacked credibility with respect to his justification for prescribing the oral sedative Triazolam. AR 1186, n.1; AR 1189 n.2 and n.3; AR 1191, ¶ 1.28. The Commission evaluated his testimony and determined that Dr. Wodja did not have the knowledge and skills necessary to evaluate severe decay into the nerve and severe infection. AR 1189 (¶ 1.19). Dr. Wodja may not ask this Court to reweigh the testimony and determine that his accounts and his expert's opinions should be substituted for the findings the Commission made. The Commission's ruling that three fact witnesses were credible and that Dr. Wodja was not credible should not be disturbed.<sup>23</sup>

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<sup>22</sup> See WAC 246-817-710(5) definition of "deep sedation/analgesia" is a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

<sup>23</sup> Dr. Wodja attacks the Commission's finding that Patient A's roommates and family were found by the Commission to be credible. AR 1184. Even if a witness has a

A dentist owes the patient a duty to comply with the standard of care. In health disciplinary licensing matters, the Commission determines which practices are generally accepted in the state of Washington. The Commission applied the facts of this case to the categories of behavior that Dr. Johnson and the other experts testified were a breach of the standard of care. Therefore, the Commission's findings of facts 1.3 through 1.23 and 1.32 through 1.48 support the legal conclusion in paragraph 2.5 that Dr. Wodja acted negligently in the treatment of Patient A, thus violating RCW 18.130.180(4).

3. **Dr. Wodja failed to accurately and fully record patient treatment notes, along with medications prescribed, administered, dispensed, and stored, thus conclusions of law 2.7, 2.9 and 2.10 must be affirmed.**

It is unknown exactly what quantity of medications Patient A ingested before being admitted to the emergency room. Patient A's treatment notes are woefully inadequate. AR 1227-30. Dr. Wodja testified as follows:

Q. Okay. And did you administer any anesthetic?

A. I did.

Q. Where's that charted?

A. It's not.

AR 1667; *see also* AR 1708.

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past history of drug possession, it has little to do with the witness's credibility. *See State v. Calegar*, 133 Wn.2d 718, 724-27, 947 P.2d 235 (1997). Simply because a witness has committed a crime in the past does not automatically mean the witness will lie when testifying. *Id.* at 725.

Q. So you didn't ask the patient what she took?

A. No. I did. She didn't know.

Q. Did you document it in here?

A. No.

AR 1700.

Q. Did the patient have a mask on her face that evening?

A. I did give her oxygen that night.

Q. Did you record that?

A. I don't think I did.

AR 1702

Q. Is it documented anywhere in your records that that's what you gave her?

A. No. I didn't get that in there.

AR 1705.

Dr. Wodja testified that he gave at least 0.1 mg after Patient A arrived. AR 1657. That is not documented in the chart note. See AR 1227-29. Then he gave her more Triazolam. AR 1663. That is not documented in the chart notes either. See AR 1227-29. Nor is it documented in the chart that he was crushing pills and estimating the amount administered. *Id.* Dr. Wodja claims to have wasted four of the sedative pills, but again does not document that information. AR 1678-79.

Dr. Wodja's interpretation of WAC 246-817-350<sup>24</sup> is equally creative. He tries to suggest that if he has prescription medications "in-house" after purchasing the practice, then the medication is not "stock,"

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<sup>24</sup> WAC 246-817-350 provides that when Schedule II, III, IV or V drugs as described in chapter 69.50 RCW are stocked by the dental office for dispensing to patients, an inventory control record must be kept in such a manner to identify disposition of such medicines. Such records shall be available for inspection by the secretary or his/her authorized representative.

and does not have to account for it. Dr. Wodja testified that he kept Triazolam in his personal office, and administered some of it to Patient A. AR 1656-57; AR 1704; AR 1706. This fits with Dr. Wodja's definition of stocked as "kept on hand." Pet. Brief, p. 38. He testified "I do not have an inventory of different medications, therefore I do not have a log of those, those controlled substances, which I think you are referring to." AR 1706. Regardless of whether he chose to maintain a log, he had a duty to account for any medications he kept on hand. The Commission reviewed all of the exhibits and found that he failed to fully and accurately document and record all medications prescribed, administered, dispensed, and stored. The Commission can use its experience as practitioners to determine what is acceptable. Dr. Wodja may not ask this Court to reweigh the evidence and apply the law differently. Thus, the Commission's findings of facts in paragraphs 1.32 through 1.41, and its legal conclusions in paragraphs 2.7, 2.9 and 2.10 were correct and must be affirmed.

**4. Dr. Wodja failed to report that Patient A was hospitalized and conclusion of law 2.8 must be affirmed.**

Patient A would not have been admitted to the Emergency Room that night but for Dr. Wodja's prescription and direction to ingest Triazolam on the night he claimed to treat her for a dental emergency.

Dr. Wodja does not deny that he failed to inform the Dental Commission of Patient A's hospitalization on October 17, 2007. Rather, he claims that (a) the patient was being evaluated for some reason unrelated to his treatment of her; and (b) the Commission already knew so he was excused. Patient A's hospitalization was a direct result of Dr. Wodja's treatment for a dental related condition, due to the fact that Patient A was so anesthetized that she could not consent to treatment for 15 hours after admittance. Rather, Dr. Wodja wants to parse out half of the facts, and try to solely focus this appellate court on the sexual assault evaluation. However, the ER dentist performed an incision and drain on the site that was supposedly treated by Dr. Wodja, and only after she could finally consent to treatment. AR 1288.

It was solely Dr. Wodja's duty under WAC 246-817-320 to inform the Commission of any hospitalization "as a direct result of dental procedures or anesthesia." Dr. Wodja had at least nine days between October 17, 2007 when Patient A was hospitalized, and when the Department's investigator first contacted him on October 26, 2007. He had two other opportunities to report the information in his requested responses from October 31, 2007 and November 5, 2007, and he failed to do so. The Statement of Charges was not issued until November 30, 2007, and as will be discussed below, Dr. Wodja refused to provide a written

statement about any knowledge he may have of Patient A. The Commission's findings of facts in paragraph 1.42 through 1.46, and its conclusion of law in Paragraph 2.8 is correct and must be affirmed.

5. **Dr. Wodja had a duty under RCW 18.130.180(8) to fully cooperate with the disciplining authority during its investigation thus conclusion of law 2.11, must be affirmed.**

At no time did Dr. Wodja invoke a Fifth Amendment privilege. On October 26, 2007, Dr. Wodja made admissions about the amount of medication prescribed and the patient's state of undress. AR 1481-85. On October 31, 2007 and November 5, 2007, Dr. Wodja was given two notifications that a written statement was required. AR 1290-94. He fully testified to all the issues at the hearing six weeks later and admitted that he did not provide the requested information. AR 1688, ll. 20-25. He cannot now invoke the Fifth Amendment at the appellate stage in order to invite error. Thus, the Commission correctly found that Dr. Wodja failed to cooperate with the Department's investigator in paragraph 1.48 of the Final Order.

The Fifth Amendment privilege against self-incrimination is applicable to civil cases in limited circumstances. *Eastham v. Arndt*, 28 Wn. App. 524, 533, 624 P.2d 1159 (1981); *and see Chavez v. Martinez*, 538 U.S. 760, 123 S. Ct. 1994, 155 L. Ed. 2d 984 (2003) (can only invoke

in a civil proceeding if the criminal charges were brought prior to the civil matter). The mere existence of an ongoing criminal investigation does not bar proceeding with civil litigation arising out of the same factual allegations. *King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 352, 16 P.3d 45 (2000). If parallel criminal and civil cases implicate a defendant's Fifth Amendment privileges, a court may consider granting a stay of the civil action after balancing seven factors. *Id.* Dr. Wodja did not request a stay of the Commission's proceedings, nor was one granted. Health license disciplinary matters are not so related to criminal proceedings to automatically invoke the protections of the Fifth Amendment. The sanctions that may be imposed against a licensed health care professional under RCW 18.130.160 have no correlation to any criminal penalties (suspension of a license versus imprisonment), nor are the nature of the Commission's charges similar to criminal violations (unprofessional conduct versus rape).

Since Dr. Wodja provided some statements during the investigation<sup>25</sup> and fully testified at hearing, his assertions that he can claim a Fifth Amendment privilege to same matters and not others is

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<sup>25</sup> In similar licensing proceedings, the courts have consistently held that a statement given prior to a DUI arrest can be used in a civil license revocation proceeding. *Ball v. Dep't of Licensing*, 113 Wn. App. 193, 53 P.3d 58 (2002); *Williams v. Dep't of Licensing*, 46 Wn. App. 453, 731 P.2d 531 (1986).

without support.<sup>26</sup> Once a witness waives his privilege and testifies as to some matters, he is then subject to cross examination on questions germane to his direct theory of the case. *State v. Lougin*, 50 Wn. App. 376, 380, 749 P.2d 173 (1988). It would be a curious rule of evidence which allows one party to bring up a subject, drop it at a point where it is no longer advantageous to him, and then bar the other party from further inquiries about it. *Id.* Dr. Wodja's statement to Investigator Reed was a party admission under ER 801(d)(2). Admissions of a party opponent are not hearsay and admissible as substantive evidence. *Saldivar v. Momah*, 145 Wn. App. 365, 400, 186 P.3d 1117 (2008); RCW 34.05.452.

After making testimonial statements, Dr. Wodja just refused to further cooperate. Once Dr. Wodja was the focus of a Department investigation, he was required to cooperate with the disciplining authority, or be subject to disciplinary proceedings where he could explain his failure to cooperate. RCW 18.130.180(8). To allow such antics would impede the Commission's legislative mandate to protect the public from imprudent and reckless practitioners. The Commission's findings of facts 1.47 and 1.48, along with conclusion of law 2.11 must be affirmed.

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<sup>26</sup> When a witness in a civil suit refuses to answer a question by invoking the Fifth Amendment, the trier of fact is entitled to draw a negative inference from his refusal to testify. WAC 246-11-490(2); *Ikeda v. Curtis*, 43 Wn.2d 449, 458-59, 261 P.2d 684 (1953) (fraud in the sale of a hotel); *State Farm v. Huynh*, 92 Wn. App. 454, 462, 962 P.2d 854 (1998) (insurance fraud).

**6. The Commission correctly determined that Dr. Wodja abused Patient A and conclusion of law 2.12 must be affirmed.**

Patient A's state of undress, in a dental office, with no staff present, for nearly two hours while under the influence of sedatives is abuse of a patient. A heavily sedated patient is vulnerable to abuse, neglect, maltreatment, and exploitation when not properly monitored in a safe setting. In a dental setting, there is absolutely no reason for a patient to disrobe. Dr. Wodja's treatment of Patient A was demoralizing. His treatment of her evidences a lack of respect for patient privacy. Dr. Wodja's own expert witness, Dr. Isackson, testified that if a patient was naked in her office under the same conditions, that she would not have allowed the patient to lay there naked and would have called 9-1-1. AR 1594. Dr. Wodja abused the trust that the public puts in dentists. The Commission's conclusion of law was based on the facts admitted into evidence. The Commission's findings of facts 1.30 and, along with conclusion of law 2.12 must be affirmed.

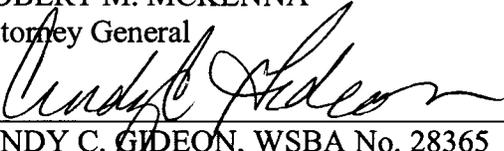
## **VI. CONCLUSION**

Dr. Wodja's procedural arguments fail to rise to the required standard for this Court to remand the matter back to a different Commission panel given the Washington Supreme Court's previous ruling in *Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 663 P.2d 457 (1983).

Additionally, the Commission's Final Order is based upon substantial evidence that was admitted at the administrative hearing. The Commission evaluated the evidence, weighed the testimony, and made credibility determinations at the hearing. For these reasons, the Commission's Final Order must be AFFIRMED.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of September, 2009.

ROBERT M. MCKENNA  
Attorney General

  
CINDY C. GIDEON, WSBA No. 28365  
Assistant Attorney General  
Attorneys for Department  
360-664-0083 facsimile: 360-664-0229  
cindyg@atg.wa.gov

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
DENTAL QUALITY ASSURANCE COMMISSION**

In the Matter of:

CHRISTOPHER A. WODJA,  
Credential No. DE00009263,

Respondent.

Docket No. 07-10-A-1089DE

EX PARTE ORDER OF  
SUMMARY SUSPENSION

**PRESIDING OFFICER:** Jerry Mitchell, Health Law Judge

**COMMISSION PANEL:** Dr. Russell B. Timms, Chair  
Dr. Robert J. Achterberg, D.D.S. M.S.  
Dr. Abdul Alkezweeny, Ph.D.  
Dr. Fred Quarnstrom, D.D.S.

On November 29, 2007, this matter came before the Dental Quality Assurance Commission (Commission), on a Motion for Order of Summary Suspension brought by the Dental Program of the Department of Health (Department) through the Office of the Attorney General. The Department issued a Statement of Charges alleging Respondent violated RCW 18.130.180(1), (4), (6), (7), (8)(a-b), and (24) and WAC 246-817-310; WAC 246-817-320; WAC 246-817-340; WAC 246-817-350; and WAC 246-817-360. The Commission, after reviewing the Statement of Charges, Motion, and supporting evidence, grants the motion. CREDENTIAL SUSPENDED pending further action.

**I. FINDINGS OF FACT**

1.1 Christopher A. Wodja (Respondent) is a dentist, credentialed by the State of Washington at all times applicable to this matter.

1.2 Respondent is the principal dentist and owner of North City Dental.

1.3 The Department issued a Statement of Charges alleging Respondent violated RCW 18.130.180(1), (4), (6), (7), (8)(a-b), and (24) and WAC 246-817-310;

EX PARTE ORDER OF  
SUMMARY SUSPENSION

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**ATTACHMENT 1**

WAC 246-817-320; WAC 246-817-340; WAC 246-817-350; and WAC 246-817-360.

The Statement of Charges was accompanied by all other documents required by WAC 246-11-250.

1.4 The declaration of Investigator Gary Reed, together with the attached exhibits to his declaration, establishes that there is a risk of immediate danger to the public health, safety, or welfare.

1.5 Respondent did not record the prescription for the narcotic pain pills, Tylenol #3, nor did he record any medication given after the patient arrived at his office.

1.6 Respondent showed a callous disregard for Patient A's dignity and well-being. Respondent directed Patient A to wear a see-through medical gown. No other clinic staff were present during this appointment. Patient A did not have a chaperone. Patient A was placed in the humiliating situation of having her dental treatment conducted while she wore only a tank top and the sheer gown. Respondent provided an unacceptable treatment environment.

1.7 Respondent rendered his patient vulnerable by prescribing, dispensing, and/ or administering to her a prescription hypnotic sedative which left her without complete control over her treatment and the situation.

1.8 Respondent's callous disregard for the patient's safety is further evidenced by his failure to fully assess the patient during and at the conclusion of the appointment.

1.9 The evidence establishes that Respondent failed to adhere to clinical safeguards that are necessary to ensure the safe prescription and administration of sedative medications.

1.10 Respondent placed himself in a dangerous position by being alone with a highly sedated patient. There was no one to come and assist Respondent in managing an emergency. Additionally, there is no evidence that Respondent has the credentials, training, and emergency equipment required for sedation of patients. This placed the patient in an unreasonable risk of harm.

1.11 In the alternative, the evidence establishes Respondent's willingness to abuse his prescriptive authority and dental credential to gain access to victims, render them vulnerable, and humiliate them without regard to the devastating consequences that result.

1.12 As set forth in the allegations in the Statement of Charges, as well as the motion for summary action, the evidence presented indicates Respondent abused the trust placed in him as a credentialed dentist.

1.13 As of this date, Respondent has failed to cooperate with the disciplining authority. The Department of Health was approved to investigate this matter. Health Care Investigator, Mr. Reed, sent correspondence to Respondent's attorney on or about October 31, 2007 and November 5, 2007. Respondent was requested to provide a written explanation of the events, certain categories of documents, and responses to specific questions. He did not respond. Respondent has a statutory duty to cooperate with the Commission and the Department of Health in its investigations.

1.17 The above pattern of behavior demonstrates Respondent's disregard for laws, whether they concern acceptable prescriptive practices that protect his patients or respect for the patients that he treats, including a safe environment where they are not vulnerable to exploitation and neglect. Such past disregard indicates Respondent is

unlikely to abide by future restrictions on his dental practice short of full suspension. Further, Respondent's transgressions were so wide-ranging as to implicate all aspects of his decision making, including scheduling, charting, medication protocols, auxiliary staffing, professional boundaries, and cooperation with the disciplinary authority. A restriction on his scope of practice, such as prohibiting his use of hypnotic sedatives, or prohibiting him from treating women patients, would not adequately protect the public from the risks of these broader issues, which apply to patients of all genders regardless of their specific treatment needs.

## II. CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over Respondent's credential to practice as a dentist. RCW 18.130.040.

2.2 The Commission has authority to take emergency adjudicative action to address an immediate danger to the public health, safety, or welfare. RCW 34.05.422(4); RCW 34.05.479; RCW 18.130.050(7); and WAC 246-11-300.

2.3 The Findings of Fact establish the existence of an immediate danger to the public health, safety, or welfare if Respondent has an unrestricted credential. There are no conditions available to the Commission that would adequately safeguard patient safety by fashioning some form of lesser restriction upon Respondent's credential. Immediate suspension is necessary to prevent future misuse of Respondent's dental license. The Commission can and should summarily suspend Respondent's dental credential. The Findings of Fact establish that the requested summary action is necessary, and adequately addresses the danger to the public health, safety, or welfare.

EX PARTE ORDER OF  
SUMMARY SUSPENSION

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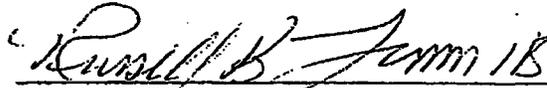
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ATTACHMENT 1

III. ORDER

Based on the Findings of Fact and Conclusions of Law, it is ORDERED that Respondent's credential to practice as a dentist is SUMMARILY SUSPENDED pending further disciplinary proceedings by the Commission. Respondent shall immediately deliver all credentials, including wall, display, and/or wallet, if any, to the Commission.

Dated this 29<sup>th</sup> day of November, 2007.



DR. RUSSELL B. TIMMS, D.D.S.

Panel Chair

FOR INTERNAL USE ONLY:

PROGRAM NO. 2007-10-0023

EX PARTE ORDER OF  
SUMMARY SUSPENSION

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ATTACHMENT 1

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FILED

JAN 14 2008

Adjudicative Clerk Office

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
DENTAL QUALITY ASSURANCE COMMISSION

In the Matter of .

Docket No. 07-10-A-1089DE

CHRISTOPHER A. WODJA  
Credential No. DE00009263

STATEMENT OF CHARGES

Respondent

The Deputy Executive Director of the Dental Quality Assurance Commission (Commission), on designation by the Commission, makes the allegations below, which are supported by the evidence contained in program file no. 2007-10-0023DE. The patient referred to in this document is identified in confidential schedule attached at the last page.

**1. ALLEGED FACTS**

1.1 On March 25, 2002, the state of Washington issued Respondent a credential to practice as a dentist. Respondent's credential is currently active. Respondent has never been issued a permit for the administration of conscious sedation or deep sedation to patients.

1.2 Since August 2006, Respondent has been the dentist and principal of North City Dental office, which is located in Shoreline, King County, Washington.

1.3 On Tuesday, October 16, 2007, Patient A presented with an abscess in the upper right quadrant, near tooth #6. Respondent gave the patient a prescription for 16 Acetaminophen/Codeine 300/30 despite the fact that she clearly stated on the medical history that she was already taking "Vicodin". Respondent acknowledged in his treatment notes for October 16, 2007, that they were Vicodin ES, showing that he knew Patient A already had a powerful narcotic prescription. Respondent did not justify the reason for prescribing more narcotics. Respondent wanted to see her again in two (2) days, which would be Thursday, October 18. Per the records, patient wanted to be seen on Friday, October 19 instead. Respondent agreed to treat her but was unable to schedule an appointment on Friday due to the office being closed. On Wednesday, October 17, 2007, Respondent agreed to treat her later in the evening.

STATEMENT OF CHARGES  
DOCKET NO. 07-10-A-1089DE

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ATTACHMENT 2

1.4 On Tuesday October 16, 2007, Respondent prescribed six (6) Triazolam, 0.25 mg and called the prescription into Costco Pharmacy. Triazolam is a classified as a Schedule IV drug, within a class of drugs called sedative / hypnotics.

1.5 On Wednesday October 17, 2007, at approximately 6:30 p.m., Patient A ingested two (2) of the Triazolam tablets. She was unable to operate her own vehicle, so a friend drove her to the dental office.

1.6 On October 17, 2007, at approximately 7:00 p.m. Respondent initiated treatment of Patient A, after-hours and with no staff present and no chaperone.

1.7 At approximately 8:00 p.m., Respondent contacted Patient A's roommate and requested that she bring the additional (4) tablets of Triazolam to the office so Patient A could take them for the desired effect.

1.8 Two of Patient A's roommates delivered the medication to the back door of the empty office. There, they observed Patient A wandering from the operatory wearing a see-through gown that came down to the mid-thigh. Under the gown, Patient A was only wearing a tank-top and was without any pants or underwear. The roommates questioned why the Patient was without her jeans. The roommates heard Patient A ask if she could put her pants back on, and Respondent stated "yes." The roommates left and then immediately returned and demanded entry where upon they were required to wait in the waiting room for another half hour. When one of the roommates got up to use the restroom, she noticed Patient A's jeans beside the treatment chair.

1.9 At the conclusion of the session, Dr. Wodja attempted to follow the patient into the restroom where he claimed he would assist Patient A with dressing.

1.10 Instead, upon their insistence, the two roommates accompanied Patient A into the restroom and asked her if Respondent had touched her, whereupon she pointed to her crotch and affirmatively acknowledged that Respondent touched her genital area.

1.11 At the conclusion of the treatment, the witnesses requested the return of the prescription bottle. Respondent informed Patient A's roommates that Patient A consumed all of the prescribed Triazolam, "plus some." Respondent admitted to King County Sherriff Officers and the Commission investigator that in addition to the

Costco prescription, he gave Patient A two (2) tablets 0.125 mg of Triazolam from his sample box.

1.12 After leaving his office at approximately 9:30 p.m., the roommates called the police and Patient A was transported to Harborview Medical Center. When she arrived at approximately 10:30 p.m., she was heavily medicated and sedated, and unable to respond to verbal commands or questions. The patient was not coherent until the following morning.

1.13 While admitted at the hospital, an incision and drainage was done on the upper right quadrant, tooth #6.

1.14 When the Sherriff's Office executed a search warrant approximately a week later, Patient A's treatment record was not filed with other patient files. It was located in a closet in Respondent's office sitting on top of a stack of magazines and reading material.

1.15 Respondent violated professional and personal boundaries with Patient A on October 17, 2007. Respondent directed the patient to change into a see-through medical gown and remained alone for over an hour with the over-sedated patient, who was naked from the waist down under the gown.

1.16 Respondent treated Patient A below the standard of care in the state of Washington. Specifically, Respondent:

- A. Prescribed a sedative for the purpose of providing analgesic effect;
- B. Over-prescribed pre-operative medications and / or failed to give appropriate pre-operative instructions;
- C. Failed to fully document all medications prescribed and / or administered, including but not limited to antibiotics, narcotics, mouth rinses, and sample sedative tablets administered;
- D. Failed to document a justification or finding for each of the prescriptions and or medications administered;
- E. Failed to document chief complaint; assessment, testing, discoloration, location and extent of swelling, and diagnosis;
- F. Failed to administer an anesthetic and / or record dosage, strength, and amount;

- G. Failed to document incision or drainage site; instruments used, length of incision, description and quantity of serosanguinous fluid and / or purulence, if present. And whether or not a drain was placed and sutured.
- H. Failed to adequately monitor the patient for quantity of medication ingested; failed to assess the situation pre-operatively, during the procedure, and post-operatively; failed to adequately recover a heavily sedated patient and allowed her to leave the premises without properly recovering, and / or failed to refer the patient for emergency care. All of these put the patient at unreasonable risk of harm. Failed to have adequate staff for a sedated patient while he was alone in the office with a sedated woman. If there had been a medical emergency he would have been unable to manage it himself, thus placing the patient in harms' way.
- I. Failed to adequately perform the dental treatment scheduled that evening for Patient A, who had come in for treatment of an abscessed tooth with facial swelling.

1.17 The Health Care Investigator, Mr. Reed, sent correspondence to Respondent's attorney on or about October 31, 2007 and November 5, 2007. Respondent was requested to provide a written explanation of the events, certain categories of documents, and responses to specific questions. As of this date, Respondent has failed to cooperate with the disciplining authority.

## 2. ALLEGED VIOLATIONS

2.1 Based on the Alleged Facts, Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1), (4), (6), (7), (8)(a-b), (24); and

WAC 246-817-310, WAC 246-817-320; WAC 246-817-340; WAC 246-817-350; and WAC 246-817-360 which provide, in part:

**RCW 18.130.180 Unprofessional conduct.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

...

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

...

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) not furnishing any papers or documents

(b) not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;

...

(24) Abuse of a client or patient or sexual contact with a client or patient;

....

**WAC 246-817-310 Maintenance and retention of records**

Any dentist who treats patients in the state of Washington shall maintain complete treatment records regarding patients treated. These records shall include, but shall not be limited to X rays, treatment plans, patient charts, patient histories, correspondence, financial data and billing. These records shall be retained by the dentist for five years in an orderly, accessible file and shall be readily available for inspection by the DQAC or its authorized representative: X rays or copies of records may be forwarded to a second party upon the patient's or authorized agent's written request. Also, office records shall state the date on which the records were released, method forwarded and to whom, and the reason for the release. A reasonable fee may be charged the patient to cover mailing and clerical costs.

Every dentist who operates a dental office in the state of Washington must maintain a comprehensive written and dated record of all services rendered to his/her patients. In offices where more than one dentist is performing the services the records must specify the dentist who performed the services. Whenever requested to do so, by the secretary or his/her authorized representative, the dentist shall supply documentary proof:

- (1) That he/she is the owner or purchaser of the dental equipment and/or the office he occupies.
- (2) That he/she is the lessee of the office and/or dental equipment.
- (3) That he/she is, or is not, associated with other persons in the practice of dentistry, including prosthetic dentistry, and who, if any, the associates are.
- (4) That he/she operates his office during specific hours per day and days per week, stipulating such hours and days.

**WAC 246-817-320 Report of Patient Injury**

All licensees engaged in the practice of dentistry shall submit a complete report of any patient mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of dental procedures or anesthesia related thereto. This report shall be submitted to the DQAC within thirty days of the occurrence.

**WAC 246-817-340 Recording requirements for all prescription drugs.**

An accurate record of any medication(s) prescribed or dispensed shall be clearly indicated on the patient history. This record shall include the date prescribed or the date dispensed, the name of the patient prescribed or dispensed to, the name of the medication, and the dosage and amount of the medication prescribed or dispensed.

**WAC 246-817-350 Recording requirement for scheduled drugs.**

When Schedule II, III, IV or V drugs as described in chapter 69.50 RCW are stocked by the dental office for dispensing to patients, an inventory control record must be kept in such a manner to identify disposition of

such medicines. Such records shall be available for inspection by the secretary or his/her authorized representative.

**WAC 246-817-360 Prescribing, dispensing or distributing drugs.**  
No dentist shall prescribe, dispense or distribute any controlled substance or legend drug for other than dental-related conditions.

2.2 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

### 3. NOTICE TO RESPONDENT

The charges in this document affect the public health, safety and welfare. The Deputy Executive Director of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline pursuant to RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

DATED November 26, 2007.

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
DENTAL QUALITY ASSURANCE  
COMMISSION

  
KIRBY PUTSCHER  
DEPUTY EXECUTIVE DIRECTOR

ROBERT M. MCKENNA  
ATTORNEY GENERAL

  
CINDY C. GIDEON, WSBA #28365  
ASSISTANT ATTORNEY GENERAL

FOR INTERNAL USE ONLY:

PROGRAM NO. 2007-10-0023DE

STATEMENT OF CHARGES  
DOCKET NO. 07-10-A-1089DE

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ATTACHMENT 2

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
DENTAL QUALITY ASSURANCE COMMISSION**

In the Matter of:	)	Docket No. 07-10-A-1089DE
	)	
CHRISTOPHER A. WODJA, D.D.S.,	)	FINDINGS OF FACT,
License No. DE00009263,	)	CONCLUSIONS OF LAW,
	)	AND FINAL ORDER
Respondent.	)	
_____	)	

**APPEARANCES:**

Christopher A. Wodja, Respondent, by  
Lawrence and Versnel PLLC, per  
John C. Versnel, III., and Vanessa M. Vandenbrug, Attorneys at Law

Department of Health Dental Program, by  
Office of the Attorney General, per  
Cindy C. Gideon, Assistant Attorney General

**COMMISSION PANEL:** Russell B. Timms, D.D.S., Panel Chair  
Robert J. Achtenberg, D.D.S.  
Abdul Alkezweeny, Ph.D.  
Larry Knutson, D.D.S.

**PRESIDING OFFICER:** Jerry D. Mitchell, Health Law Judge

On January 16, 17, and 18, 2008 the Dental Quality Assurance Commission  
(Commission) held a hearing regarding the Order of Summary Suspension and  
Statement of Charges issued on November 30, 2007. License suspended.

**ISSUES**

- A) Did the Respondent engage in unprofessional conduct as alleged under RCW 18.130(1), (4), (6), (7), (8)(a-b) and (24), and WAC 246-817-310, WAC 246-817-320, WAC 246-817-340, WAC 246-817-350 and WAC 246-817-360?
- B). If the Department proves unprofessional conduct, what disciplinary sanctions are appropriate under RCW 18.130.160?

**FINDINGS OF FACT  
CONCLUSIONS OF LAW,  
AND FINAL ORDER**

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**ATTACHMENT 3**

## SUMMARY OF PROCEEDINGS

During the January 16-18, 2008 hearing, the following witnesses testified:

Stephanie Behrens; Janeel Adams; Gaylene Davis; Patient A; Gary Reed;  
Dr. Barton S. Johnson; Dr. Deann W. Isaacson; Teri Harkenider Wodja; Respondent,  
Christopher Wodja; Dr. Brian Judd; and Dr. Robert Julian.

The following Department exhibits were admitted except as noted below:

- Exhibit D-1: Costco Pharmacy Log and Patient Counseling Information;
- Exhibit D-2: Dental records and radiographs of Patient A from North City Dental/Respondent;
- Exhibit D-3: Medical and Dental records of Patient A—Harborview Medical Center (Harborview);
- Exhibit D-4: W.S.P. Toxicology Report;
- Exhibit D-5: Letters from Gary Reed to Respondent, dated October 31, 2007 and November 5, 2007, respectively;
- Exhibit D-6: Color photographs of Respondent's office and of Patient A;
- Exhibit D-7: Licensing and Educational documentation (not admitted pursuant to prehearing evidentiary ruling); and
- Exhibit D-8: King County Sheriff's Office Call Log (not admitted pursuant to prehearing evidentiary ruling).

The following Respondent exhibits were admitted except as noted below.

- Exhibit R-1: Respondent's chart for Patient A (withdrawn – the parties relied on the Department's redacted version found in Exhibit D-1);
- Exhibit R-2: Patient A's chart from Harborview (withdrawn – the parties relied on the Department's redacted version found in Exhibit D-2);
- Exhibit R-3: Respondent's phone records;

FINDINGS OF FACT  
CONCLUSIONS OF LAW,  
AND FINAL ORDER

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ATTACHMENT 3

Exhibit R-4: Photographs of Respondent's office; and

Exhibit R-5 Respondent's office floor plan.

Prior to the presentation of witnesses, the Presiding Officer instructed those Commission panel members who had participated in the summary proceedings relating to the Respondent, that they should consider only the evidence the parties submitted during this hearing in reaching their findings and conclusions set forth below.

### **CREDIBILITY FINDING**

The panel finds credible the testimony of the Department's two witnesses, Ms. Stephanie Behrens and Ms. Janeel Adams, who testified regarding Patient A's pre-appointment behavior, as well as her actions and state of undress while at the Respondent's office on the evening of October 17, 2007. The panel bases its finding of credibility on the demeanor of these witnesses, their independent corroboration of events, their lack of interest in the outcome of the proceeding, their reliance on an independent witness (Ms. Adams' sister Gaylene Davis, who also testified) who worked in a dental office, and the fact that they expeditiously called police, who took Patient A to Harborview Medical Center (Harborview) in Seattle, Washington, subsequent to her visit to the Respondent's office that evening.

### **I. FINDINGS OF FACT**

1.1 The Respondent received a credential to practice dentistry in the state of Washington on March 25, 2002. In August 2006, the Respondent purchased, and is the principal owner of North City Dental clinic in Shoreline, Washington, where he treated

Patient A in October 2007. At North City Dental, the Respondent provided a broad range of dentistry, including fillings, crowns, bridges, periodontal work, and root canals.

1.2 In the course of providing dental treatment to Patient A, the Respondent's dental care failed to meet the accepted standard of practice and care, harming Patient A or placing Patient A at risk of harm.

Prescription medications and treatment

1.3 On October 16, 2007, the Respondent saw Patient A for approximately ten minutes at North City Dental clinic. Patient A is a relatively slight individual who presented to the Respondent with severe decay and infection into the nerve and abscess in her mouth. (See Exhibit D-2, p. 15). Patient A filled out a short medical history form at the time of her visit on October 16, 2007. On that form, she denied she had a history of drug abuse.

1.4 Patient A had previously been seen at North City Dental clinic before the Respondent purchased the practice. Patient A was treated extensively at the clinic throughout the course of 2003. The medical history form she filled out in 2003 stated that she had a history of drug abuse.

1.5 All of Patient A's North City Dental clinic records, including the prior medical history form and the October 16, 2007 form, were admitted as Exhibit D-2, and were available to the Respondent in Patient A's chart at the time he treated her.

1.6 The Respondent only reviewed the October 16, 2007 medical history form prior to prescribing any medications for Patient A, or prior to treating her. The Respondent failed to review the prior medical history forms contained in Patient A's file.

1.7 On October 16, 2007, the Respondent prescribed for Patient A Clindamycin, and Vicodin (Hydrocodone), a narcotic, without reviewing her extensive prior history at the clinic, her prior indication of drug abuse, and without noting in her chart any justification for the prescriptions:

1.8 On October 17, 2007, prior to seeing Patient A, the Respondent, without reviewing her extensive prior history at the clinic and without noting in her chart any justification, prescribed for her two more drugs: another narcotic, Acetaminaphen with Codeine, and Triazolam, a Schedule IV drug, within a class of drugs called sedative/hypnotics.

1.9 On October 17, 2007, the Respondent prescribed six .25 mg tablets of Triazolam for Patient A, and ordered her to take two tablets just prior to the 7:00 p.m. appointment he had scheduled on October 17, 2007. (See Exhibit D-2, p. 17).<sup>1</sup>

1.10 Triazolam is a conscious sedation agent, also known as Halcyon, designed to reduce anxiety and make the patient drowsy and apathetic. Triazolam may also cause slurred speech, delayed reactions, sexual fantasies, and amnesia. The manufacturer's recommended maximum dose of Triazolam is .5 mg, depending on the size of the patient and other factors. The sedative effect of Triazolam is so powerful that pre-operative instructions are required advising the patient not to drive while taking the drug, and post-operative instructions similarly are required, advising the patient not

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<sup>1</sup> The Respondent testified that he actually prescribed tablets of .125 mg strength, but that the pharmacist made a mistake. The Respondent's claim lacks credibility. In the experience of the Commission, pharmacist mistakes of the type claimed by the Respondent are extremely rare. In addition, the Respondent entered a note on Patient A's chart in Exhibit D-2 prescribing ".2 mg tabs" of the drug, not .125 mg. The Costco prescription record in Exhibit D-1 identifies the dose prescribed as .25 mg. The Respondent does not deny that he prescribed six tablets of Triazolam.

to drive or make important decisions. Moreover, doctors prescribing Triazolam in a clinical setting should have a conscious sedation permit acknowledging their understanding of unanticipated effects of the drug and how to reverse them. Doctors should have knowledgeable staff to assist them should an emergency occur with patients under conscious sedation, and should maintain emergency equipment, such as oxygen, airway adjuncts, blood pressure monitors, stethoscopes, and reversal agents, including flumazenil and naloxone. Patients should be monitored for vital signs constantly while undergoing sedation with Triazolam. (See testimony of Dr. Bart Johnson).

1.11 The administration of successive doses of a drug to achieve the desired result is called titrating to effect. Titrating to effect is best achieved by administering very small, accurately measured doses over recommended periods of time to see if the patient responds. For Triazolam, if a patient ingests successive doses too quickly, the effects of the drug become cumulative and may lead to heavy sedation, which may cause the patient to alternate between delirium and sleep. (See testimony of Dr. Bart Johnson).

1.12 Doctors are required to maintain an inventory of drugs such as Triazolam, kept in their office supplies.

1.13 Doctors are required to note the disposal or destruction of drugs such as Triazolam.

1.14 Patient A took two of the six prescribed .25 mg tablets of Triazolam just prior to her 7:00 p.m. appointment with the Respondent on October 17, 2007.

1.15 Patient A's roommate Janeel Adams dropped Patient A off at North City Dental clinic at approximately 7:00 p.m. on October 17, 2007. Patient A was loopy, giddy, and relaxed at that time. (See testimony of Janeel Adams).

1.16 At the Respondent's request, Patient A's roommates, Stephanie Behrens and Janeel Adams, brought the vial containing the remaining four .25 mg tablets of Patient A's prescription of Triazolam to North City Dental at approximately 8:00 p.m. on October 17, 2007, and gave the vial to the Respondent. The Respondent gave Patient A two of the four remaining .25 mg prescription tablets of Triazolam. At that time, Ms. Behrens and Ms. Adams observed Patient A to be incoherent and without clothing on the lower half of her body. The two women left the office, and consulted by phone with Ms. Adams' sister, Gaylene Davis, who is employed in a dentist's office. Ms. Behrens and Ms. Adams returned to the Respondent's office at approximately 8:15 p.m., where they found Patient A in an operating chair with a blanket draped over her, and a mask on her face. Ms. Behrens, while visiting the restroom, observed Patient A's clothes on the floor.

1.17 The Respondent administered additional Triazolam to Patient A later during the appointment by crushing two .125 mg tablets of the drug from a supply kept in his office, and giving her part of the crushed tablets.

1.18 While Patient A was under the Respondent's care on October 17, 2007, Patient A ingested over 1.0 mg of Triazolam: 1) two .25 tablets prior to her appointment; 2) two additional .25 mg tablets of Triazolam during the appointment; and 3) a portion of

two crushed .125 mg Triazolam tablets from the Respondent's office supply of the drug. (See Exhibit D-2, p. 17 and the Respondent's testimony).<sup>2</sup>

1.19 The Respondent first violated the standard of care when he initially agreed to treat Patient A's severe decay into a nerve and severe infection, a condition beyond his expertise and knowledge, rather than referring Patient A to expert emergency care immediately. His failure to assess the severity of her condition and his lack of expertise placed her in danger of harm or risk of harm.

1.20 The Respondent violated the standard of care by prescribing for Patient A, six .25 mg tablets for Patient A, well beyond the .5 mg recommended dose of Triazolam, without a certificate or training in the use and effect of Triazolam, and placing Patient A at unreasonable risk of harm from oversedation.<sup>3</sup>

1.21 The Respondent violated the standard of care when he administered over 1.0 mg of Triazolam, well beyond the recommended .5 maximum dose without:

- 1) properly assessing the obviously sedative effect the drug was already having on her, as exhibited by her incoherence and state of undress;
- 2) monitoring or charting her vital signs while she was under sedation, thus placing her at unreasonable risk of harm from

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<sup>2</sup> The Respondent testified that the only additional Triazolam he administered was the portion of crushed .125 mg tablets. However, the Respondent's testimony is not believable by Investigator Gary Reed. Mr. Reed testified that the Respondent advised Mr. Reed, during the investigation, that the Respondent had given Patient A two more tablets from the six prescribed tablets after Patient A arrived at the office, had thrown away the remainder of the prescription, and had also given her two tablets from his office supply. Moreover, the Respondent's own chart notes indicate that when Patient A's roommates brought the prescription vial to his office, the Respondent gave Patient A two more of those tablets. (See Exhibit D-2, p. 17).

<sup>3</sup> The Respondent's claim that he prescribed six tablets because he expected that he might need to perform future work on Patient A lacks credibility. The Respondent failed to chart any justification for the magnitude of the Triazolam prescription. The Respondent failed to assess and understand the possible dangerous effects associated with the drug.

oversedation; 3) having sufficient emergency and reversal supplies in his office to reverse the effects of the Triazolam; and 4) having any trained staff present to assist in the event of an emergency,<sup>4</sup> thus causing Patient A harm or placing her at risk of harm.

1.22 The Respondent violated the standard of care when he released Patient A without providing written post-operative instructions while she was obviously in a state of heavy sedation prior to leaving his office, causing her harm or placing her at risk of harm from oversedation.

1.23 The Respondent violated the standard of care by failing to inventory his office supply of Triazolam or to record his disposal of Triazolam.

#### Abuse

1.24 On the evening of October 17, 2007, the Respondent admitted Patient A to his clinic for treatment knowing that there would be no trained staff to assist him during the time he was going to treat her, and knowing that she would be under conscious sedation with the drug Triazolam, for which one of the side effects is that it induces sexual fantasy.

1.25 The Respondent provided Patient A with a see-through gown and a blanket.

1.26 The Respondent was treating Patient A for severe decay to the nerve, severe infection, and abscess that required lancing and draining, a procedure that, in

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<sup>4</sup> The Respondent's claim that Patient A's condition was caused by her tolerance for Triazolam due to her drug addiction is irrelevant and unconvincing. The Respondent clearly overprescribed Triazolam for Patient A when he initially prescribed more than the maximum recommended dose without being aware of Patient A's drug history. Moreover, Patient A exhibited signs at the beginning of the October 17, 2008 appointment that the Triazolam was having an effect.

the experience of the panel, takes between 10 and 20 minutes. Patient A was at the Respondent's clinic for approximately one and one half hours between 7:00 p.m. and 9:00 p.m. on October 17, 2007, much longer than the prescribed procedure warranted. The Respondent's claim that he was waiting for the Triazolam to take effect lacks credibility because Patient A was already exhibiting signs of sedation when she entered the clinic at 7:00 p.m., and was clearly showing signs of sedation when her roommates later came to the clinic at 8:00 p.m. Patient A was unsteady, incoherent, showed delayed responses, and, most importantly, was without clothing from her waist down for a procedure that did not require that she remove any clothing.

1.27 During the investigation, the Respondent advised Department of Health Investigator Gary Reed that Patient A had tight jeans on and the Respondent had asked her to put a gown on. The Respondent claimed to Mr. Reed that Patient A had taken her clothes off, and the Respondent did not ask her to put her jeans back on because he thought the procedure would last only a short time. (See testimony of Gary Reed).

1.28 In the testimony during the hearing, the Respondent claimed that he was unaware that Patient A was unclothed during the time she was in his office until she left the chair in his office at approximately 8:45 p.m. The Respondent's claim lacks credibility in light of the credible statements of Patient A's roommates that Patient A was naked from the waist down at 8:00 p.m. in the Respondent's office, and in light of the Respondent's statements to Mr. Reed during the investigation. Moreover, it strains credibility that Patient A would have been in such a state of undress for over one and one half hours without the Respondent being aware of it, especially in view of the

Respondent's repeated assertions that he had Patient A in his view at all times while she was in the office. (See testimony Respondent).

1.29 The Respondent had administered more than 1.0 mg of Triazolam to Patient A, more than twice the recommended maximum dose of .5 mg.

1.30 The Respondent abused Patient A by: 1) placing her in a vulnerable position due to his overmedication of her with Triazolam, the effects of which the Respondent failed to properly assess, understand, or monitor; 2) placing her in the position of being unclothed for a prolonged period of time in his office with no other staff present to observe and monitor her; and, 3) causing her to be in his office unclothed and under heavy sedation for one and a one half hours when the required procedure should only have taken a maximum of 20 minutes.

1.31 The Department failed to show that the Respondent sexually abused Patient A. Patient A was taken to Harborview Medical Center (Harborview) in Seattle, Washington, by police on October 17, 2007, shortly after leaving the Respondent's office. At Harborview, Patient A provided conflicting statements regarding her memory of treatment by the Respondent, at one point stating that he had sexually assaulted or touched her, and at other points stating she had vague or little memory of what occurred. (See Exhibit 3, pp. 1, 18, 23, and 24). There were no witnesses who observed the Respondent in sexual contact with Patient A. When Stephanie Behrens and Janeel Adams were in the Respondent's office, they did not observe the Respondent in sexual contact with Patient A. Patient A was heavily sedated with

Triazolam during her appointment and the drug is known to induce sexual fantasy. (See testimony of Dr. Johnson). On the witness stand, Patient A stated she had no clear memory of her treatment by the Respondent. Subsequent DNA testing showed Respondent had not had sexual intercourse with her. (See testimony of Patient A and of Gary Reed). Taken together, the facts do not provide clear and convincing evidence that the Respondent sexually abused Patient A.

#### Charting

1.32 Charting, or the proper recording of prescriptions, diagnoses, impressions, observations, and course of treatment on patient charts, is crucial to the safety of patients because it provides a contemporaneous, accurate record to rely on for guidance in future treatment. Failure to adequately chart violates the standard of care because it creates an unreasonable risk of harm to the patient. Exhibit D-2, pp.15-18 shows the Respondent's charting associated with Patient A.

1.33 The Respondent failed to chart any pre-operative and post-operative instructions to Patient A, for whom he had prescribed Triazolam, a conscious sedation agent capable of inducing heavy sedation.

1.34 The Respondent failed to chart a justification for his October 16, 2007 prescription of Vicodin (Hydrocodone), a narcotic drug, for Patient A, whose medical history indicated a history of drug abuse.

1.35 The Respondent failed to chart a justification for his October 17, 2007 prescription of Acetaminaphine with Codeine, also a narcotic, and thus failed to explain

his reasons for back-to-back prescriptions of narcotics to Patient A, whose medical history indicated a history of drug abuse.

1.36 The Respondent failed to chart the doses of Triazolam administered to Patient A at his office on October 17, 2007.

1.37 The Respondent failed to chart Patient A's vital signs during the time she was under conscious sedation, thus failing to demonstrate that he was properly monitoring the level of Triazolam administered and Patient A's reaction to the drug.

1.38 The Respondent failed to chart his claimed administration of septocaine<sup>5</sup> prior to performing an "incise and drain" procedure on Patient A. (See Exhibit D-2, p. 17).

1.39 The Respondent failed to document Patient A's incision or drainage site, the instruments used in the surgery, the length of the incision, the description and quantity of fluid removed, and whether or not a drain was placed and sutured.

1.40 The Respondent failed to keep his chart for Patient A in the same location as his other patient files, but rather stored her file on top of a jumbled pile of magazines and documents in a separate closet in his office. (See Exhibit D-6, p. 5).

1.41 The Respondent's failure to chart the elements of his treatment of Patient A, and his failure to maintain a proper filing regimen for patient files is below the standard of care and created unreasonable risk of harm to Patient A because it jeopardized the ability of the Respondent, or other future practitioners, to treat her without endangering her health and well-being.

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<sup>5</sup> Septocaine is a local anesthetic injected by dentists to block nerve impulses associated with pain during dental procedures. [www.fda.gov/medwatch/safety/2006/Mar%20PIs/septocaine-PI.pdf](http://www.fda.gov/medwatch/safety/2006/Mar%20PIs/septocaine-PI.pdf)

Failure to report patient injury

1.42 When Patient A left the Respondent's office on October 17, 2007, her roommates called the police. (See testimony of Ms. Behrens and Ms. Adams). After interviewing Patient A and her roommates, the police took Patient A to Harborview where she was admitted at approximately 10:00 p.m. (See Exhibit D-3, p.1).

1.43 Harborview admitting notes show Patient A was being evaluated for possible sexual assault, an exhibited swollen right cheek, and intermittent periods of sleep and confused consciousness associated with sedation. (See Exhibit D-3, p. 1).

1.44 At Harborview, Patient A continued to show signs of heavy sedation and of the tooth abscess and infection for which she had visited the Respondent. The abscess was drained at Harborview. (See Exhibit D-3, p. 5).

1.45 The Respondent was aware shortly after the October 17, 2007 appointment with Patient A, that she had been taken to Harborview after leaving his clinic. (See the Respondent's testimony).

1.46 The Respondent failed to report Patient A's hospitalization at Harborview to the Commission within 30 days subsequent to his treatment of her on October 17, 2007.

Failure to cooperate

1.47 Department of Health Investigator Gary Reed sent two letters to the Respondent requesting the Respondent's cooperation with the investigation of the Respondent's treatment of Patient A on October 16 and 17, 2007. The first letter, dated October 31, 2007, requested a written explanation of the complaint and various patient

records. The second letter, dated November 5, 2007, requested copies of additional documents.

1.48 The Respondent complied with the requests for various patient records, but has not, to date, filed a written explanation of the complaint. The Respondent's lack of a written explanation due to the possibility of a criminal investigation of the case, does not excuse the lack of response to the request in this proceeding.

Sanctions-only Findings of Fact

1.49 The nature of the conduct here is egregious. This is particularly true of the findings that the Respondent abused a vulnerable patient and violated the standard of care. In determining appropriate sanctions, the Commission may take into consideration the Respondent's prior Stipulation to Informal Disposition (STID). RCW 18.130.160. The Commission also may take into consideration the Respondent's prior conviction for assault.<sup>6</sup> See Prehearing Order No.3: Order on Respondent's Motion in Limine and Motion to Strike; Order on Conduct of Hearing; Order on Motion to Shorten Time and Motion to Compel Discovery, January 7, 2008.

1.50 On July 14, 2004, the Respondent agreed to a STID for failure to meet the accepted standard of care associated with a patient who complained that a crown didn't fit. The Respondent was required to make a refund of fees charged; provide proof of payment; undertake continuing education on crown and bridge work; and pay \$1,000 in costs. In January 2007, the Respondent fulfilled all conditions of the STID.

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<sup>6</sup> The parties submitted sanctioning briefs relating to the assault conviction. The Presiding Officer did not provide the briefs to the Commission, but advised the Commission of the prior assault conviction. The Presiding Officer so advised the Commission only after the Commission had determined that violations had occurred and that sanctions were necessary.

1.51 In 2002, the Respondent was convicted for misdemeanor assault based on a 1999 indictment in Massachusetts. The Respondent advised the state of Washington of this conviction when he applied for his license to practice dentistry in the state.

1.52 The Commission also finds the Respondent's refusal or failure to acknowledge his lack of expertise and judgment to treat Patient A to be an aggravating factor.

1.53 The Commission finds no mitigating factors.

## II. CONCLUSIONS OF LAW

2.1 The Commission has jurisdiction over the Respondent and over the subject matter of this proceeding. RCW 18.130.040 RCW.

2.2 The Washington Supreme Court held that the constitutional standard of proof in a professional disciplinary hearing is clear and convincing evidence. *Ongom v. Dept. of Health*, 159 Wn.2d 132 (2006), cert. denied 127 S. Ct. 2115 (April 2007).

2.3 The Commission used its experience, competency, and specialized knowledge in evaluating the evidence presented in this case. RCW 34.05.461(5).

2.4 The Uniform Disciplinary Act, chapter 18.130 RCW, provides definitions of what conduct, acts, or conditions constitute unprofessional conduct. In this case, the Department alleged that the Respondent violated RCW 18.130.180(1), (4), (6), (7), (8)(a-b), and (24) and WAC 246-817-310, WAC 246-817-320, WAC 246-817-340, WAC 246-817-350, and WAC 246-817-360.

The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

...

- (4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed.
- (6) The possession, use, prescription for use or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;
- (7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;
- (8) Failure to cooperate with the disciplining authority by:
  - a. Not furnishing any papers or documents
  - b. Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;

...

- (24) Abuse of a client or patient or sexual contact with a client or patient;

RCW 18.130.180

...  
WAC 246-817-310. Maintenance and retention of records. Any dentist who treats patients in the state of Washington shall maintain complete treatment records regarding patients treated. These records shall include, but shall not be limited to X rays, treatment plans, patient charts, patient histories, correspondence, financial data and billing. These records shall be retained by the dentist for five years in an orderly, accessible file and shall be readily available for inspection by the DQAC or its authorized representative: X rays or copies of records may be forwarded to a second party upon the patient's or authorized agent's written request. Also, office records shall state the date on which the records were released, method forwarded and to whom, and the reason for the release. A reasonable fee may be charged the patient to cover mailing and clerical costs.

Every dentist who operates a dental office in the state of Washington must maintain a comprehensive written and dated record of all services rendered to his/her patients. In offices where more than one dentist is performing the services the records must specify the dentist who performed the services. Whenever requested to do so, by the secretary or his/her authorized representative, the dentist shall supply documentary proof:

- (1) That he/she is the owner or purchaser of the dental equipment and/or the office he occupies.
- (2) That he/she is the lessee of the office and/or dental equipment.
- (3) That he/she is, or is not, associated with other persons in the practice of dentistry, including prosthetic dentistry, and who, if any, the associates are.
- (4) That he/she operates his office during specific hours per day and days per week, stipulating such hours and days.

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**WAC 246-817-320 Report of Patient Injury.**

All licensees engaged in the practice of dentistry shall submit a complete report of any patient mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of dental procedures or anesthesia related thereto. This report shall be submitted to the DQAC within thirty days of the occurrence.

**WAC 246-817-340 Recording requirements for all prescription drugs.** An accurate record of any medication(s) prescribed or dispenses shall be clearly indicated on the patient history. This record shall include the date prescribed or the date dispensed, the name of the patient prescribed or dispensed to, the name of the medication, and the dosage and amount of the medication prescribed or dispensed.

**WAC 246-817-350 Recording requirement for scheduled drugs.** When Schedule II, III, IV or V drugs as described in Chapter 69.50 RCW are stocked by the dental office for dispensing to patients, an inventory control record must be kept in such a manner to identify disposition of such medicines. Such records shall be available for inspection by the secretary or his/her authorized representative.

**WAC 246-817-360 Prescribing, dispensing or distributing drugs.** No dentist shall prescribe, dispense or distribute any controlled substance or legend drug for other than dental-related conditions.

2.5 Based upon Findings of Fact 1.24 through 1.31, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(1), the Commission of an act involving moral turpitude relating to the practice of a person's profession.

2.6 Based upon Findings of Fact 1.3 to 1.23 and 1.32 to 1.48, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(4), negligence or malpractice which results in injury to a patient or creates an unreasonable risk that a patient may be harmed.

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2.7 Based upon Findings of Fact 1.7, 1.8, and 1.32 to 1.41, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(7) and WAC 246-817-310, the rule requiring a dentist to properly maintain and retain patient records.

2.8 Based upon Findings of Fact 1.42 to 1.46, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(7) and WAC 246-817-320, the rule requiring a dentist to report any patient injury requiring hospitalization.

2.9 Based upon Findings of Fact 1.12, 1.13, 1.17, and 1.23, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(7) and WAC 246-817-340, the rule requiring accurate record keeping for all prescription drugs.

2.10 Based upon Findings of Fact 1.12, 1.13, 1.17, and 1.23, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(7) and WAC 246-817-350, the rule requiring inventory control records for scheduled drugs.

2.11 Based upon Findings of Fact 1.47 to 1.48, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(8)(b) by failing to provide, upon request, a full written explanation of the subject of the complaint.

2.12 Based upon Findings of Fact 1.24 to 1.31, the Department proved by clear and convincing evidence that the Respondent violated RCW 18.130.180(24), by abusing a patient.

2.13 Based on Findings of Fact 1.3 to 1.53, the Department failed to show by clear and convincing evidence that Respondent violated RCW 18.130.180(6) related to the possession, use prescription, or distribution of controlled substances, RCW 18.130.180(8)(a) related to cooperating with the Department by furnishing papers or documents; and RCW 18.130.180(7) and WAC 246-817-360 related to prescribing, dispensing or distributing controlled substances for other than dental procedures.

2.14 As a result of the above Findings of Fact and these Conclusions of Law, the Commission may impose sanctions under RCW 18.130.160. Regarding sanctions, the Commission must first consider the protection of the public.

Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority and in determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant.

RCW 18.130.160.

2.15 Based on Sanctions only Findings of Fact 1.49 to 1.53, the Commission concludes that the following sanctions are necessary to protect the public.

### III. ORDER

3.1 The Respondent's license to practice as a dentist in the state of Washington is suspended for seven years from the date of this Order.

3.2 The Respondent may petition the Commission for modification of this Order or reinstatement no sooner than five years from the date this Order is signed.

The Commission has sole discretion to grant or deny the Respondent's petition for

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modification, and has the authority to impose restrictions and/or conditions on the Respondent's license to practice as long as the Commission's jurisdiction over the Respondent, pursuant to this Order, continues. The following conditions must be met prior to seeking modification of this Order:

A. Psychological/sexual misconduct counseling and evaluation. The Respondent shall obtain counseling and an evaluation from a Commission approved licensed psychologist, psychiatrist, or therapist who specializes in the treatment of health care providers who have engaged in activities of a sexual nature during the treatment of patients. The Respondent shall provide evidence from the counselor at the time of his request for modification or reinstatement that the Respondent has engaged in counseling, been evaluated by the counselor, and has fully followed the recommendations of the counselor.

B. Education. The Respondent shall undertake at his own expense, a minimum of 40 hours of training in pharmacology, including training in oral sedation agents, with an instructor approved by the Commission. The Respondent shall provide both a certificate of completion and an evaluation of proficiency from the instructor.

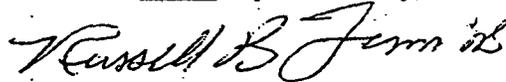
C. Record maintenance. The Respondent shall complete at his own expense 14 hours of continuing education in charting and record maintenance from a Commission approved instructor. The Respondent shall provide both a certificate of completion and an evaluation of proficiency from the instructor.

D. Obey Laws. The Respondent shall obey all federal, state, and local laws and all administrative rules governing the practice of the profession in the state of Washington.

E. Change of Address. The Respondent shall inform the Department and the Adjudicative Services Unit, in writing, of any changes in his residential and/or business address within 30 days of such change.

3.3 Assume Compliance Costs. The Respondent shall assume all costs with complying with any and all requirements of this Final Order.

Dated this 25<sup>th</sup> day of February, 2008.



RUSSELL B. TIMMS, D.D.S.  
Panel Chair

FOR INTERNAL USE ONLY: (Internal tracking numbers)  
Program No. 2007-10-0023

### CLERK'S SUMMARY

<u>Charge</u>	<u>Action</u>
RCW 18.130.180(1)	Violated
RCW 18.130.180(4)	Violated
RCW 18.130.180(6)	Dismissed
RCW 18.130.180(7)	Violated
RCW 18.130.180(8)(a)	Dismissed
RCW 18.130.180(8)(b)	Violated
RCW 18.130.180(24)	Violated
WAC 246-817-310	Violated
WAC 246-817-320	Violated
WAC 246-817-340	Violated
WAC 246-817-350	Violated

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**NOTICE TO PARTIES**

This Order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate/national reporting requirements. If adverse action is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this Order with:

Adjudicative Service Unit  
P.O. Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to:

Dental Program  
P.O. Box 47867  
Olympia, WA 98504-7867

The petition must state the specific grounds upon which reconsideration is requested and the relief requested. The petition for reconsideration is considered denied 20 days after the petition is filed if the Adjudicative Service Unit has not responded to the petition or served written notice of the date by which action will be taken on the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this Order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. RCW 34.05.470(3).

The Order remains in effect even if a petition for reconsideration or petition for review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This Order was "served" upon you on the day it was deposited in the United States mail. RCW 34.05.010(19).

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NO. 63318-0

**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

CHRISTOPHER A. WODJA

Appellant,

v.

DEPARTMENT OF HEALTH,  
DENTAL QUALITY ASSURANCE  
COMMISSION, an agency of the state  
of Washington,

Respondents.

DECLARATION OF  
SERVICE

FILED  
COURT OF APPEALS DIVISION I  
STATE OF WASHINGTON  
2009 SEP 28 AM 11:59

I declare under penalty of perjury under the laws of the state of Washington that on September 25, 2009, I served a true and correct copy of the Respondents' Brief On Appeal and this Declaration of Service by placing same in the U.S. mail via state Consolidated Mail Service with proper postage affixed to:

JOHN C. VERSNEL, III  
LAWRENCE & VERSNEL PLLC  
4120 COLUMBIA CENTER  
701 FIFTH AVENUE  
SEATTLE, WA 98104

DATED this 25th day of September, 2009, at Olympia, Washington.



NICOLE TEETER  
Legal Assistant