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THE STATE OF SOUTH CAROLINA
In the Supreme Court

OCT 31 2013

S.C. Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
John D. McLeod, Administrative Law Judge

Lower Court Case No. 11-ALJ-11-0453-AP
Appellate Tracking Number ~~2012-212267~~ 2013-002068

Edward P. Trimmier, D.M.D.,

Petitioner,

v.

South Carolina Department of Labor, Licensing
And Regulation, State Board of Dentistry,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

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OCT 11 2012
SC Court of Appeals

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

RECORD ON APPEAL

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E.T. 1

STATE OF SOUTH CAROLINA
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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward P. Trimmier, D.M.D.,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, State Board of
Dentistry,

Respondent.

Docket No. 11-ALJ-11-0453-AP

ORDER DENYING MOTION FOR
REHEARING

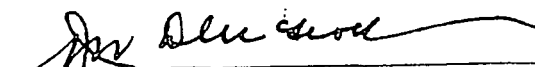
The captioned docket is before this Court in its appellate capacity.

The Court has issued a final decision affirming the decision initially appealed from and Appellant has filed a Motion for Reconsideration and to Alter or Amend Judgment.

The proper motion would have been for Rehearing under SCALC Rule 40, under which rehearings are discretionary with the Court.

Considering the Motion as one for Rehearing, and after reviewing the record, the Court finds that Appellant's Motion for Reconsideration (Rehearing) and to Alter or Amend Judgment should be and hereby is DENIED.

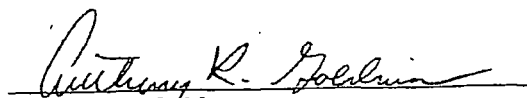
May 15, 2011
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

May 15, 2011
Columbia, SC


Anthony R. Goldman
Judicial Law Clerk

FILED

MAY 16 2012

ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Edward P. Trimmier, D.M.D.,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, State Board of
Dentistry,

Respondent.

Docket No. 11-ALJ-11-0453-AP

ORDER

STATEMENT OF THE CASE

Edward P. Trimmier, D.M.D., (Appellant) appeals the Order of the South Carolina Board of Dentistry (The Board) dated July 28, 2011 regarding Appellant's application for reinstatement of his South Carolina license to practice dentistry. The Board granted the Appellant's motion to have his license reinstated subject to the condition that he shall provide written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary impediments, pending or otherwise, against his license at that time.

Appellant is or has been licensed in three states at various times, Georgia, New York and South Carolina. He has been the subject of disciplinary action in all three based upon his misdemeanor conviction for filing false claims with the South Carolina Medicaid program.

Appellant entered into a disciplinary Consent Agreement with the State of New York and provided evidence which was accepted by the S.C. Dental Board indicating he was on unsupervised probation as of June 21, 2010 until February 12, 2011. Outstanding matters regarding Appellant's license status or disciplinary history in New York are not at issue in this appeal.

The South Carolina Dental Board disciplined Appellant by way of a disciplinary Consent Agreement dated December 7, 2002 in which he admitted to his criminal conviction for filing the aforementioned false Medicaid claims, that he had placed a misleading advertisement and that he

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SC ADMIN. LAW COURT **2**

had failed to properly assign his auxiliary personnel. Appellant was sanctioned and received a license suspension of six (6) years which was stayed to probation provided that he paid a civil penalty of \$25,000.00 and complete at his own expense eight (8) hours of Ethics training and education approved by the Board.

The Georgia Dental Board revoked Dr. Trimmier's dental license because of the federal conviction and disciplinary action in South Carolina. Following Appellant's appeal of the Georgia Order of Revocation, the Georgia Dental Board placed Appellant on indefinite suspension by Order dated October 9th, 2009. The terms of this Order permitted Appellant to petition the Georgia Board to end the suspension after two years; on or about October 9, 2011. On April 14, 2010, prior to the end of Appellant's suspension in Georgia, Appellant voluntarily surrendered his Georgia dental license and applied for reinstatement of his lapsed South Carolina dental license by application dated April 6, 2010.

It is evident from this record that Appellant opted not to petition the Georgia board to lift his license suspension and that he did not provide the South Carolina board a statement from the Georgia board concerning his status. (R. 150)

Further, at the time he applied for reinstatement of his South Carolina dental license, Appellant's license had been lapsed since March 1, 2003. Appellant appeared before the Board on July 15, 2011 in support of the application. At the application hearing before the Board, following deliberation, and by unanimous vote, the Board approved the application for licensure with the above-stated condition and notified Appellant of its decision by Order dated July 28, 2011. The decision was based upon the determination by the Board while the Appellant had provided documentation from the New York Office of Professional Discipline indicating that his New York license was in good standing; Appellant did not provide similar documentation concerning his Georgia dental license.

STANDARD OF REVIEW

In an appeal from an administrative agency, this Court is governed by the Administrative Procedures Act. S.C. Code Ann. 1-23-380(B) (1976, as amended). According to this statute, the decision of the Accounting Board should not be disturbed unless found to be clearly erroneous in view of the reliable, probative and substantial evidence or found to be arbitrary and capricious. South Carolina Code Ann. § 1-23-380(A) (6) (e) & (f) (1976, as amended). An Appellate Court

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must not substitute its judgment for that of the [Board] as to the weight of the evidence on questions of fact in the absence of either of the above-described situations. A reviewing court may not overturn an agency's decision unless it finds the decision is "clearly erroneous" in view of reliable, probative, and substantial evidence on the whole record." S.C. Code Ann. § 1-23-380(g) (5) (2002). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Midlands Utility, Inc. v. S.C. Department of Health and Environmental Control, 298 S.C. 66, 69, 378 S.E.2d 256, 258. Applying this standard of review, an appellate court may not substitute its judgment for that of the agency concerning the weight that could be afforded the evidence. See e.g., Toussaint v. State Board of Medical Examiners, 303 S.C. 316, 400 S.E.2d 488 (1991). The decision of an administrative agency can be reversed only if the administrative findings are clearly erroneous in view of the substantial evidence on the whole record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

DISCUSSION

The governing statute, S.C. Code Ann. § 40-15-170 (2011), provides in pertinent part that re-licensure of a dentist in this state after an absence of over six years is at the discretion of the Board. Section 40-15-170 states the following:

If an individual's license to practice dentistry or dental hygiene is revoked by another state for cause this shall, in the discretion of the board, constitute grounds for revocation of his South Carolina license. The license of a dentist or dental hygienist who does not either reside or practice in South Carolina for a period of six successive years is considered inactive. The time spent in active service by any person in the armed forces or public health service of the United States or with the Veterans' Administration is not construed as absence from or failure to practice in the State. Relicensing after an absence of over six years may be made at the discretion of the board upon proof of high professional fitness and moral character.

S.C. Code Ann. § 40-15-170 (2011).

Appellant is properly subject to the requirements of Section 40-15-170 for purposes of licensure. He was first licensed in South Carolina in 1999, was disciplined by Consent Agreement in 2002, and allowed his license to lapse on March 1, 2003. The record in this case indicates that Appellant maintained a Georgia address from March 2003 to May 2010 (R. 56). Further, he was employed in Georgia from March 2003 to March 2007 and from March 2007 to October 2009 in Marietta and Atlanta Georgia respectively.

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S.C. Code Ann. §§ 40-1-70 and 130 (2011) of Title 40, Chapter 1 of the S.C. Code of Laws provide additional authority in support of the Board's decision in this case.

S.C. Code 40-1-70. Powers and duties of boards.

The powers and duties of regulatory boards include, but are not limited to:

- (1) determining the eligibility of applicants for examination and licensure;*
- (2) examining applicants for licensure including, but not limited to:*
 - (a) prescribing the subjects, character, and manner of licensing examinations;*
 - (b) preparing, administering, and grading the examination or assisting in the selection of a contractor for the preparation, administration, or grading of the examination;*
- (3) establishing criteria for issuing, renewing, and reactivating the authorizations to practice of qualified applicants, including the issuance of active or permanent, temporary, limited, and inactive licenses, or other categories as may be created;*
- (4) adopting a code of professional ethics appropriate to the profession or occupation which it licenses or regulates;*
- (5) evaluating and approving continuing education course hours and programs;*
- (6) conducting hearings on alleged violations of this article and regulations promulgated under this article;*
- (7) resolving consumer complaints, where appropriate and possible;*
- (8) disciplining persons licensed under this article in a manner provided for in this article;*
- (9) promulgating regulations which have been submitted to the director, at least thirty days in advance of filing with Legislative Council as required by Section 1-23-30. (emphasis added)*

S.C. Code 40-1-130. Board's authority to sanction.

A board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the respective board. A board must deny authorization to practice to an applicant who has failed to demonstrate the qualifications or standards for licensure contained in the respective board's licensing act. The applicant shall demonstrate to the satisfaction of the board that the applicant meets all the requirements for the issuance of a license.

S. C. Code Ann. § 40-15-140 (2011) is also instructive as to the S.C. Board of Dentistry decision in this case as it relates to the Board's discretion here. Section 40-15-140 provides, as shown below, that an applicant who holds a license or certificate from any jurisdiction shall

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certify that he has not violated any of the provisions of the Dental Practice Act governing his prior license or practice or operation.

It is the duty of the Board to examine (or cause to be examined) all qualified applicants for a license to practice dentistry or dental hygiene or who desire to be registered as dental technicians in this State. No examination is required to be registered as an orthodontic technician. Prior to admittance to the examination or the registration of an orthodontic technician, each applicant shall produce evidence satisfactory to the Board that he possesses good moral character. If the Board refuses an applicant admission to the examination or registration as an orthodontic technician because of unsuitable moral character the Board shall notify the applicant in writing and set forth in detail the reason supporting the Board's decision. An applicant who holds a license or certificate from any jurisdiction shall certify that he has not violated any of the provisions of the Dental Practice Act governing his prior license or practice or operation.

S. C. Code Ann. § 40-15-140 (2011).

Appellant contends that despite the foregoing sections of state law, that the surrender of his Georgia license might preclude the South Carolina Board from asking anything further from him with regard to his Georgia license status, because of the surrender. Appellant further argues that the Board order is tantamount to a requirement that he apply for and be granted another Georgia license prior to further consideration by the South Carolina board. The July 28, 2011 Order imposes no such requirement. It further does not preclude consideration of Appellant's license status in Georgia prior to the surrender nor does the Appellant's voluntary surrender deprive the Board of jurisdiction.

The South Carolina Court of Appeals held in SCDOR v. Club Rio, 392 S.C. 636, 709 S.E.2d 690 (2011) that a surrender of an alcoholic beverage license does not deprive the licensing authority of jurisdiction. In *Club Rio*, the club's surrender of its rights under the [alcoholic beverage] license did not deprive the tribunal of jurisdiction to consider the DOR revocation proceedings. Although the Dental Board is not engaged in a revocation or other disciplinary proceeding here, *Club Rio* is instructive because of Appellant's argument here that his voluntary surrender means that he does not have a Georgia dental license and that therefore licensure in South Carolina should proceed without reference to his Georgia license status. Similar rationale and public protection concerns led the *Club Rio* court to conclude that this

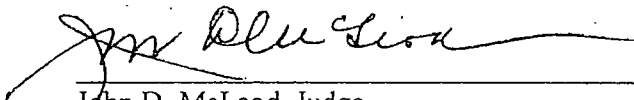
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argument, if accepted, would have permitted the club owner to avoid being banned from receiving a new beer and wine permit in the future.

Other jurisdictions have similarly rejected the argument that voluntary relinquishment of a license deprives the Board of disciplinary jurisdiction. See, e.g., Cross v. Colo. State Bd. of Dental Exam'rs, 552 P.2d 38 (Colo. App. 1976); Gilpin v. Bd. of Nursing, 837 P.2d 1342 (Mont. 1992), overruled on other grounds Erickson v. State ex. rel. Bd. of Med. Exam'rs, 938 P.2d 625 (Mont. 1997); Gares v. N.M. Bd. of Psychologist Exam'rs, 798 P.2d 190 (N.M. 1990); Gaddy v. Okla. State Bd. of Osteopathy, 554 P.2d 1375 (Okl. 1976); Delozier v. State, 631 A.2d 228 (Vt. 1993).

IT IS HEREBY ORDERED accordingly for all of the foregoing reasons, the Board's decision to reinstate Appellant's license subject to the condition that he shall provide written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary impediments, pending or otherwise, against his license at that time is **AFFIRMED**.

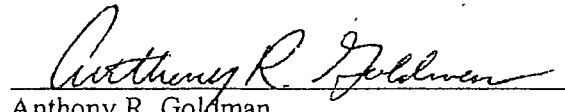
March 22, 2011
Columbia, SC


John D. McLeod, Judge
S.C. Administrative Law Court

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

March 22, 2011
Columbia, SC


Anthony R. Goldman
Judicial Law Clerk

E.T. 10

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING, AND REGULATION
BEFORE THE STATE BOARD OF DENTISTRY**

In the Matter of:

Edward P. Trimmier, DMD,
License No. 3600,

Applicant

**ORDER ON THE APPLICANT'S MOTION
FOR REINSTATEMENT
(Public)**

This matter came before the Board of Dentistry (the Board) for hearing on July 15, 2011, as a result of the Applicant's Motion to have his license reinstated. A quorum of Board members was present. The hearing was held pursuant to appropriate provisions of the S.C. Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, *et seq.* (1976, as amended). The Applicant appeared and was represented by Paul deHolczer, Esquire.

In a December 7, 2002, Consent Agreement, the Applicant admitted various violations of the practice act; and, further, that the facts presented grounds constituting misconduct as alleged. In the Consent Agreement, he waived formal hearing procedures, requesting the matter be addressed pursuant to S.C. Code Ann. § 1-23-320(f) in lieu of, among other things, a hearing into the matter. After reviewing the Consent Agreement, the Board, among other things, imposed a fine of Twenty-five Thousand Dollars (\$25,000.00); required the Applicant to complete a pre-approved ethics course; suspended his license for six (6) years, immediately stayed; and placed his license in a probationary status for six (6) years.

On or about April 6, 2010, the Applicant asked that his license be reinstated because of his compliance with and completion of the Consent Agreement's requirements, and his desire to return to practice in South Carolina. A July 29, 2010, Order provided the Applicant may be issued a license to practice dentistry subject to providing evidence satisfying the Board "that his license and/or certificates from Georgia, New York, and any other states of licensure are in good standing, whether active or inactive." The Applicant voluntarily surrendered his Georgia license on April 9, 2010.

The Applicant provided documentation from the Senior Investigator of the State Education Department/The University of the State of New York, Office of Professional Discipline, indicating his license appears to be in good standing. The Applicant did not provide similar documentation concerning his former Georgia license.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that: the Applicant's motion to have his license reinstated is granted, subject to the following condition:

The Applicant shall provide written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing

at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time.

AND IT IS SO ORDERED.

STATE BOARD OF DENTISTRY

BY: 

**Thomas M. Dixon, DMD
President of the Board**

July 28, 2011

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE STATE BOARD OF DENTISTRY**

In the Matter of:

Edward P. Trimmier, D.M.D.

Applicant

ORDER

WHEREAS, Applicant has applied for license reinstatement to practice dentistry in this state by application dated April 6, 2010. Upon review of the application, questions arose concerning Applicant's qualifications and fitness to practice. At its meeting on July 16, 2010, Applicant appeared with counsel, James H. Ritchie, Esq. in support of the application. Evidence and testimony established that Applicant was initially licensed in S.C. in 1999 is or has been licensed in Georgia and New York as well. On or about December 7, 2002, Applicant was disciplined by the S.C. Board of Dentistry based upon his state conviction in Georgetown County for five (5) misdemeanor counts of filing false claims with the S.C. Medicaid program, placing a misleading advertisement and failure to properly assign his auxiliary personnel. The S.C. disciplinary Consent Agreement suspended his license for six (6) years and stayed the suspension pending payment of a \$25,000.00 fine and completion of a Board-approved course in ethics. On or about October 31, 2003, Applicant's S.C. license lapsed. Applicant was licensed in Georgia in 2001. He was disciplined in that state based on the S.C. Board action and for submitting two (2) false answers on a 2003 Georgia Anesthesia/Deep Sedation permit application because he falsely answered 'NO' to two (2) questions on that application concerning criminal convictions and discipline by another board. The Georgia Board issued a sanction similar to the S.C. sanction, the terms of which made Applicant eligible to reapply to terminate his Georgia probation on or about July 2009. Evidence and testimony at the hearing further established that Applicant is on probation [unsupervised] in the State of New York and that a subsequent Georgia action revoked Applicant's license. Applicant appealed the action of the Georgia Board and was ultimately placed on indefinite suspension upon remand to the Georgia board. Prior to the S.C. reinstatement appearance, Applicant voluntarily surrendered his Georgia license while said license was suspended.

WHEREAS, Applicant has further advised the Board of a willingness to submit to any other conditions as the Board may desire, from time to time, to assure it of Applicant's continued fitness and qualification. The Board finds that Applicant's S.C. license has been inactive (lapsed) for more than six (6) years. In these instances, the Board must require that Applicant comply with the Board authorized reentry process which includes, *inter alia*, provision of a statement from all states of licensure or certification that the license or certificate is in good standing, whether active or inactive.

THEREFORE, IT IS ORDERED THAT:

Applicant may be issued a license to practice dentistry in this state subject to the following terms and conditions:

1. Applicant must provide documentary evidence satisfactory to the Board that his license and/or certificates from Georgia, New York and any other states of licensure are in good standing, whether active or inactive.

AND IT IS SO ORDERED.

STATE BOARD OF DENTISTRY

July 29, 2010
Date

BY: Felicia L. Goins
FELICIA L. GOINS, D.M.D.
President of the Board

CERTIFICATE OF SERVICE BY MAIL

This is to certify that the undersigned has this date served this 8/5/2010 in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party (ies) or their attorney (s), to the following address: 223 N. Fairview Spartanburg SC 29302
This 5th day of August 2010
By: Vernice Reynolds, Administrator
Printed name, title & signature

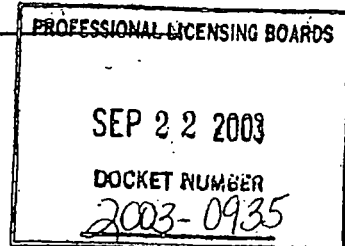
BEFORE THE GEORGIA BOARD OF DENTISTRY SEP 2 2003
STATE OF GEORGIA

IN THE MATTER OF:)

EDWARD PERRY TRIMMIER, D.M.D.,)
License No. , DN012482)

Respondent.)

DOCKET NO.



PUBLIC CONSENT ORDER

By agreement of the Georgia Board of Dentistry and Edward Perry Trimmier, D.M.D., Respondent, the following disposition of this matter is entered pursuant to the provisions of the Administrative Procedure Act, O.C.G.A. § 50-13-13(a)(4).

FINDINGS OF FACT

1.

Respondent is licensed to practice dentistry in the State of Georgia and was issued the license on December 28, 2001.

2.

On May 23, 2002, Respondent pled guilty in Georgetown County, South Carolina in the case of State of South Carolina v. Edward P. Trimmier, Case No. 02-GS-22-407 to five (5) counts of Filing False Claims with the South Carolina Medicaid Program in violation of Section 43-7-60(B)(1), S.C. Code of Laws, 1976, as amended. According to the indictment, the claims filed were materially false in that the services for which the claims had been filed had not been provided or rendered as claimed. Respondent was sentenced to three (3) years confinement, suspended upon the payment of \$5,000.00 plus costs and assessments (a total of \$10,403.00 remitted by Respondent) and the service of five (5) years probation.

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3.

The Board has received information that on or about December 7, 2002, Respondent signed a Consent Order for disciplinary action with the South Carolina Board of Dentistry wherein he admitted that:

(a) Respondent filed at least five (5) false claims for reimbursement and plead guilty to all five (5) counts of filing a false claim;

(b) Respondent assigned, allowed, employed or permitted a dental assistant, who did not possess the requisite training, nor certification, to complete x-rays, and to turn or control the nozzle (valve) during a nitrous oxide sedation procedure. Additionally the said dental assistant further provided oral prophylaxis; and

(c) During the period of January 2000, Respondent implied a specialty in pediatric dentistry whereby an advertisement published by, or caused to be published by the Respondent was contained within a category asserting "Dentist- Pediatric Dentist (Child & Adolescents)". Respondent does not possess a specialty license in pediatric dentistry and thus the advertisement was misleading.

4.

The said South Carolina Consent Order ordered that Respondent's license to practice dentistry in South Carolina is suspended for six (6) years however, that said suspension is stayed and the license is in a probationary status for six (6) years during which Respondent is to pay a fine of \$25,000.00 due on December 7, 2002. Additionally, Respondent is to complete a pre-approved course in ethics consisting of at least eight (8) hours.

5.

On March 21, 2003, Respondent submitted an application to the Board for a General Anesthesia/Deep Sedation permit. On that application, Respondent falsely answered "No" to the following two (2) questions:

(a) "Have you ever been arrested, convicted, sentenced, pled guilty or given first offender status for any felony, misdemeanor or any offense other than a minor traffic violation? DWI or DUI are not minor traffic violations;" and

(b) "Has any disciplinary action been taken against you by any state board, or any regulatory board?"

6.

Without knowledge of the information set forth in the foregoing paragraphs, the Board issued the Respondent a provisional general anesthesia permit on March 25, 2003 for a period of six (6) months.

7.

On or about June 20, 2003, the Board voted to summarily suspend Respondent's license.

8.

The Respondent waives any further findings of fact with respect to this matter.

CONCLUSIONS OF LAW

The Respondent's conduct constitutes sufficient grounds for the imposition of sanctions upon his license to practice dentistry in the State of Georgia under O.C.G.A. Ch. 11, T. 43, as amended. The Respondent hereby waives any further conclusions of law with respect to the above-styled matter.

ORDER

The Georgia Board of Dentistry, having considered the particular facts and circumstances of this case, including the Respondent's own willingness to undertake the corrective measures outlined herein, hereby orders, and the Respondent hereby agrees that this matter shall be disposed of as follows:

1.

Beginning upon the docketing of this Consent Order, Respondent's license to practice dentistry in the State of Georgia shall remain suspended for a period of six (6) years. Pursuant to O.C.G.A. § 43-11-47(e), **all but the first ninety (90) days (following the docketing of this Consent Order) of said suspension is hereby stayed** pending satisfactory completion of the probationary period imposed in paragraph 2, below. Should any of the terms and conditions of the probationary period or this Consent Order be violated by Respondent, said stay shall immediately be vacated on the date the Board is notified of such violation(s) without the requirement of any further action by the Board. During the first ninety (90) day after the effective date of this Consent Order (the period of actual suspension), the Respondent shall not engage in the practice of dentistry. If the Respondent shall so engage, his license to practice dentistry shall be subject to revocation, upon substantiation thereof. This prohibition shall include all of the acts and services defined in O.C.G.A. § 43-11-17(a) as constituting the practice of dentistry, as well as the following:

- (a) Chairside assistance to another dentist in the dental treatment of any patient;
- (b) Appearance before dental patients in a laboratory coat, clinic smock, or other garment that is customarily worn by dentists treating patients;

(c) Consultation with another dentist concerning the treatment of Respondent's patients in the presence of, or within the hearing of, any patient; provided, however, that the Respondent may discuss with a subsequent treating dentist, out of the presence or hearing of any patient, the Respondent's prior diagnosis or pre-existing treatment plan and the proposed plan of treatment by said subsequent treating dentist. The Respondent shall not personally convey the fact or substance of such a communication to a patient or patients. The Respondent shall not indirectly convey to a patient through another treating dentist a diagnosis, treatment plan, or other professional determination; and

(d) Personal acceptance of payment for dental services directly from a patient in the reception area of the Respondent's dental office.

The terms of this paragraph shall not be interpreted to preclude Respondent from acting as a dental office manager or administrator, which work may include, but not be limited to, preparing and distributing payroll; accounting; the ordering of supplies and attending to other general office needs; answering the telephone and scheduling appointments; and those other duties traditionally performed by an office manager or administrator. Under no circumstances shall the duties of an office manager or administrator be construed to include any of the actions listed in paragraph 1(a) through 1(d) or any act or service that would constitute the practice of dentistry as defined in O.C.G.A. § 43-11-17.

2.

Starting the ninety-first (91st) day from the date of docketing of this Order the Respondent's license shall be under a period of stayed suspension and shall be placed on probation for a period of six (6) years until discharged in accordance with paragraph 2(h) of this Consent Order, with the following terms and conditions of probation:

(a) The Respondent shall permit the random inspection of his office records, including but not limited to billing, insurance, and treatment records by a representative of the Georgia Board of Dentistry at any reasonable time designated by the Georgia Board of Dentistry or its representative. The Respondent shall have the right to be present during such inspection of records and Respondent shall have the right to have his attorney present at the time of the inspection, and the rights of privacy and confidentiality of patients shall be maintained. The Respondent shall also make himself available, upon reasonable notice, for personal interviews with the Investigative Committee of the Board.

(b) Upon the docketing of this Order, the Board and the Respondent shall set up a time for inspection and evaluation of Respondent's facilities and equipment. After such inspection and evaluation **and if** a general anesthesia permit is subsequently issued to the Respondent by the Board, Respondent shall permit the inspection of his office and equipment by a representative of the Georgia Board of Dentistry at any reasonable time designated by the Georgia Board of Dentistry or its representative for purposes of assuring that Respondent is meeting all of the requirements for the issuance of a general anesthesia permit. Additionally, the Respondent shall also make himself available, upon reasonable notice, for personal interviews with a designated Board approved on-site evaluator.

(c) In the event the Respondent should leave Georgia to reside or practice outside of Georgia for periods longer than thirty (30) consecutive days, the Respondent shall notify the Board in writing of the dates of departure and return. Periods of residency or practice outside of Georgia will not apply to the reduction of the Respondent's probationary period unless authorized by the Board. The Respondent shall advise the Board of any change in his residence and/or office address.

(d) If the Respondent shall fail to abide by all State and Federal laws relating to drugs and regulating the practice of dentistry, the Rules and Regulations of the Georgia Board of Dentistry, or the terms of this Consent Order and probation, the Respondent's license shall be subject to revocation, upon substantiation thereof, and shall not be subject to restoration. Summary suspension of the Respondent's license, pending any such proceeding, may be ordered pursuant to the provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-18(c)(1), or any other statute authorizing such emergency action.

(e) Within two (2) years of the effective date of this Consent Order, Respondent shall complete sixteen (16) hours of course work in professional ethics to be **pre-approved** by the Board. Within thirty (30) days of completion of said course work, Respondent shall provide the Board with proof of successful completion. These hours of course work shall be in addition to any continuing education requirements mandated by law pursuant to O.C.G.A. § 43-11-46.1(a).

(f) Within two (2) years of the effective date of this Consent Order, Respondent shall complete twelve (12) hours of course work to be taken in the area of risk management. At least six (6) of the twelve (12) hours shall be taken in the first year. Said coursework is to be **pre-approved** by the Board. Within thirty (30) days of completion of said course work, Respondent shall provide the Board with proof of successful completion. These hours of course work shall be in addition to any continuing education requirements mandated by law pursuant to O.C.G.A. § 43-11-46.1(a).

(g) Within three (3) years of the effective date of this Consent Order the Respondent shall attend and complete the course on Law, Ethics, and Professionalism (L.E.A.P.) offered by the Medical College of Georgia. Within thirty (30) days after the completion of the course,

Applicant shall provide documentation to the Board indicating his successful completion. This course shall be in addition to the sixteen (16) hours of ethics required in paragraph 2(e) above and in addition to any continuing education requirements mandated by law pursuant to O.C.G.A. § 43-11-46.1(a).

(h) Within sixty (60) days from the scheduled date of termination of probation, the Respondent may petition for termination of probation by certifying under oath before a notary public that the Respondent has complied with all conditions of probation. The Board shall be authorized to review and evaluate the practice of the Respondent prior to the lifting the probation. At such time, the Board shall be authorized to restore all rights and privileges incident to the license of the Respondent, unless it extends, maintains, or imposes such restrictions or conditions as the Board deems appropriate, based upon the information presented to it pursuant to this Consent Order or otherwise available to the Board. The Board shall notify Respondent of its intent to extend, maintain or impose such restrictions or conditions beyond the designated probationary period, and Respondent may respond to such notification in writing or request an appearance before the Board or its representative as in a non-contested case. This Consent Order shall remain in effect pending a final determination by the Board and notification that the probationary period has terminated.

3.

In addition to and in conjunction with any other sanction contained herein, this Consent Order shall serve as a public reprimand to the Respondent for his conduct.

4.

In addition to and in conjunction with any other sanction contained herein, the Respondent shall pay a total fine of \$20,000.00, payable in 5 installments by certified check or

money order to the Board. The first installment shall be in the amount of \$5,000.00 to be paid within one (1) year of the effective date of this Consent Order. The second installment shall be paid in the amount of \$3,000.00 to be paid within two (2) years of the effective date of this Consent Order. The third installment shall be in the amount of \$3,000.00 to be paid within three (3) years of the effective date of this Consent Order. The fourth installment shall be paid in the amount of \$3,000.00 to be paid within four (4) years of the effective date of this Consent Order. The fifth and final installment shall be paid in the amount of \$6,000.00 to be paid within five (5) years of the effective date of this Consent Order. Such fine shall be sent to the attention of the Ms. Tachunta A. Thomas, Executive Director, (or whoever the Executive Director is at the time of payment) at the Georgia Board of Dentistry, 237 Coliseum Drive, Macon, Georgia 31217-3835. If the Respondent shall fail to pay said fine pursuant to the terms of this paragraph, the Respondent's license shall be subject to revocation, upon substantiation thereof, and shall not be subject to restoration.

5.

Approval of this Consent Order by the Georgia Board of Dentistry shall in no way be construed as condoning the Respondent's alleged conduct, and shall not be construed as a waiver of any of the lawful rights possessed by the Board. This Consent Order shall not become effective until approved by the Georgia Board of Dentistry and docketed with the Division Director of the Professional Licensing Boards.

6.

Within ten (10) days of any request of the Board, the Respondent shall promptly supply all information necessary for the reporting of this Consent Order to the National Practitioner Data Bank - Healthcare Integrity and Protection Data Bank, as required by federal law.

The Respondent, Edward Perry Trimmier, D.M.D., acknowledges that he has read this Consent Order and understands its contents. The Respondent understands that he has the right to a hearing in this matter, and Respondent freely, knowingly and voluntarily waives such right by entering into this Consent Order. The Respondent further understands and agrees that the Board shall have the authority to review the investigative file and all relevant evidence in considering this Consent Order. The Respondent further understands that this Consent Order, once approved, shall constitute a public record, which may be disseminated as a disciplinary action of the Board. If this Consent Order is not approved, it shall not constitute an admission against interest in this proceeding, or prejudice the ability of the Board to adjudicate this matter. The Respondent consents to the terms and sanctions contained herein.

Accepted this 12th day of September, 2003.

GEORGIA BOARD OF DENTISTRY

BY:

Logan Nalley Jr. DMD
LOGAN NALLEY, JR., D.M.D.

President

ATTEST:

Mollie J. Fleeman

MOLLIE FLEEMAN

Division Director

Professional Licensing Boards Division

(BOARD SEAL)

CONSENTED TO:

Edward Perry Trimmier
EDWARD PERRY TRIMMIER, D.M.D.
Respondent

Sworn to and subscribed
before me this 10 day
of September, 2003.

Robert S. Hatcher

NOTARY PUBLIC

My commission expires:

Notary Public, Cobb County, Georgia
My Commission Expires March 2, 2005

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA STATE BOARD OF DENTISTRY**

In the Matter of:

EDWARD P. TRIMMIER, D.M.D.,
License No. 3600

Respondent.

CONSENT ORDER

By agreement of the State Board of Dentistry of South Carolina (the Board) and the above-named Respondent, the following disposition of this matter is entered pursuant to the provisions of S.C. Code Ann. §1-23-320(f) (Supp. 2001) of the South Carolina Administrative Procedures Act:

FINDINGS OF FACT

1. Respondent admits that he is licensed to practice dentistry in the State of South Carolina and was so licensed at all times relevant to the matters asserted in this case.
2. Respondent admits that he filed false claims for reimbursement, placed a misleading advertisement and failed to properly assign his auxiliary personnel, among other things, as alleged in the Formal Accusation, dated September 9, 2002, a copy of which is attached hereto and incorporated herein as Exhibit 1.
3. Respondent further admits that as a result of the previous admissions herein, Respondent has violated S.C. Code Ann. §§ 40-15-190(A)(2),(9), (10), (11), (12), and (13) (1976 as amended); 40-15-80; 40-15-130; 40-15-220; and 40-15-260; and Regulations No. 39-11(1-F); 39-11(4-A) and (4-C).
4. Respondent waives any further findings of fact with respect to this matter.

CONCLUSIONS OF LAW

1. Respondent admits that the conduct in this matter constitutes sufficient grounds for disciplinary or corrective action under §§ 40-15-190, supra, and 40-15-200 (Supp. 1976, as amended). Respondent hereby waives any further conclusions of law with respect to this matter.
2. Respondent has full knowledge that he has the right to a hearing and to be represented by counsel in this matter, and freely, knowingly, and voluntarily waives such rights by entering into this Consent Order. Respondent understands and agrees that by entering into this Consent Order he voluntarily relinquishes any right to judicial review of Board action(s) which may be taken concerning any related matters. Respondent understands and agrees that this Consent Order will not become effective unless and until approved by the Board. Respondent understands and agrees that a

representative of the General Counsel's Office may be present during presentation of this Consent Order to the Board. Respondent understands and agrees that if this Consent Order is not approved, it shall not constitute an admission against interest in this proceeding or prejudice the right of the Board to adjudicate this matter.

THEREFORE, IT IS ORDERED WITH RESPONDENT'S CONSENT THAT:

1. Respondent's license to practice dentistry in this State shall be suspended for a period of six (6) years from the effective date of this Consent Order; however, the said suspension is hereby stayed, and Respondent's license shall continue uninterrupted in a probationary status for a period of six (6) years, subject to Respondent's compliance with the following conditions:
 - a. Respondent shall pay a fine of twenty-five thousand (\$25,000.00) dollars. The said fine shall be due at such time as this Order is submitted to the full Board for approval. Payment must be in the form of a cashier's check, money order, or other good funds. Failure to pay the said fine shall result in the immediate temporary suspension of the Respondent's license to practice dentistry in this State until such amount is paid in full.
 - b. Respondent shall, at his own expense, successfully complete a pre-approved course in ethics, consisting of at least eight (8) hours, within twelve (12) months of the effective date of this agreement, and provide the Board with adequate verification of satisfactory completion of the course.
 - c. Respondent shall appear before the Board, upon reasonable notice, at any point in the future as required by the Board during the period of probation.
2. Respondent is represented by counsel and enters into this Consent Order freely and voluntarily and not under duress, restraint or compulsion.
3. Respondent understands that failure to comply with the letter, intent or spirit of this Consent Order shall result in the immediate temporary suspension of his license to practice dentistry in the State of South Carolina pending a hearing into the matter and until further Order of the Board. In addition, the failure to comply with the letter, intent or spirit of this Consent Order may result in the immediate lifting of any stay that may be in effect, in accordance with South Carolina Code Ann. §1-23-370 (c) (1976, as amended).
4. Respondent agrees to comply with all state and federal statutes and regulations governing the practice of dentistry.
5. Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of Respondent's practice and compliance with the provisions of this Consent Order. Respondent may be required to furnish the Board

with additional information as may be deemed necessary by the Board or its representatives. In addition to such requests, the Board in its discretion may require Respondent to submit further documentation regarding Respondent's practice, and it is Respondent's responsibility to fully comply with all reasonable requests in a timely fashion. Failure to reasonably comply with such requests will be deemed a violation of this Consent Order.

6. Pursuant to the South Carolina Freedom of Information Act, this Consent Order, with attachments, is a public document, and this action will be reported to the National Practitioner Data Bank in accordance with P.L. 99-660.
7. This Consent Order shall take effect immediately upon receipt by Respondent or his counsel.

AND IT IS SO ORDERED.

Columbia, South Carolina

12/7/02 2002.

STATE BOARD OF DENTISTRY

BY: Dennis W. Newton, Jr.
DENNIS W. NEWTON, JR., D.D.S.,
VICE PRESIDENT
FOR THE PRESIDENT

WE CONSENT

Edward P. Trimmer
EDWARD P. TRIMMIER, D.M.D.

Respondent

E. Bart Daniel
E. BART DANIEL, ESQ.
ATTORNEY FOR THE RESPONDENT

Patrick D. Hanks
Patrick D. Hanks
ATTORNEY for the South Carolina
Department of Labor, Licensing & Regulation

Dec 7, 02
Date

Dec 7, 02
Date

12/10/02
Date

COPY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward P. Trimmier, D.M.D.,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, State Board of
Dentistry,

Respondent.

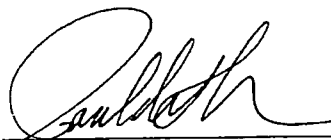
Docket No. 11-ALJ-11-0453-AP

APPELLANT'S
MOTION
FOR
RECONSIDERATION, TO ALTER OR
AMEND JUDGMENT

COMES NOW the Appellant, by and through his undersigned counsel, to move the Administrative Law Court to reconsider its order filed 22 March 2012 and to alter or amend its judgment rendered therein. Appellant was served by email on the date of filing with a copy of the Order filed 22 March 2012 and Appellant submits this motion within the time period allowed by Rule 3.C, Rules of Procedure for the Administrative Law Court.

Appellant respectfully submits the Administrative Law Court should set aside its order affirming the decision of the South Carolina Department of Labor, Licensing and Regulation, State Board of Dentistry for the reasons set forth more fully in Appellant's Memorandum in Support of Appellant's Motion for Reconsideration, to Alter or Amend Judgment.

Respectfully submitted,



Paul D. de Holczer (SC Bar #6905)
Moses & Brackett, PC
1333 Main Street, Suite 650
Post Office Box 100261
Columbia, SC 29202-3261
803-461-2317
Attorney for Appellant

April 2, 2012

FILED

APR 03 2012
E.T. 28

SC ADMIN. LAW COURT

COPY

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Edward P. Trimmier, D.M.D.,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, State Board of
Dentistry,

Respondent.

Docket No. 11-ALJ-11-0453-AP

APPELLANT'S MEMORANDUM IN
SUPPORT OF APPELLANT'S
MOTION
FOR
RECONSIDERATION, TO ALTER OR
AMEND JUDGMENT

Appellant Edward P. Trimmier, DMD (hereinafter "Trimmier" or "Appellant"), captioned above, appeals from the final Order issued by the Administrative Law Court (hereinafter "the Court") on 22 March 2012, incorporated herein and made a part hereof my reference. This final Order was served on Appellant by email on 22 March 2012. In so appealing, Appellant preserves and reargues all issues previously raised and argued.

Appellant's Motion for Reconsideration, to Alter or Amend Judgment is premised on the ground that the Court's Order should be reversed because substantial rights of Appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions set forth in the Final Order of the South Carolina State Board of Dentistry are:

- (A) In violation of constitutional or statutory provisions;
- (B) Made upon unlawful procedure;
- (C) Affected by other error of law;
- (D) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and

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APR 03 2012

- (E) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appellant's Motion for Reconsideration does not ask this Court to substitute its judgment for that of the Board; but to find that the Board's decision is clearly erroneous in view of the evidence on the whole record.

STATEMENT OF FACTS

1. Appellant was initially licensed to practice dentistry in South Carolina in 1999 and is or has been licensed to practice dentistry in Georgia and New York as well.
2. On or about May 23, 2002, Appellant entered into a plea agreement in the Georgetown County Court of General Session and pled guilty to five counts of filing false claims with the South Carolina Medicaid Program. (R., p. 80)
3. On or about December 7, 2002, Appellant entered into a Consent Agreement with the Board; Appellant admitted that he is licensed to practice dentistry in the State of South Carolina and was so licensed at all times relevant to the matters asserted in this case. (R., p. 80)
4. By the Consent Agreement of December 7, 2002, Appellant admitted that he filed false claims for reimbursement, placed a misleading advertisement and failed to properly assign his auxiliary personnel, among other things, as alleged in the Formal Accusation, dated September 9, 2002, attached to and incorporated in the Consent Agreement.
5. By the Consent Agreement of December 7, 2002, Appellant admitted he violated S.C. Code Ann. §§ 40-15-190(A)(2), (9), (10), (11), (12), and (13) (1976 as amended); 40-15-80; 40-15-130; 40-15-220; and 40-15-260; and Regulations No. 39-11 (1-F); 39-11(4-A) and (4-C).

6. By the Consent Agreement of December 7, 2002, Appellant admitted that his conduct constituted sufficient grounds for disciplinary or corrective action under §§ 40-15-190, supra, and 40-15-200 (Supp. 1976, as amended).
7. By the Consent Agreement of December 7, 2002, Appellant waived any further findings of fact or any further conclusions of law with respect to these matters.
8. By the Consent Agreement of December 7, 2002, Appellant agreed that his license to practice dentistry in this State was suspended for a period of six (6) years from the effective date of the Consent Order; however, the said suspension was stayed, and his license placed in a probationary status for a period of six (6) years, subject to (a) his payment of a fine of twenty-five thousand (\$25,000.00) dollars; (b) the Board's verification of his successful completion of a pre-approved course in ethics; and, (c) his appearance before the Board, upon reasonable notice, at any point in the future as required by the Board during the period of probation.
9. By the Consent Agreement of December 7, 2002, Appellant agreed to cooperate with the Board, its attorney, investigators, and other representatives in the investigation of Appellant's practice and compliance with the provisions of this Consent Order, to furnish the Board with additional information as may be deemed necessary by the Board or its representatives, and to submit in a timely fashion further documentation regarding Appellant's practice upon the Board's reasonable requests.
10. Appellant was licensed by the Georgia Board of Dentistry (hereinafter "the Georgia Board") to practice dentistry in Georgia in 2001. On or about September 22, 2003, Appellant entered into a Public Consent Order with the Georgia Board (R. 80). Appellant was disciplined in Georgia (public reprimand, fine of \$20,000.00, random inspection of office records and place of practice, suspension stayed on probation for a period of six years, required course work in

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professional ethics, risk management, and Law, Ethics, and Professionalism). The terms of the Georgia Board sanction made the Appellant eligible to reapply to terminate his Georgia probation on or about July 2009. On or about March 28, 2008, the Georgia Board issued a Final Decision and Order which revoked Appellant's license (R., p. 77).

11. Appellant appealed the revocation of the Georgia Board to the Bibb County Superior Court and, on or about September 15, 2009, the Bibb County Superior Court reversed the Georgia Board's revocation and remanded the case to the Georgia Board with an order that it enter and Amended Final Decision that imposed the sanctions contained in the initial Decision (R. 77). The Georgia Board issued its Amended Final Decision on October 16, 2009, which Decision placed Appellant on indefinite suspension with eligibility to petition for reinstatement after two years and imposed a fine of \$1,000.00. While the matter in Georgia was under appeal, Appellant determined that he would not return to practice in Georgia. (R., p. 15, l. 17 - p. 16, l. 15). At the conclusion of the period of suspension, Appellant declined to petition the Georgia Board for reinstatement and, instead, decided to surrender his Georgia license.
12. On or about April 6, 2010 (approximately eighteen months before he was eligible to petition the Georgia Board to end his suspension) Appellant entered into a Voluntary Surrender (Filed April 14, 2010) of his Georgia dentistry license with the Georgia Board (R., p. 75).
13. On or about April 6, 2010, Appellant applied for reinstatement to practice dentistry in South Carolina. The Board met with Appellant on July 16, 2010 to discuss and consider Appellant's application. On or about July 29, 2010, the Board issued its Order on Appellant's application for reinstatement to practice dentistry in South Carolina.
14. By the Order of July 29, 2010, the Board noted that Appellant advised the Board of a willingness to submit to any other conditions as the Board may desire, from time to time, to

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assure it of Applicant's continued fitness and qualification. The Board found that Appellant's South Carolina dentistry license had been inactive (lapsed) for more than six years and required that Appellant comply with the Board's authorized reentry process which includes, *inter alia*, provision of a statement from all states of licensure or certification that the license or certificate is in good standing, whether active or inactive.

15. By the Order of July 29, 2010, the Board ordered that Appellant may be issued a license to practice dentistry in South Carolina subject to Appellant providing documentation satisfactory to the Board that his license and/or certificates from Georgia, New York and any other states of licensure are in good standing, whether active or inactive.
16. On or about March 31, 2011, Appellant applied for reinstatement to practice dentistry in South Carolina. The Board met with Appellant on July 15, 2011 to discuss and consider Appellant's application. On or about July 28, 2010, the Board issued its Order on Appellant's application for reinstatement to practice dentistry in South Carolina. By the Order of July 28, 2011, the Board recognized that it had received written evidence to the Board which was satisfactory, in the Board's discretion, that showed his New York dentistry license was in good standing; however, the Board stated that Appellant had not provided "similar documentation concerning his former Georgia license."
17. By the Order of July 28, 2011, the Board ordered that Appellant's "motion to have his license reinstated is granted, subject to the following condition: The Applicant shall provide written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time."

RESPONDENT'S ARGUMENT

1. Respondent argues that "this appeal should be dismissed because the South Carolina Dental Board granted Appellant's application for licensure." Respondent states: "On both occasions [July 29, 2010 and July 28, 2011], the South Carolina Dental Board granted his license application subject only to 'receipt of written evidence to the Board, which is satisfactory, in the Board's discretion, that shows his Georgia license wither was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time.' (R. 4)."

In the hearing before this Court, Appellant pointed out that this provision, this requirement on Appellant, is not in the December 7, 2002 order of the South Carolina Dental Board. This provision is in the July 28, 2011 order of the South Carolina Dental Board and **was imposed only when the record established before the South Carolina Dental Board that Appellant had already surrendered his Georgia license while it was under suspension.** In other words, the South Carolina Board abused its discretion when it created a condition which either inadvertently frustrated Appellant or which was calculated to frustrate Appellant. (R., p. 38, l. 1-19) (See Hearing on July 16, 2010).

The South Carolina Board also abused its discretion when it imposed an *ex post facto* requirement on Appellant, a requirement which is an enhanced punishment of Appellant. Because this sanction was not part of Appellant's punishment under the December 7, 2002 order, this requirement retroactively changes the legal consequences of actions Appellant committed prior to the issuance of the requirement and enhances the punishment for those actions. The Constitutions of the United States and of South Carolina specifically prohibit the passage of *ex post facto* laws. U.S. Const. art. I, § 10; S.C. Const. art. I, § 4.

In civil and administrative matters such as this, an agency may apply its rules retroactively provided the legislature has expressly authorized it to do so. Bowen v. Georgetown University Hospital, 488 U.S. 204, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988) (Retroactive application disfavored by courts, but will be upheld where Congress has expressly granted such powers.) There is no express grant of retroactive power to the South Carolina Department of Labor, Licensing and Regulation, State Board of Dentistry in cases such as this. Although Appellant could find no South Carolina case exactly on point, the South Carolina Supreme Court has held that a change in a prisoner's parole review from annual to biannual review constitutes an *ex post facto* violation. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000).

2. "Appellant has not presented any evidence to the Board concerning his efforts to petition the Georgia Board or to obtain information from them clarifying whether they would end his suspension if asked to do so."

The Record on Appeal contains two verifications of Appellant's Georgia licensure (R., p. 74; p. 98; p. 184). The record is clear that he was under suspension in Georgia at the time he surrendered his license. As the Statement of Facts above shows, Appellant litigated the discipline of the Georgia Board through Georgia's administrative procedures and in Georgia's courts. Appellant ultimately decided to abandon any ambition to practice dentistry in Georgia and any effort to litigate the lifting of the suspension in Georgia. From his history with the Georgia Board, its reversed and remanded order and punishment, and the significant costs involved in litigation of this type, this decision is readily understandable. (R., p. 233) Appellant ultimately determined to practice dentistry in South Carolina. (R., p. 254)

3. “[The record in this case] does not contain enough information for the Board to make a decision that protects the public.”

The Record contradicts this statement. There is no allegation, proof or finding of patient harm in the Record before this Court. This matter has been before the South Carolina Board three times. Appellant has complied with the December 7, 2002 order of the South Carolina Dental Board. He is on record as offering to do more. (R., 119) The South Carolina Board is declining to exercise its discretion, abdicating its powers and responsibilities to the Georgia Board, and failing to make a determination whether or not the Appellant presents any danger or risk of danger to the citizens of South Carolina – even though there is not now and never has been any allegation, proof or finding of harm to any patient in Georgia, South Carolina or New York.

4. “If an individual's license to practice dentistry or dental hygiene is revoked by another state for cause this shall, in the discretion of the board, constitute grounds for revocation of his South Carolina license.” § 40-15-170.

Appellant concedes that this is grounds for revocation in South Carolina; however, Appellant was suspended in Georgia, not revoked, and, furthermore, **Respondent did not cite this statute as a basis to deny Appellant a license in this case**; neither has it been cited or established as a basis to deny Appellant a license in this case that the State of New York disciplined the Appellant under reciprocity. Respondent's effort to apply this statute in a disciplinary matter which originated in South Carolina and has been dealt with by South Carolina, and which triggered a reciprocal

disciplinary matter in those other states, is to create an absurd and vicious circular disciplinary system.

By highlighting a portion of § 40-15-170, Respondent argues that "Relicensing after an absence of over six years may be made at the discretion of the board upon proof of high professional fitness and moral character." Appellant concedes the letter of the statute, however, Appellant argues that this provision of § 40-15-170 does not state that the only proof of "high professional fitness and moral character" is "receipt of written evidence to the Board, which is satisfactory, in the Board's discretion, that shows his Georgia license wither was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time." Proof of standing of licensure in Georgia is not rationally related to Appellant's professional fitness and moral character. **It is a clear abuse of discretion to premise proof of "high professional fitness and moral character" solely on Appellant's license status in Georgia.**

The Record on Appeal does not show or tend to prove that the Board premised proof of "high professional fitness and moral character" on Appellant's license status in Georgia. Respondent has not made any finding that Appellant has filed to provide proof of "high professional fitness and moral character." Respondent's counsel proposes to make this point only in this appellate matter.

To the contrary, we have declined to give deference to an agency counsel's interpretation of a statute where the agency itself has articulated no position on the question, on the ground that "Congress has delegated to the administrative official and not to appellate counsel the responsibility for elaborating and enforcing statutory commands." Investment Company Institute v. Camp, 401 U. S. 617, 628 (1971); cf. Burlington Truck Lines, Inc. v. United States, 371 U. S. 156, 168 (1962) ("The courts may not accept appellate counsel's post hoc rationalizations for agency [orders]").

Bowen v. Georgetown University Hospital, 488 U.S. 204, 109 S.Ct. 468, 102 L.Ed.2d 493 (1988)

(emphasis supplied). In fact, the Record contains evidence that Appellant has been pardoned for his offenses (R. p. 71; p. 214).

5. "Appellant . . . argues that since Appellant has no Georgia license, his premature and voluntary surrender in lieu of a petition to the Georgia Board should be rewarded by the South Carolina Board . . . upon the theory that surrender means not only that he does not have a Georgia license now, but that he never had one."

Appellant has never asserted or argued that he never had a Georgia license to practice dentistry. This argument mischaracterizes Appellant's argument. Appellant argues that the December 7, 2002 order of the South Carolina Dental Board, to which Appellant consented, did not have the later-imposed, retroactive provision that he provide "documentary evidence satisfactory to the Board that his license and/or certificates from Georgia, New York and any other states of licensure are in good standing, whether active or inactive." Appellant argues that the December 7, 2002 order of the South Carolina Dental Board, to which Appellant consented, did not have this additional punitive provision.

Appellant alternatively argues that he has satisfied this additional provision in that he has provided documentary evidence satisfactory to the Board that his license and/or certificates from New York (and any other states of licensure) are in good standing, whether active or inactive. Appellant points out that he has satisfied this additional provision in that his inactive New York license is in good standing and **that he has no active Georgia license and no inactive license.** Appellant does

not seek to be rewarded, but to set aside the Board's absurd and unfair interpretation of a retroactive provision.

6. "Appellant seemingly is arguing that the surrender of his Georgia license precludes the South Carolina Board from asking anything further from him with regard to Georgia." "If this were true, all applicants [with other states' licenses] could merely surrender their other state licenses temporarily while applying in South Carolina"

Respondent again misstates Appellant's argument. Appellant concedes that grounds for discipline in Georgia and other states are often also grounds for discipline in South Carolina. In fact, Appellant acknowledges that he was disciplined in Georgia based on reciprocity and the premise that the grounds for discipline in South Carolina gave rise to grounds for discipline in Georgia. Again, Appellant argues that the December 7, 2002 order of the South Carolina Dental Board, to which Appellant consented, did not require Appellant to provide documentary evidence satisfactory to the Board that his license and/or certificates from Georgia was in good standing, whether it was active or inactive.

Appellant also argues that the South Carolina Board has all it needs of information regarding any Georgia discipline and does not need "permission" from Georgia to reinstate Appellant. Respondent knows that a licensee cannot "temporarily surrender" any state license and this argument is therefore disingenuous and misleading. A licensee can have an inactive license (placed on inactive status by agreement of the licensee and licensor) and can have a license revoked by a licensor. "Surrender" is a separate specific situation. The surrender of a license is a definitive and permanent

unless the licensee re-applies for licensure – and then only as if the licensee never had a license previously.

Appellant would point out that it was the South Carolina Board that defined the conditions under which Appellant would be reinstated. Now, almost as an afterthought, the South Carolina Board would impose an additional punitive measure which, in effect, would force Appellant to make an expensive re-application in Georgia or to engage in expensive litigation in Georgia to pursue a Georgia license he does not want or intend to use (R., p. 137 - p. 139) Respondent knows and has known that Appellant's Georgia licence was surrendered when it was suspended. Respondent knows and has known that Respondent's requirement upon Appellant has the absurd effect of requiring Appellant to apply de novo to the Georgia Board for licensure and, only upon being granted a license in Georgia, apply for reinstatement of his South Carolina licence.

7. "This Court has held in an analogous situation that a surrender of a professional license does not deprive it of jurisdiction."

Respondent cites Michael A. Paulin v. SCDLLR, 07-ALJ-11-00447-AP (2007). As far as Appellant can determine, Respondent is citing to an Unpublished Opinion, SCDLLR v. Michael A. Paulin, Opinion No. 2010-UP-091 (2010), which opinion has no precedential value.

Assuming without conceding that any principle enunciated in the Paulin opinion has precedential value, **Appellant has never argued that the Board or this Court does not have subject jurisdiction of this matter or lacks authority to decide this case, or that the case is moot.** Appellant concedes that the surrender of his South Carolina license would not deprive the South Carolina Board of jurisdiction with regard to the practice of dentistry in South Carolina. The license

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at issue in this case is a foreign license, however. Moreover, Appellant does not deny that grounds for discipline in another jurisdiction might constitute grounds for discipline in South Carolina.

Appellant argues that, under the law in this case, Respondent should not be allowed to add an additional requirement on Appellant and, if Respondent is allowed to do so, that additional requirement should be construed strictly, narrowly and against Respondent. Since it is Respondent who added the additional punitive provision, this Court should so construe it and require Respondent to abide by it. This construction would lead this Court to the ineluctable conclusion that Appellant has no Georgia license, either active or inactive, which would require Appellant to provide "documentary evidence satisfactory to the Board that his license and/or certificates from Georgia . . . [is] in good standing" If the South Carolina Board wanted this provision to apply to Appellant, it should have put this in its December 7, 2002 order. If the South Carolina was concerned that Appellant lacked professional fitness and moral character, it should have said so.

CONCLUSION

The essence of Respondent's argument is that "this appeal should be dismissed because the South Carolina Dental Board granted Appellant's application for licensure . . . subject only to 'receipt of written evidence to the Board, which is satisfactory, in the Board's discretion, that shows his Georgia license wither was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time.'"

As Appellant has shown, this provision was added after the Appellant agreed to discipline by the South Carolina Dental Board and after the Board knew that Appellant had already surrendered his Georgia license. The South Carolina Board abused its discretion when it created a condition which either inadvertently frustrated Appellant or which was calculated to frustrate Appellant. The

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South Carolina Board abused its discretion when it imposed a retroactive requirement on Appellant, a requirement which is an enhanced punishment of Appellant and not part of Appellant's punishment under the December 7, 2002 order.

By declining to exercise its discretion, by arbitrarily abdicating its powers and responsibilities to the Georgia Board, and by failing to make a determination whether or not the Appellant presents any danger or risk of danger to the citizens of South Carolina, the South Carolina Board has abused its discretion. Respondent has further abused its discretion by denying Appellant a South Carolina dental license simply because he surrendered his Georgia license. It is a clear abuse of discretion to arbitrarily premise proof of "high professional fitness and moral character" simply and solely on Appellant's license status in Georgia. The Record on Appeal does not show or tend to prove that the Board premised proof of "high professional fitness and moral character" on Appellant's license status in Georgia. The South Carolina Board did not find that Appellant surrendered his Georgia license to avoid discipline in South Carolina.

The Record in this case is clear that Appellant has been candid with the Board that he surrendered his Georgia license and in expressing his reasons for declining to pursue his Georgia license. Appellant has consistently admitted his guilt and taken responsibility for his indiscretions. He has not contested the charges in court or before the Board, entering into consent orders and plea agreements at every turn. He has not sought to avoid the reasonable consequences of his actions. He has only contested the imposition of inconsistent and unfair penalties not rationally related to the protection of the public.

Appellant alternatively argues that he has satisfied this additional provision in that he has provided documentary evidence satisfactory to the Board that his license and/or certificates from New York (and any other states of licensure) are in good standing, whether active or inactive. Appellant

points out that he has no active Georgia license and no inactive license. Appellant seeks only to set aside the Board's absurd and unfair interpretation of a provision the Board added after the fact of Appellant's discipline. Respondent's requirement upon Appellant has the absurd effect of requiring Appellant to apply de novo to the Georgia Board for licensure and, only upon being granted a license in Georgia, apply for reinstatement of his South Carolina licence. Since the South Carolina Board added a punitive measure which, in effect, would force Appellant to make an expensive re-application in Georgia or to engage in expensive litigation in Georgia to pursue a Georgia license he does not want or intend to use, Appellant submits that additional requirement should be construed strictly, narrowly and against Respondent.

Appellant respectfully petitions this Court to reverse the denial of Appellant's dental license on the grounds that the substantial rights of Appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions set forth in the Final Order of the South Carolina State Board of Dentistry are in violation of constitutional or statutory provisions; made upon unlawful procedure; are arbitrary, capricious, characterized by abuse of discretion and clearly unwarranted exercise of discretion; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and affected by other error of law.

RESPECTFULLY SUBMITTED,



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Attorneys for Appellant

April 3, 2012

South Carolina Department of Labor, Licensing and
Regulation Before the State Board of Dentistry

IN RE:

Edward Perry Trimmier, DMD

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) EDWARD P. TRIMMIER, DMD

Motion for

Re-consideration

of

The within hearing was taken before, Robin L.
Spaniel, Verbatim Court Reporter and Notary Public in
and for the State of South Carolina, at the offices of
South Carolina Department of Labor, Licensing and
Regulation, Columbia, South Carolina.

Reported by:

Robin Spaniel

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Appearances

President:
Thomas M. Dixon, D.M.D.

Board members:
Felicia L. Goins, D.M.D.
David W. Jones, D.D.S.
Charles F. Wade, D.M.D.
John M. Whittington, D.M.D.
Douglas J. Alterman, D.M.D.
Z. Vance Morgan, IV, D.D.S.
Sherie Williams, R.D.H.
Eric Schweitzer

For the Respondent:
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Moses Koon & Brackett, PC
1333 Main Street, Suite 650
Columbia, SC 29201

Advice Counsel:
James C. Saxon, Esquire

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Exhibits

Applicant's Exhibit No. 1: 2/10/11 Letter from State
Education Department of New York (1 pg)

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1 P R O C E E D I N G S

2 DR. DIXON: Dr. Trimmier, how are you this morning?

3 DR. TRIMMIER: I'm doing great. How are you doing?

4 DR. DIXON: Doing fine. Good morning, Dr. Trimmier.

5 DR. TRIMMIER: Good morning.

6 DR. DIXON: Would you like to introduce your
7 attorney.

8 MR. de HOLCZER: I'm Paul de Holczer. I'm with
9 Moses, Koon and Brackett. And I have the
10 privilege of representing Dr. Trimmier in
11 this. And Dr. Trimmier is here with his wife,
12 Sonya, a school teacher up in Spartanburg.

13 MR. SAXON: Paul, I have to ask you this every time,
14 will you spell your last name for me.

15 MR. de HOLCZER: Sure. d-e H-o-l-c-z-e-r.

16 DR. DIXON: Thank you, Dr. Trimmier, for coming
17 before us. Were you here for the
18 introductions earlier this morning when we
19 introduced the Board?

20 MR. de HOLCZER: We were.

21 DR. DIXON: Okay. So at this point we'll forgo
22 reintroducing if that's okay with you guys.

23 DR. TRIMMIER: Yes, sir.

24 DR. DIXON: Could you swear in Dr. Trimmier at this
25 point.

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1 Whereupon,

2 Edward P. Trimmier, DMD, being duly sworn and
3 cautioned to speak the truth, the whole truth,
4 and nothing but the truth, testified and
5 deposed as follows:

6 Court Reporter: State your full name for the
7 record, please.

8 Witness: Dr. Edward Perry Trimmier

9 DR. DIXON: Thank you Dr. Trimmier.

10 DR. TRIMMIER: Yes, sir.

11 DR. DIXON: If you would, would you like to speak to
12 us and present your case.

13 DR. TRIMMIER: I would.

14 MR. de HOLCZER: If I might, I'd like to just do an
15 introduction, then of course, Dr. Trimmier
16 would be happy to respond and everything.

17 We're here pursuant to an existing order,
18 which I'm sure you have, which states that Dr.
19 Trimmier may be issued a license to practice
20 dentistry in this state subject to providing
21 documentary evidence satisfactory to the Board
22 that his license and/or certificates from
23 Georgia, New York, and any other states of
24 licensure are in good standing whether active
25 or inactive. At this point, Dr. Trimmier is

E.T. 47

1 in -- has a license in New York which is all
2 restrictions on it are ended as far as
3 anything else he has to complete except for
4 probably paying a fee if he were to practice
5 in New York. And he has no intention of
6 practicing in New York but he has kept that up
7 because a good part of his education was in
8 New York. As far as Georgia goes since, I
9 think, the last meeting with the Board Dr.
10 Trimmier had surrendered his license to
11 practice in Georgia. And he has no -- he has
12 a lot of ties to South Carolina. He's from
13 South Carolina. His wife is from South
14 Carolina. His wife is working in South
15 Carolina. He has a home in Spartanburg where
16 his wife is teaching and both families go back
17 a long time there. He has a daughter who
18 finished Converse, another daughter who has
19 got about three years in Converse but had to
20 withdraw for reason of medical treatment and
21 requires surgery and Dr. Trimmier would like
22 to help her with that. If his financial
23 situation were to improve, it might -- it
24 would improve, of course, if he was readmitted
25 a licensure. And I'd just like to stress that

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1 he has these with ties to South Carolina.
2 South Carolina is where he intends to practice
3 and continue his practice and not Georgia. He
4 has basically closed the door and turned the
5 corner and started a new chapter in his life
6 putting Georgia behind him. And that is why
7 he has decided to surrender his license in
8 Georgia rather than to renew it and continue
9 in Georgia in any way.

10 We would submit that the surrender of
11 license in Georgia is -- does satisfy the
12 prior order of this Board in that he has --
13 just like he has no intention of practicing in
14 Montana or California or numerous other
15 jurisdictions, it doesn't behoove him to
16 pursue any kind of licensure if he's not going
17 to practice and has no intention of practicing
18 or living in those jurisdictions. So Georgia,
19 we would submit falls under the same situation
20 as it would for Montana or California or any
21 other of the jurisdictions where Dr. Trimmier
22 could apply or could pursue practice but
23 chooses not to and chooses to practice in
24 South Carolina with the permission of the
25 Board.

1 Having said that, I'd just also add that
2 Dr. Trimmier meets all the requirements for
3 licensure in South Carolina and stands ready,
4 able and willing to cooperate with the Board
5 in any measures that the Board should see fit
6 to impose on him as a condition of renewing
7 his licensure in South Carolina.

8 We would submit that Dr. Trimmier's very
9 impressive educational credentials and his
10 clinical experience would benefit citizens of
11 South Carolina and we submit Dr. Trimmier
12 would make a contributing member of the dental
13 professional community. And with regard to
14 any of the past issues which have come up, Dr.
15 Trimmier is rehabilitated. He's been pardoned
16 in South Carolina and his situation is very
17 much in looking forward and looking forward to
18 doing what is necessary to be a contributing
19 member of the dental professional community.
20 And having said that, I will sit down and just
21 let you ask any question of Dr. Trimmier which
22 you might have.

23 DR. DIXON: Thank you, sir. Dr. Trimmier, do you
24 have any statements you would like to make?

25 A I would just like to confirm I'm a long time South

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1 Carolina resident, my family's here and I'm here to
2 practice in South Carolina. I went to the Medical
3 University of South Carolina and have been through
4 training up in New York. I do have colleagues up
5 in New York that are dentist anesthesiologists,
6 however my ties are here in South Carolina. And as
7 you said I was pardoned, the state of South
8 Carolina said that I'm not a danger to anyone, they
9 pardoned me. You have recommendations that state -
10 - of my moral character. I'm of good moral
11 character. You have recommendations there that
12 state my qualifications as a dentist, both from
13 anesthesiologists, general dentists, periodontists
14 and those were admitted some time ago. So I think
15 I'm in good standing and look forward to practicing
16 in South Carolina and ask you now for my
17 reinstatement of my licenses here in South
18 Carolina.

19 DR. DIXON: So you have an education for general
20 dentistry as well as periodontist and dental
21 anesthesia?

22 A Oh, no. I said I had a periodontist that wrote a
23 recommendation. That was Dr. Silboro (phonically).

24 DR. DIXON: But you would be practicing as a general
25 dentist?

1 A As a general dentist, right. The diplomat is in
2 anesthesiology. I completed the medical residency
3 in anesthesiology as four years total and you have
4 that. There's a certificate there from Brookdale
5 University Medical Center, our chief was the chief
6 of anesthesiology at NYU. And that's a very
7 intensive medical residency in anesthesia, so I
8 learned anesthesia -- I mean I'm qualified in that
9 and even talked with a dentist here who's a
10 periodontist who said that - that was in
11 Spartanburg - I could maybe come by help him or
12 counsel him on some cases in anesthesiology, maybe
13 some more difficult cases and he could ask me
14 questions. So I think I can offer service. I did
15 talk with them at the Medical University of South
16 Carolina about a year or so ago, talked to the
17 Dean, Dr. Bell, whom I know, who's a friend and
18 fellow professor, about doing seminars in
19 anesthesiology there teaching. I was a teacher
20 before I became a dentist. I taught at Dorman High
21 School. I have a degree in education, and in
22 science. I would like to also teach.

23 DR. WADE: Dr. Trimmier, would you mind, just for
24 the new faces on the Board, would you review
25 the issue in Georgia and in New York and just

E.T. 52

1 kind of -- and South Carolina. Just kind of
2 what happened over your past years.
3 A Well, in New York my license was put on probation
4 because of the plea agreement I signed ten years
5 ago regarding a billing office -- one of the
6 management personal in the office. Since then I've
7 taken many courses in management. I just recently
8 took course at Hinman in management. There is a
9 personal law and fraud in dental practice, how to
10 prevent that in your dental practice, a course
11 that's coming up. It's offered by the South
12 Carolina Dental Association, coming up in
13 September. I'd certainly be happy to take that
14 course. And I'll continue taking courses. I am
15 looking at a PhD in leadership with Regent
16 University which is good moral training. I have a
17 Bachelor of Arts in religion from Wofford College,
18 Sunday school teacher. I do seek -- have good
19 moral character. I live a righteous life and do
20 well because that's the best way. I mean that's
21 awarded because I think God's the one that awards
22 us all for our behavior. And, you know, I have a
23 right to my belief in that as our constitution laws
24 say we have a right to our conscientiousness and
25 that's mine.

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1 DR. DIXON: Take us --

2 A But in New York that - sorry - was based on what
3 occurred in South Carolina. And it's off probation
4 and the letter states I've satisfied all
5 requirements there.

6 DR. DIXON: Take us back, I believe it was 2003. Is
7 that right? 2003. Take us back through what
8 happened with your practice in -- is it
9 Georgetown? Is that correct?

10 A Georgetown that was 2002.

11 DR. DIXON: 2002. Take us back through that a
12 little bit.

13 A Right. As I stated there was -- attorney general
14 was running for governor at that time. He had --
15 his platform was on white collar crime. He went to
16 the Medical University and tried to say they had
17 some issues there and they said rather than go to
18 court they would shut down. So he backed off from
19 that. There was a sweep that came through my area.
20 There was no complaint against me. There was a
21 lady that worked for Head Start that told him there
22 wasn't anything wrong with the patients I treated.
23 I did treat some patients at South Carolina
24 Association or Pee-Dee Dental Association said they
25 needed someone with anesthesia to help with some of

E.T. 54

1 the patients. There's a back log of people, we
2 don't do anesthesia and because of my credentials I
3 treated some of the Head Start patients. Had an
4 office manager that was an impressive lady and she
5 kind of went in took the charge but they were put
6 on a disk and the -- some of the x-rays were
7 backwards and so forth and we had to look at x-rays
8 to see what was there. The long and short of it --
9 MR. de HOLCZER: I would say the long and short of
10 it was that there was a prosecution and Dr.
11 Trimmier -- as you well know there's lots of
12 reasons why you might accept a plea bargain as
13 opposed to go forward with a trial. Sometimes
14 the way the posture is and the expense of a
15 trial and all that, there's a reason to engage
16 in a plea bargain and Dr. Trimmier did that
17 and that was resolved through his acceptance
18 of a sentence under that plea bargain.

19 A Which is probation and that ended in South Carolina
20 in 2008. I satisfied all requirements for that and
21 took a course.

22 MR. de HOLCZER: And has since been pardoned.

23 A And it's been pardoned, so according to the law it
24 can't be used against me or even shouldn't -- the
25 count shouldn't even be listed. I have all my

E.T. 55

1 rights, I mean, I'm forgiven and so I want to get
2 on with my life. That's been kind of -- Jim
3 Ritchie wrote a letter to New York said that it's
4 been going around for ten years and that's kind of
5 long enough to hold that over someone. It's time
6 for me to move on and get back to work.

7 MR. de HOLCZER: Mr. Ritchie being a prior attorney.

8 A Prior counsel, attorney, senator.

9 DR. WADE: And then in Georgia?

10 MR. de HOLCZER: In Georgia there was a suspension
11 that followed from this.

12 A They were duplicating, they said, you know, nothing
13 will happen in Georgia for what happened in South
14 Carolina. And so they duplicated that process.
15 That issue ended in 2009, I satisfied all the
16 requirements there. In New York it was February
17 2011 because they didn't put me on probation there
18 until 2005. Five and six is eleven. The Georgia
19 Board called them and then they put me on
20 probation.

21 DR. ALTERMAN: I've got a question about licensure.

22 So right now you're not licensed in Georgia?

23 A I am not, no.

24 DR. ALTERMAN: And in New York, you said you were
25 licenced but you said that there's a fee that

1 needed to paid?

2 **A** Well, it's active. See, their process is it came
3 off probation and it went into an active status.

4 DR. ALTERMAN: Came off probation when?

5 **A** February 2011.

6 DR. ALTERMAN: Okay. And, so, that's indefinite and
7 you can pay the fee whenever you want --

8 **A** Yes.

9 DR. ALTERMAN: Ten years from now you decide you
10 want to reactivate it, it's still there?

11 **A** That's correct.

12 DR. ALTERMAN: Okay. So it doesn't mean that you
13 didn't pay a fee doesn't mean it's expires.

14 **A** That's correct. There's no reinstatement process.

15 DR. DIXON: Dr. Trimmier can you take us from the --

16 DR. ALTERMAN: I'm sorry. Let me -- So it's an
17 inactive license technically at this point in
18 New York?

19 **A** They say it's active.

20 DR. ALTERMAN: Okay.

21 DR. DIXON: In New York.

22 **A** In New York.

23 MR. de HOLCZER: We've gotten letters from the
24 Department of Education, which controls
25 licensure in New York, which they won't state

E.T. 57

1 that he's in good standing because that's not
2 what they will say but they did say that his
3 probation is over and it's resolved.

4 **A** They said they considered it in good standing when
5 I was on probation. I mean their laws are
6 different they said. I've been in good standing
7 there for a long time.

8 MR. de HOLCZER: The Board should have those letters
9 from the Department of Education.

10 DR. ALTERMAN: Okay. Thank you.

11 **A** Thank you, Dr. Alterman.

12 DR. DIXON: Dr. Trimmier, getting away from the
13 sanction in South Carolina that happened back
14 in 2002 or 2003 whenever that deliberation was
15 completed. Talk to us a little bit about the
16 falsification of documentation in Georgia that
17 took place.

18 **A** What happened there, that was back again in 2003
19 and that plea agreement ended in 2009. I checked -
20 - I thought everything was supposed to stay in
21 state, that's what my attorney Bart Daniel said.
22 And I called the board there and I mentioned to
23 them what was happening in South Carolina because I
24 didn't want to buy a practice there if I, you know,
25 if I couldn't practice or there would be some

E.T. 58

1 sanction against the license. So I mentioned what
2 had happened. They knew what had happened but I
3 had an application for a permit as a -- to do
4 anesthesia, they credentialed me in but on that it
5 had a question have you ever had anything happen
6 before. A lady of mine filled it out and I signed
7 it but it had a question on there, have you had
8 anything that happened in South Carolina and the
9 wrong box was checked. They called me and I said,
10 I'm sorry, that wrong box was checked, that's an
11 error. They said no problem. Later on the new
12 board came in and they revisited that and there was
13 a plea agreement signed with that where I was on
14 probation and that was 2003 to 2009. I've
15 satisfied all requirements for it.

16 DR. DIXON: Was there an incident where some
17 anesthesiology equipment that was used that
18 was not, you know, licensed under the state of
19 Georgia?

20 A No. They said my facility was extremely -- I mean
21 really top drawer if you will or top notch.

22 MR. de HOLCZER: And Mr. Chairman, I'd just like to
23 add that all that matter was previously
24 addressed -- has all been previously addressed
25 by this Board prior to them issuing the last

E.T. 59

1 order which said that Dr. Trimmier could be
2 licensed in South Carolina provided he's taken
3 care of, you know, becoming in good standing
4 with licensure in any states. It's
5 specifically -- the order specifically
6 mentioned Georgia and New York because at that
7 time Dr. Trimmier had a relationship with
8 Georgia and New York. But it says any states
9 of licensure and, of course, at this point,
10 the only states of licensure are New York and
11 South Carolina. And so we feel like -- I can
12 appreciate that this Board would want to
13 explore that past history but that had already
14 been addressed at the time of the last order.
15 And we would submit that Dr. Trimmier has done
16 everything that has been expected of him to
17 getting in good standing and to make himself
18 eligible for re-application for licensure in
19 South Carolina, rather than use that history
20 against him in any way. I mean, that history,
21 we would submit, has been dealt with by the
22 prior order of this Board and has been dealt
23 with by other orders in those other states.
24 And that is sort of -- well, it is, it should
25 be considered to be resolved as far as -- that

E.T. 60

1 is what we would submit.

2 DR. JONES: Let me ask you this, Dr. Trimmier, if
3 you decided to practice in Atlanta, if you
4 decided to go back to Georgia to practice,
5 what would be required for you to set up
6 practice -- or be licensed in Georgia?

7 A Same thing here, apply for reinstatement.

8 DR. ALTERMAN: But you've already given up your
9 license there, so basically you would probably
10 have to start anew, correct, in Georgia?

11 MR. de HOLCZER: I believe that's correct. I
12 believe that's correct. With a surrender of
13 license he would have to start de novo or
14 completely all over again. But as we point
15 out he has absolutely no desire to practice in
16 Georgia and has turned his back on Georgia and
17 has opened a new chapter in his life.

18 DR. GOINS: When was the last time you practiced,
19 Dr. Trimmier?

20 A It's been since 10/2009.

21 DR. ALTERMAN: That was in Georgia?

22 A That was in Georgia. When Jim Ritchie asked me to
23 surrender the license, he said that would help.
24 And I had been practicing in Georgia, otherwise I
25 would just stayed and practiced there and waited

1 but I surrendered and then so I haven't practiced
2 in a while.

3 DR. JONES: So you would submit that your license --
4 I just want to be clear. I know this is
5 probably asking the same question over. You
6 submit that your license to practice in
7 Georgia is in good standing but inactive?

8 A Yes.

9 MR. de HOLCZER: Well, no. I think Dr. Trimmier is
10 confused. He has surrendered his license in
11 Georgia, but by the same token he never had a
12 license -- for example, I like to use the
13 example; I pick Montana. He has no license in
14 Montana. He never did. He never had any
15 intention to practicing in Montana. He didn't
16 practice in Montana. Georgia, he has a
17 history of practicing in Georgia, but he
18 surrendered his license, he doesn't want to
19 practice in Georgia. And so for all practical
20 purposes his situation in Georgia is the same
21 in Montana. He's not licensed to practice and
22 if he wanted to practice in Montana or
23 Georgia, he'd have to start all over again but
24 he has no desire to or inclination or
25 intention to do so.

1 DR. JONES: Well, I understand that but if we're
2 looking at the requirements and instructions
3 for the reinstatement of a license, and that's
4 Number 2, it says licenses and certificates
5 from which you had in other states must be in
6 good standing whether active or inactive. And
7 that's what I'm asking.

8 MR. de HOLCZER: Yes, sir. He has no active license
9 in Georgia for it to be in good standing or
10 not good standing. He is not practicing in
11 Georgia. He has no license in Georgia. But
12 the states where he has some licensure,
13 whether active or inactive and where he's
14 submitted himself to investigation,
15 examination by the medical board -- I mean
16 dental board is New York and South Carolina.
17 And so rather than go through any kind of
18 process in Georgia, just like he's declined to
19 do any kind of process in Montana, he is in
20 exactly the same situation as far as Georgia
21 as he would be in Montana or 50 other
22 potential jurisdictions of this country. He
23 has no intention, relationship, licensure,
24 whatsoever in those other 50 jurisdictions
25 including DC for example. But he's not got

1 anything in Georgia for it to be in good
2 standing or bad standing just as he does -- or
3 active or inactive, just as he doesn't in
4 Montana.

5 DR. WHITTINGTON: In other words, there were no
6 charges against him in Georgia when he took
7 this inactive status?

8 MR. de HOLCZER: When he took the status in Georgia
9 I believe everything had been resolved in
10 front of the court. He had taken an appeal at
11 some point. It had been resolved to the
12 extent that he was now back at square one to
13 reapply in Georgia and rather than go through
14 all the rigmarole and effort and expenditure,
15 he just said I'm done with Georgia.

16 A See you later. Says I owe no fees, I'm fine.
17 Everything's good with them.

18 DR. WHITTINGTON: And you're not on any probationary
19 status or anything in Georgia? That had been
20 satisfied.

21 A No. That was years ago.

22 DR. WHITTINGTON: Okay.

23 DR. ALTERMAN: And the last time you practiced in
24 the state of South Carolina was when?

25 A 2002, December of -- well, beginning of 2003

1 actually.

2 MR. SCHWEITZER: There's something showing the good
3 standing in New York? Isn't that one of the
4 requirements?

5 A Yes.

6 MR. SAXON: I think we have that.

7 DR. DIXON: So when you where -- was your license --
8 when you surrendered your license in Georgia,
9 was your license at that point in good
10 standing with the state of Georgia?

11 A I --

12 MR. de HOLCZER: Let me -- what I understand about
13 Georgia was, he would have had to reapply and
14 ask to be -- just as he sits here today he
15 would have to go through that in Georgia and
16 he's declined to do that. So we would say it
17 was -- because of the surrender it's inactive.
18 But had it not been surrendered, he would have
19 had to come back before that board and get
20 permitted to practice just as he sits here
21 today.

22 MR. SAXON: I think the difference is in coming here
23 there are disciplinary matters against the
24 Respondent whether he has met the requirements
25 of a previous order. And we've danced around

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1 the question, but it still remains, at the
2 time of the voluntary surrender was there
3 anything standing in the way of that license
4 being renewed?

5 MR. de HOLCZER: A hearing before the Georgia Dental
6 Board resolved in Dr. Trimmier's favor would
7 have been required.

8 MR. SAXON: Okay. But there wasn't one.

9 MR. de HOLCZER: But there wasn't one because he's
10 declined to practice in Georgia and decided to
11 turn a corner and move his practice --

12 MR. SAXON: Is it fair to say that he chose
13 voluntary surrender rather than submit to
14 possible disciplinary action?

15 MR. de HOLCZER: No, sir. Because he had already
16 been --

17 MR. SAXON: Okay. Explain the difference to us.

18 MR. de HOLCZER: He had already been disciplined in
19 Georgia. He had already submitted to
20 discipline in Georgia, that had all been
21 resolved. It was a question of whether or not
22 he wanted to continue to practice in Georgia
23 and he decided he did not want to do that.

24 MR. SAXON: Tell the Board when the disciplinary
25 matters in Georgia were resolved, give us an

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1 exact date if you can.

2 MR. de HOLCZER: 2009.

3 MR. SAXON: When in 2009?

4 MR. de HOLCZER: I'll have to pull out the Georgia
5 order. Give me a moment.

6 MR. SAXON: All right. While you're doing that,
7 when was voluntary surrender?

8 MR. de HOLCZER: The voluntary surrender was -- I
9 have a copy here.

10 MS. REYNOLDS: April 9, 2010.

11 A. April 9, 2010. Thank you.

12 MR. de HOLCZER: And I'd just like to point out,
13 it's not a matter of semantics. It's not a
14 matter of game playing. It's a matter of Dr.
15 Trimmier does not want to practice in Georgia.
16 He doesn't want to go forward with that re-
17 application process and so it's not a matter
18 of good standing in Georgia or bad standing in
19 Georgia. He's not got any standing in Georgia
20 just as he doesn't --

21 MR. SAXON: Well, actually it is because the Board
22 order said active or inactive, good standing
23 in two states not Montana or any of the other
24 states, but in Georgia and New York whether
25 active or inactive.

1 MR. de HOLCZER: He's not inactive though. And
2 respectfully and I understand you're counsel
3 to the Board rather than the Board. But he is
4 not inactive in Georgia or active in Georgia.
5 His status in Georgia is exactly what it would
6 be in Montana. The reason Georgia and New
7 York were mentioned in the order were because
8 at that particular time he did have some sort
9 of status in Georgia. But what the actual
10 order says is in any other states of
11 licensure. He is now -- you know, this Board
12 has no question about Montana because he's
13 never been licenced in Montana ever before.
14 But he is in exactly the same status he would
15 be with Montana, no status whatsoever. Not
16 active, not inactive, no status. And that's
17 how he decided to resolve it. As you can
18 appreciate there's lot of reasons why a person
19 could turn their back on a particular
20 jurisdiction. In this case Dr. Trimmier had
21 been through the board process, he had been
22 through a litigation on an appeal and had been
23 successful in that appeal in Georgia.
24 There's expenses involved in this as well as
25 psychological issues, and psychological issues

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1 I don't mean that he's in any way
2 psychologically impaired. I mean that he
3 wanted to turn his back on anything in the
4 past that had been a problem for him and move
5 forward with his life and practice in a
6 positive way. Georgia had not been -- had not
7 readmitted him. He had not reapplied. He
8 didn't want to reapply because he didn't want
9 to go through all the rigmarole, even though
10 he won his appeal. Even though he had the
11 ability to reapply in Georgia, he wanted to
12 move on with his life and his practice and he
13 wanted to do that in his home state of South
14 Carolina. And that's not unreasonable and
15 that's not gaming the system in anyway. He is
16 submitting himself to this Board fully for
17 this Board to examine him, vet him and
18 determine what this Board thinks is good for
19 the citizens of South Carolina. At no time
20 has it ever been alleged that there's been any
21 patient harm by Dr. Trimmier. He's never
22 injured a patient. And if this Board were to
23 find that he's a danger to the health, safety
24 and welfare of the people of South Carolina,
25 then absolutely this Board should have an

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1 issue. But he has satisfied that. He's never
2 been a danger. He's willing to do whatever
3 this Board would like him to do. He just asks
4 for another chance, a second chance. If
5 there's not anything such as rehabilitation,
6 then there would be a statute I would submit or
7 a regulation that would say that he should
8 never get a second chance. But this doctor is
9 asking for a second chance. He's done
10 everything that's been expected of him. He's
11 gotten a pardon on the underlining matters and
12 he's ready to move forward. And if this Board
13 should say that, you know, they would like to
14 see him do something else or they would like
15 to see some further assurances, he's already
16 said he's able, ready and willing to comply
17 with what the Board wants, and that's how he
18 sits here.

19 MR. SCHWEITZER: Jamie, the letter from New York is
20 which one?

21 MR. SAXON: I think it was toward -- Veronica, isn't
22 that towards the front?

23 MS. REYNOLDS: Right. And the last order from
24 Georgia is on Page 81.

25 MR. SCHWEITZER: I'm looking at Page 77 of 130, is

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1 that the letter from New York?

2 MS. REYNOLDS: It's 130 and there's a order of the
3 voluntary surrender, which is on 79.

4 MR. SCHWEITZER: My question is, --

5 MR. SAXON: Veronica, can you help us find the New
6 York paper that says he's in good standing.

7 MR. SCHWEITZER: Because on 77 of 130 there is a
8 letter from New York, but it says he will
9 receive a letter when probation is ended.
10 That's the letter I'm not putting my finger
11 on.

12 MR. de HOLCZER: What I was saying was there's no
13 letter that says exactly he is in good
14 standing in New York because they don't issue
15 such a letter. That's what my investigation
16 found. But Dr. Carr -- excuse me, Ms. Carr
17 who's an investigator for New York and her
18 supervisor, and I can't recall her name, but I
19 have that document here.

20 **A Satisfied all requirements.**

21 MR. de HOLCZER: He satisfied his probation. He
22 satisfied everything --

23 **A All requirements, may return to practice.**

24 MR. SAXON: Is the June 21, 2010 letter the most
25 recent from New York?

1 A It would be 2011 would be the letter.

2 MR. SCHWEITZER: That's the one I'm looking for.

3 MR. SAXON: That's what we're looking for. This one
4 says June 21, 2010.

5 MR. SCHWEITZER: It says you will receive a letter.
6 That's the letter that I can't find in the
7 file.

8 MR. de HOLCZER: I have it. I have a copy and I
9 believe we submitted any copies and we asked
10 that the New York board send them to the South
11 Carolina Board directly to the administrator
12 directly. And I believe there's a copy. Ms.
13 Reynolds should have a copy of those letters
14 where I requested it.

15 MS. REYNOLDS: Apparently we have the documents, all
16 of the documents that were submitted.

17 MR. de HOLCZER: Okay.

18 MS. REYNOLDS: We have the paper documents.

19 MR. de HOLCZER: I have one of February 2011, which
20 I'm happy to submit. Should I give it to Ms.
21 Reynolds?

22 MS. REYNOLDS: Let me look at it.

23 MR. de HOLCZER: That's one. I know I have another
24 one as well.

25 MR. SAXON: Ms. Reynolds, may I have a look at that

1 please.

2 MR. de HOLCZER: If I may, I also have a copy of
3 that letter which was sent directly -- that I
4 got from Mr. Ritchie. It went directly to Mr.
5 Ritchie --

6 MR. SAXON: Give us just a second please.

7 MR. de HOLCZER: -- his former attorney.

8 MR. SAXON: Ma'am, will you mark this Applicant No.
9 1.

10

11 (Whereupon, 2/10/11 Letter from State
12 Education Department of New York,
13 consisting of 1 page, was marked
14 Applicant's Exhibit No. 1 for
15 identification.)

16

17 DR. ALTERMAN: Can we just read it out loud or are
18 we not allowed to do that?

19 MR. SAXON: I'll pass it around. Sure we are.
20 Would you like me to --

21 DR. ALTERMAN: I just want to read it. It looks
22 short.

23 MR. SAXON: This is marked as Applicant's No. 1 it's
24 on the State Education Department of
25 University of the State of New York

1 letterhead, dated February 10, 2011, addressed
2 to Dr. Trimmier. Dear Dr. Trimmier -- and
3 this is regarding Commissioner's Order No.
4 0021819. The Commissioner's Order under the
5 above numbers had imposed a period of
6 probation on you with respect to your
7 privileged to practice the profession of
8 dentistry in the state of New York. Your
9 period of probation started on February 13,
10 2005 and ended on February 12, 2011. Since
11 you have complied with all the terms of your
12 probation, we have closed this file.

13 MR. SCHWEITZER: So what's the date of that one?

14 MR. SAXON: February 10, 2011, of this year.

15 MR. SCHWEITZER: I'm sorry, I hate to picky, how can
16 that be? It's dated two days before the end
17 and it says it's ended.

18 A She just sent it so it would probably come on the
19 exact date.

20 MR. de HOLCZER: The copy I have -- what we
21 submitted was the --

22 MR. SAXON: I guess by the time it reached him in
23 Spartanburg it would have been after that
24 February 12th date.

25 A Yes.

1 DR. DIXON: Dr. Trimmier, I think the last time you
2 met before this Board one thing that we asked
3 of you was that you had this letter of good
4 standing from the state of New York. We also
5 asked that you have a letter of good standing
6 from the state of Georgia.

7 A I called the state of Georgia and they said what
8 they would send is I satisfied all of their
9 requirements, I didn't owe any fees, which I sent
10 that to my attorney. And, I mean, the surrender
11 says that I can apply for reinstatement at anytime.

12 DR. DIXON: So all we have from the state of Georgia
13 is basically is that you don't owe any fees or
14 fines?

15 A That's not all the requirements. There's no
16 connection with me. I don't owe them anything, no
17 probation, anything. And that's what they said
18 they'd do. That's considered their letter of good
19 standing. I've talked with them at the board and
20 that's what they said to me. And that's what I'm
21 relating the truth of what they said.

22 DR. DIXON: Do we have a copy of that?

23 MR. de HOLCZER: I'm looking -- I have a copy of --
24 and I think y'all -- excuse me. I think this
25 Board has a copy of, for one thing the Amended

1 Final Decision of the --

2 A That letter that I sent you just said zero, don't
3 owe anything.

4 MR. de HOLCZER: Yeah, there was a Final Order
5 though of the State Board and I'm looking to
6 see if there's something else. I think with
7 the voluntary surrender -- the acceptance of
8 the voluntary surrender was also predicated on
9 his having nothing further to do with -- you
10 know, that the board --

11 A I didn't owe them anything.

12 MR. de HOLCZER: He didn't owe them anything. I
13 mean I think they wouldn't have accepted the
14 surrender had he had some outstanding
15 obligation to them, financial or otherwise.

16 DR. ALTERMAN: And you're basically asking us on the
17 New York thing to accept that letter as a
18 letter in good standing saying that they
19 closed the file?

20 A Yes.

21 DR. ALTERMAN: You think that's the same thing?

22 A Yes.

23 MR. de HOLCZER: I am -- And the reason I give my
24 word as an officer of the court that I
25 contacted the New York board and I dealt with

1 Ms. Carr and that was all they were willing to
2 send. They said that's all we will send.
3 That is what she told me because we asked
4 repeatedly and I believe I've copied Ms.
5 Reynolds with the letter saying please send a
6 letter of good standing.

7 DR. ALTERMAN: Are you saying that's under this
8 specific circumstance or that's just their
9 normal thing they do?

10 MR. de HOLCZER: No, that's their normal thing to
11 do. That's what her explanation was. She was
12 very impatient and she said this is all we do,
13 we're not going to do anything extra for
14 anybody.

15 DR. ALTERMAN: Okay. Thank you.

16 MR. de HOLCZER: Thank you. If I might add the
17 acceptance of surrender, when Dr. Trimmier
18 surrendered his license in Georgia, the
19 surrender became effective upon acceptance by
20 the Georgia Board of Dentistry. And Page 2 of
21 that voluntary surrender is Georgia's
22 acceptance of the surrender. So that should
23 have terminated any obligation -- had he had
24 any obligations, that would have been their
25 opportunity to say we don't accept your letter

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1 of surrender.

2 DR. DIXON: Why would they? I mean --

3 MR. de HOLCZER: Well, if he owed money to them for
4 example, they could say, no, we're keeping you
5 in a status where you are under disciplinary
6 restrictions in the state of Georgia. So if
7 you apply for licensure in any other state,
8 you must identify that you have restrictions
9 placed on you by the Georgia Board of
10 Dentistry. And by accepting his surrender, he
11 has no file then further with Georgia. He is
12 not -- again, it's as though he were not ever
13 licensed there active or inactive as though he
14 were in the same situation as in Montana. The
15 file is closed. There is no file.

16 DR. DIXON: The difference to me being that there
17 was a pending disciplinary action there.

18 **A But there's not.**

19 DR. DIXON: Not until the surrender was made.

20 **A There wasn't one before the surrender I think is**
21 **the point. What is the action? I satisfied**
22 **everything.**

23 MR. SAXON: Well the actual voluntary surrender
24 itself says you have a right to a hearing but
25 that you knowingly and voluntarily waive such

E.T. 78

1 right. So there was something happening that
2 required a hearing.

3 A That's just general jargon that they write in
4 everything that you have a right to a hearing for
5 your surrender. You can come appear before them to
6 surrender your license but that wasn't necessary.
7 They agreed to the surrender. I didn't have to
8 have a hearing to do that.

9 DR. DIXON: Prior to that, was your license not
10 suspended?

11 A It had been and that would be for in 2008 for three
12 years ALJ and then it's been -- that's over. I
13 mean that's gone too.

14 DR. ALTERMAN: But you would have needed a hearing
15 to get that license unsuspended if you so
16 wanted to.

17 A Well, I would have to go back before the board and
18 have it reinstated, which is what this says too,
19 but I wouldn't have to do that to get it
20 unsuspended. That only just lasted that amount of
21 time. After that time, it states you may go back
22 to the board. If the board does not act favorably,
23 then they could be held to be capricious. So I
24 think that's pretty permanent that I could get
25 licensed in three years and that's with 2011 so I'm

E.T. 79

1 in good standing.

2 DR. DIXON: After the suspension, that was
3 overturned is that correct by --

4 A A superior court judge.

5 DR. DIXON: Superior court judge. And then after
6 that point --

7 A There's nothing left. I surrendered voluntarily
8 because I didn't want to fool with going back to
9 court or anything.

10 DR. DIXON: Was there pending that the license would
11 be -- that you would have to go back -- were
12 you going to have to go back before the
13 Georgia Board?

14 MR. de HOLCZER: If I might. There's a -- and I
15 think it should be in your file. There's an
16 Amended Final Decision from the Georgia Board
17 of Dentistry and the decision says the
18 Respondent's license to practice dentistry
19 should be suspended indefinitely but he could
20 apply for lifting of the suspension and
21 restoration of his license at any time
22 following his service of two years of
23 suspension. Which he --

24 A It's two years. That's way been over.

25 MR. de HOLCZER: That was in October of 2000 -- this

1 order is 2009 and then rather than submit to a
2 reexamination and go through dealing with the
3 board, he said I'm going to just forget about
4 Georgia. I'll just move forward with my life.

5 A It's docketed though with ALJ was 2008. According
6 to Georgia law it's my understanding they go when
7 it was docketed in 2008. So it would have been
8 2010 when that was over.

9 MR. de HOLCZER: It does look like in 2008 is when
10 it was docketed.

11 A Yeah. And Dr. Marshall he had -- when I was here a
12 year ago had a license revoked but he was admitted
13 that same day.

14 MR. de HOLCZER: In fact, the final decision was
15 issued April 1, 2008.

16 DR. DIXON: So there was no -- after the suspension
17 it was overturned by the court system, there
18 was no plans for the Georgia board to revoke
19 your license?

20 A No, they could not. No, that's gone. That was
21 taken away by an act of law.

22 MR. de HOLCZER: Right. This order reversed --
23 points out that the court reversed the
24 revocation of his license.

25 A That was over an anesthesia permit issue of

1 rescheduling where the guy came out at the wrong
2 time. That was a scheduling issue. I paid a
3 thousand dollar fine for that to the ALJ so all
4 that's clear. The fine's paid, everything's clear.
5 That's what that letter said. I paid all the
6 fines. Everything's done. I mean, I've paid
7 restitution to everybody. I've, you know,
8 repented, I've changed, I've learned. I'll be a
9 good citizen and practice dentistry very well
10 because of what I've learned. I mean I've learned
11 a lot. I got through it, my family has, we all
12 have.

13 DR. DIXON: Does anyone have any more questions for
14 Dr. Trimmier?

15 DR. JONES: Do you intend to set up a private
16 practice?

17 A I intend to go work for someone. I have a cousin
18 that just started dental school also and he wants
19 to work for me later on. And so I'll probably work
20 with a group. I have Dr. Stukes, who's in Alcot,
21 he was a former board member years ago. He has
22 some ideas for me of where to go and what to do.
23 I've been talking with him over the past two years
24 actually.

25 DR. JONES: Would it be a corporate practice?

1 A Probably another dentist with an option to buy.
2 I'd rather work with a group and help out with
3 anesthesia, teach, mentor people. That's what my
4 goal. Use what I've learned. Help the state. Be
5 of service to the good people of South Carolina.
6 DR. JONES: You intend to do more anesthesia than --
7 as opposed to just regular --

8 A I intend to teach anesthesia. I intend to do
9 general dentistry, of course, I have advanced
10 training in general dentistry. I worked with a
11 prosthodontist VA Medical Center in DC, we had the
12 largest implant study at the time in the United
13 States. Became a fellow at ICOI. I mean I had
14 training in surgery too. I was admitted to oral
15 surgery, had surgical training. I intend to do the
16 general dentistry procedures with sedation, to
17 offer sedation as you do in your practice and Dr.
18 Goins does in hers. Offer sedation to the patients
19 who need that. It would an access for patients in
20 South Carolina. That's a good thing. I think
21 sedation provides an access for those. For me it's
22 very safe. A judge in Atlanta ruled that it saved
23 thousands of patients successfully and had the
24 highest level and qualifications of training and I
25 was not a danger to anyone.

1 DR. JONES: I wasn't questioning your education. I
2 was just asking what your intentions were,
3 what kind of practice you --

4 A Just a simple question. I do want to teach and it
5 won't be limited to anesthesia. I'll be doing
6 general dentistry also. I'm trained in that. I
7 enjoy cosmetic dentistry and filling and just doing
8 -- taking care of people, full service type of
9 practice.

10 DR. DIXON: Any other questions?

11 A Would you rather me just do anesthesia, is that
12 what you're . . .

13 DR. JONES: No. I don't care what you do.

14 A Okay. I was just -- All right. Good.

15 DR. JONES: As long as it's within reason, it
16 doesn't bother me.

17 A It's within reason, right. I mean, I'm trained if
18 anything happened to a patient, I mean I have ACLS
19 training that I have just recently got through Mary
20 Black Hospital if anything happened I can help
21 someone. But I'm very conservative in sedating
22 people. I don't use narcotics. I just use Versed
23 and something very simple. I mean, I've done all
24 the extreme cases so I'm not interested in being a
25 cowboy with that at all, I'm not. I'm very

1 conservative with anesthesia.

2 DR. ALTERMAN: I move we go into executive session.

3 DR. GOINS: Second.

4 DR. DIXON: I have a motion and a second that we
5 move into executive session. All in favor,
6 aye?

7 THE BOARD: Aye.

8 DR. DIXON: Thank you, Dr. Trimmier.

9

10 (Executive Session)

11

12 DR. DIXON: We have a motion to go back into public
13 session.

14 DR. ALTERMAN: Second.

15 DR. DIXON: All in favor aye?

16 THE BOARD: Aye.

17

18 (Public Session)

19

20 DR. DIXON: Thank you for coming back in. We had a
21 question that we wanted to pose.

22 MR. SCHWEITZER: One question just so we're clear.

23 With, again, this focuses on the Georgia
24 situation. Just so we understand it
25 correctly. The voluntary surrender of the

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1 license in Georgia was not compelled by any
2 disciplinary matter but he just decided not to
3 practice dentistry in Georgia.

4 MR. de HOLCZER: That's my understanding.

5 **A** My wife was moved here previously she's been
6 practicing here -- or been a teacher five years so
7 I wanted to come and be with her. I followed her
8 this time.

9 MR. SCHWEITZER: Okay. Yeah, I understand. And if
10 I understood the background for the
11 disciplinary action that had taken place in
12 Georgia was basically over.

13 MR. de HOLCZER: That's my understanding.

14 MR. SCHWEITZER: So there could have been an
15 administrative process to -- and I'm sorry,
16 I'm probably not using the right words. I
17 don't want to say reactivate, but to put that
18 license back into good standing.

19 **A** Yes.

20 MR. SCHWEITZER: And the only impediment was
21 administrative, it wasn't disciplinary.

22 **A** Uh-huh. Exactly.

23 MR. de HOLCZER: I believe that's right and I
24 thought y'all had a copy of whatever was
25 issued from Georgia from the Georgia board.

1 MR. SCHWEITZER: What do we have?

2 MS. REYNOLDS: What do we have from Georgia?

3 MR. SAXON: We have the last order, is all we have.

4 MS. REYNOLDS: It was the last order and nothing has
5 changed since then except --

6 MR. SAXON: We don't have anything after the
7 voluntary surrender.

8 MR. de HOLCZER: Right. You would have the order
9 and then the voluntary surrender. So that
10 would be what we have and what we -- but
11 that's our understanding based on those
12 documents.

13 MR. SCHWEITZER: I appreciate that. That was what I
14 understood you to say, I just wanted to be
15 sure I put it all together.

16 DR. DIXON: That question being answered, do we have
17 a need to go back into executive session?
18 Okay. Do we have any motions?

19 DR. WHITTINGTON: I make a motion that we would
20 grant Dr. Trimmier a license upon a letter of
21 verification from the State Board of Georgia
22 that there were no pending disciplinary
23 actions prior to his surrender. We have that
24 as far as we know of from New York, but as we
25 asked last year, we wanted a letter stating

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1 that there were no pending disciplinary
2 actions against you and we have not gotten
3 that.

4 **A** The only letter I got when I called and asked them
5 for that was the letter which I sent to my attorney
6 which states that I don't owe anything.

7 DR. DIXON: We need to -- that's a motion, a
8 motion's on the table.

9 DR. WADE: I'll make a second of that.

10 MR. SAXON: Paul, the way that would be written is
11 that the Board is -- the condition of being
12 granted the license is that Dr. Trimmier
13 provide written evidence, either of good
14 standing at the time of his voluntary
15 surrender or that there were no disciplinary
16 actions pending against his license at that
17 time.

18 DR. DIXON: So we have a motion and a second. All
19 in favor, aye?

20 THE BOARD: Aye.

21 DR. DIXON: Any opposition? None being said. Dr.
22 Trimmier, if you'll get us that letter then
23 we'll see about getting your license as soon
24 as we can.

25 **A** All right. Thank you.

1

- - - - -

2

(Whereupon, at 11:29 a.m., the

3

Examination in the above-entitled matter

4

was concluded.)

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State of South Carolina)
) CERTIFICATE
County of Lexington

Be it known that I took the foregoing hearing;

That I was then and there a Notary Public in
and for the State of South Carolina-at-large;

That by virtue thereof I was duly authorized
to administer an oath;

That the witness was by me first duly sworn to
testify the truth, the whole truth, and nothing but the
truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true,
accurate and complete transcription of the testimony so
given at the time and place aforesaid to the best of my
skill and ability;

That I am familiar with and agree to adhere to
the provisions contained in title 35 of the South
Carolina Code of Laws, Uniform Securities Act;

That I am not related to nor an employee of
any of the parties hereto, nor a relative or employee of
any attorney or counsel employed by the parties hereto,
nor interested in the outcome of this action.

August 2011 Witness my hand and seal this 4th day of



Robin L. Spaniel

Notary public for south carolina

My commission expires: June 2, 2015

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E.T. 90

In the Matter of Edward Perry Trimmer -

STATE OF SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE BOARD OF DENTISTRY

IN THE MATTER OF)

EDWARD PERRY TRIMMIER, DMD)

LICENSE # - APPLICANT)

ORIGINAL

REINSTATEMENT HEARING

Applicant.)

Given before Terri A. Winiarski, Nationally Certified Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 10:36 a.m., Friday, July 16th, 2010, at the offices of the South Carolina Department of Labor, Licensing and Regulation, 110 Centerview Drive, Columbia, South Carolina.

Reported by:
Terri A. Winiarski, CVR

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In the Matter of Edward Perry Trimmer -

A P P E A R A N C E S

Board Members: Felicia L. Goins, DDS, President
Thomas M. Dixon, DMD, Vice-President
Douglas J. Alterman, DMD
Genie M. Duncan
David W. Jones, DMD, MHS
Charles F. Wade, Jr., DMD
John M. Whittington, DMD
Sherie G. Williams, DMD

Advising the Board: Sheridan H. Spoon, Esquire
SC Department of Labor, Licensing &
Regulation/Office of General Counsel
110 Centerview Drive
P.O. Box 11329
Columbia, SC 29211-1329

For the Applicant: James H. Ritchie, Jr., Esquire
Holcombe Bomar, PA
P.O. Box 1897
Spartanburg, SC 29304

Also present: Veronica Reynolds, Board
Administrator

Reported by: Terri A. Winiarski, CVR

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In the Matter of Edward Perry Trimmier -

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No exhibits were marked in this proceeding.

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In the Matter of Edward Perry Trimmier -

1 PROCEEDING
2 DR. GOINS: Good morning --
3 DR. TRIMMIER: Good morning, Dr. Goins.
4 DR. GOINS: -- Dr. Trimmier. Yeah. Good morning.
5 How are you?
6 DR. TRIMMIER: Doing great. Yourself?
7 DR. GOINS: Good, good. The purpose of this
8 hearing is also to determine whether you can
9 get reinstatement of your license --
10 DR. TRIMMIER: Yes.
11 DR. GOINS: -- for South Carolina. And at this
12 time, I would like the Board to introduce
13 themselves. Ms. Genie?
14 MS. DUNCAN: Genie Duncan, West Columbia.
15 DR. ALTERMAN: Doug Alterman, Charleston.
16 DR. WADE: I'm Charlie Wade from Lancaster.
17 DR. JONES: David Jones, Spartanburg.
18 DR. GOINS: Felicia Goins, Columbia.
19 DR. DIXON: Tommy Dixon, Belton.
20 DR. WHITING: John Whittington from Marion.
21 MS. WILLIAMS: Sherie Williams from Greer.
22 DR. TRIMMIER: Sherie -- close to Spartanburg.
23 MS. WILLIAMS: Right.
24 DR. GOINS: At this time, I think we should go
25 ahead and swear Dr. Trimmier in, please.

In the Matter of Edward Perry Trimmier -

1 Whereupon,

2 Edward Perry Trimmier, DMD, is duly sworn and
3 cautioned to speak the truth, the whole truth, and
4 nothing but the truth.

5 DR. GOINS: Veronica, do we have a completed
6 application?

7 MS. REYNOLDS: Yes, you do.

8 DR. GOINS: Okay. All right. At this time, would
9 you like to make a statement?

10 DR. TRIMMIER: Yes, I would. I'd like --

11 DR. GOINS: I'm sorry. Are you represented by
12 counsel?

13 DR. TRIMMIER: I am.

14 OPENING REMARKS FOR THE APPLICANT BY

15 MR. RITCHIE: Madam President, I'm Jim Ritchie. I
16 represent Dr. Trimmier, and I'm glad to be
17 back with you all. We were before you in
18 January of 2009 on an application that Dr.
19 Trimmier submitted in the fall of 2008 to
20 return to South Carolina for reinstatement of
21 his South Carolina license. At that time,
22 there was an outstanding, single -- singular
23 outstanding issue regarding his license in
24 Georgia, which he held through reciprocity in
25 South -- with his South Carolina license. And

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1

2

DR. GOINS: I think I need to have you sworn.

3

MR. SPOON: No, you don't.

4

DR. GOINS: No?

5

MR. SPOON: He's an attorney.

6

DR. GOINS: Oh, okay. Great. Okay. Sorry.

7

MR. RITCHIE: It's okay.

8

DR. GOINS: Just trying to check all the bases

9

here.

10

MR. RITCHIE: No, I, I appreciate that. At the

11

time of the hearing in January of 2009, the

12

Board -- and many of you were already on the

13

Board at that time when he appeared -- were

14

satisfied with Dr. Trimmier's application and

15

his credentials and his ability in the dental

16

practice. There was a single outstanding

17

question you had regarding the status of his

18

license in Georgia. And that was -- and at

19

that point, we suspended action here at this

20

level. And we resubmitted our application

21

earlier this year and I've been working with

22

Sheridon and others on staff in the interim

23

time regarding Dr. Trimmier's situation in

24

Georgia. That matter was resolved earlier

25

this year. And by background, let me just lay

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1 it out for you a little more detailed. There
2 was a matter in 2004 when Dr. Trimmier held an
3 anesthesia permit in Georgia and it was up for
4 renewal in the spring of 2004. There was a
5 gap in between the time of the license being -
6 - lapsing and the renewal, at which time, he
7 administered anesthesia or allegedly
8 administered anesthesia to a patient. There
9 was no patient harm, no problems with the
10 medicine at all. The problem was, it was a
11 gap in the licensure. As a result, there was
12 Board disciplinary action taken in Georgia.
13 Dr. Trimmier did not agree with the initial
14 determination by the Board and went through
15 the ALJ process for review of that. And
16 that's where we were when we met you in
17 January of last year. Subsequent to that, the
18 Administrative Law Judge in Georgia reversed
19 the Board, the Board's action on his license.
20 The Board, subsequently, under the direction
21 of the court, took action to suspend Dr.
22 Trimmier's license for a period of time so he
23 could be eligible to reinstate in a period of
24 two years. By that time, Dr. Trimmier had
25 already committed to you to come back to South

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In the Matter of Edward Perry Trimmier -

1 Carolina. His wife Sonya is with us in the
2 back -- is teaching in Spartanburg and he
3 wanted to return home. That was his original
4 reason to come before you last year. In order
5 to clean all of that up and bring all of this
6 back home and be done with it, Dr. Trimmier
7 voluntarily surrendered his license in Georgia
8 earlier this year so as to put all that matter
9 to bed and be clean before you today. And
10 that's the posture in which we are to seek his
11 reinstatement today. I've worked with
12 Sheridan and Veronica, and they've been very
13 cooperative in putting this together. And
14 we're here back before you today to try to
15 wrap up the matter we started a year ago.

16 DR. TRIMMIER: Thank you.

17 EXAMINATION OF DR. TRIMMIER BY THE BOARD:

18 DR. DIXON: Just to get this straight -- so
19 basically, you were doing some anesthesia --
20 you let your license lapse to do the
21 anesthesia?

22 A. Right.

23 DR. DIXON: Then, during that time, you had a
24 patient that you did some anesthesia on. The
25 Board reprimanded you that. You went on to

In the Matter of Edward Perry Trismier -

1 the Circuit Court, and they reversed that.

2 And then, explain what the Georgia Board did
3 after that?

4 A. The --

5 MR. RITCHIE: Do you want me to do this?

6 DR. DIXON: Go ahead.

7 MR. RITCHIE: The Georgia Board then suspended his
8 license for an indefinite period, but he was
9 eligible to reapply in two years.

10 DR. DIXON: Did -- excuse my ignorance, but does
11 the Georgia Board have precedence over a
12 Circuit Court judge to do that?

13 MR. RITCHIE: Well, the Circuit Court judge said
14 that your -- the process -- their action,
15 initially, violated due process and violated
16 his rights and over-reached on the penalties.
17 And then he fought them in Circuit Court.

18 They came back in, in, I would suggest to you
19 somewhat of a retaliatory measure, went as far
20 as they could within the judge's order. And -

21 -

22 DR. ALTERMAN: In other words, the Georgia Board
23 said, all right, then we're going to just
24 suspend his license.

25 MR. RITCHIE: That's right.

In the Matter of Edward Perry Trimmier -

1 DR. JONES: Was it stayed or was it just totally
2 suspended?

3 DR. ALTERMAN: Suspended where you couldn't
4 practice at all? It was totally suspended?

5 MR. RITCHIE: That's my understanding. I didn't
6 represent him in the Georgia action, but
7 that's my understanding. Sheridan, is that --
8 you read it as well.

9 DR. JONES: So Dr. Trimmier --

10 MR. SPOON: That's correct.

11 DR. JONES: -- during that --

12 MR. SPOON: That's correct.

13 DR. DIXON: So when's the last time you worked on a
14 patient?

15 A. In October of 2009. But the, the -- it was -- what
16 I was doing was anesthetizing the patient for the
17 purpose of permit renewal. This wasn't -- I mean -
18 - and there is some different dates and so forth on
19 letters. The fellow that -- the evaluator thought
20 that that was fine, and I trusted what he said, you
21 know, as an agent of the Board. The Board's -- you
22 know, disagreed with him. And this was a new
23 Board. And this had come up before the Board in
24 2004, when the incident took place, with Mel
25 Goldstein who wrote me a letter of recommendation.

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1 He's also an Administrative Law Judge, and 90% of
2 his cases are administrative. And he was a former
3 Board attorney. And he said this was a gray area
4 due to the -- what was going on with the
5 evaluations, and the evaluator was doing it after a
6 certain specified time. I mean, one rule said I
7 had six months to -- for that permit to be
8 temporary, and then there was a letter saying two
9 months. So there are all these different letters,
10 and the letters came after the time I actually
11 administred the anesthesia and tried to get the
12 permit. So I didn't really have any, at the time,
13 knowledge to know that that was incorrect. And I
14 certainly -- I want to submit to the Board that I
15 was not defying the law or regulations. I mean, it
16 is my intent, always, to follow the law and
17 regulations. I hadn't really had anything ever
18 happen to me, except what occurred years ago. And
19 I've learned from that. I've learned to document
20 things. What the Assistant Attorney General had
21 said was that if I had documented my talk with the
22 evaluator in the chart, there wouldn't have been a
23 problem. Now, my understanding was you weren't
24 supposed to write in a chart, so I didn't. But now
25 I understand you can. And so that's what took

In the Matter of Edward Perry Trimmer -

1 place. He later, then, came out in July, which was
2 -- this was April when this took place, and it was
3 allegedly terminated in March 27th. So it went a
4 couple weeks before I did this. And there was no
5 problem with that when I actually did general
6 anesthesia and, you know, I had four years of
7 training and was -- went into oral surgery,
8 admitted into oral surgery. I pulled four wisdom
9 teeth with a patient fully sedated under general.
10 I passed that test, but there wasn't a problem with
11 that. There was an issue with the other one. So
12 that's what took place.

13 DR. DIXON: So Sheridan, if I could ask you a
14 question, what's the time limit on licensing
15 by credentials and the last time you practiced
16 actively?

17 MR. SPOON: Five years?

18 DR. DIXON: No, it's --

19 DR. ALTERMAN: Would this be considered a license
20 by credential?

21 DR. DIXON: No, it's --

22 DR. GOINS: No.

23 MR. SPOON: It's not.

24 DR. DIXON: -- it's not.

25 MR. SPOON: It's an application for reinstatement.

In the Matter of Edward Perry Trimmier -

1 DR. DIXON: Reinstatement, okay. So this is not --
2 Dr. Trimmier, tell us a little bit about the
3 situation that happened in October of 2000 in
4 South Carolina.

5 MR. RITCHIE: The initial action, you -- I think
6 you all had been briefed on that. There was a
7 paperwork/Medicaid-billing issue for which he
8 was -- which this Board took action. He was
9 later fully pardoned for that.

10 DR. JONES: Could you go into New York? Was there
11 anything involving any other state?

12 MR. RITCHIE: No, it's all reciprocity through a
13 South Carolina license.

14 A. It was a mirror of what took place.

15 DR. ALTERMAN: When was the last time your South
16 Carolina license was active?

17 A. It was active from end of 2003.

18 DR. ALTERMAN: At this point, you have no dental
19 license anywhere, in essence?

20 A. Except for New York.

21 DR. ALTERMAN: Oh, you do have a New York dental
22 license?

23 A. Yes.

24 DR. ALTERMAN: And that's current?

25 A. Yes.

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In the Matter of Edward Perry Trimmier -

1 DR. ALTERMAN: When was the last time you practiced
2 in that state?

3 A. That would be when I finished the anesthesiology
4 residency in 1999.

5 DR. DIXON: So your plans in Spartanburg are, I
6 guess, to open a private practice or go to
7 work with someone?

8 A. Yes, sir -- to return here, be with family. My
9 wife is here. I've been traveling back and forth
10 from New York. I mean, I've lived here -- I mean,
11 from Atlanta -- sorry. I've lived here all my life
12 and family's been here. I mean, Trimmiers have
13 been here for 300 years. So we're kind of old
14 South-Carolinian people. And this is my home
15 state, a state I love. I love South Carolina, love
16 South Carolinians. I want to be of service, also
17 be of service to the National Guard. I've talked
18 with them, and that's -- I'm having a physical on
19 this coming Monday. I've talked with Chief
20 Bonderer and a couple of people from that so I can
21 go on to that and be -- it's another way of being
22 of service.

23 DR. DIXON: So you have a license to practice
24 general dentistry, and are you also a dental
25 anesthesiologist?

In the Matter of Edward Perry Trimmer -

1 A. I'm a dental anesthesiologist. I've been boarded
2 in that. I passed that board, actually, at the
3 American Dental Association in Chicago. I took all
4 the tests as the MD's did when we were going
5 through and had to pass those and got through. It
6 was a medical anesthesiology residence in New York.
7 It's affiliated with NYU. They have OMS/pedo
8 residency there. I worked with, you know,
9 pedodontic children and also trauma cases,
10 neurosurgery cases. Everything that the
11 anesthesiologists did, I had the opportunity to be
12 trained and do that myself.

13 DR. DIXON: Certainly seems to be very well-trained
14 and --

15 A. Thank you.

16 DR. DIXON: -- very well-educated in dental
17 anesthesiology.

18 A. Yes, sir.

19 DR. GOINS: Sheridan, any other --

20 MR. SPOON: I have a question --

21 DR. GOINS: -- questions?

22 MR. SPOON: -- at the appropriate time.

23 DR. GOINS: Go right ahead, Sheridan.

24 MR. SPOON: Are you going to have your wife provide
25 -- have your wife talk? Well, you can do that

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1 now if it's a witness on your, you know, on
2 your behalf. I'd be happy to --

3 A. Sure, sure.

4 MR. SPOON: The wife is going to --

5 A. Sonya, come on up.

6 Whereupon,

7 Sonya Trimmier, is duly sworn and cautioned to
8 speak the truth, the whole truth, and nothing but
9 the truth.

10 DR. GOINS: Welcome, Ms. Trimmier.

11 MS. TRIMMIER: Thank you.

12 DR. GOINS: Did you want to make a statement on
13 behalf of your husband?

14 DIRECT TESTIMONY BY

15 MS. TRIMMIER: I have known this wonderful man for
16 33 years --

17 DR. TRIMMIER: Yes.

18 MS. TRIMMIER: -- we've been married now. Our
19 children say we're like dinosaurs nowadays.
20 It's pretty much extinct, you know? But he is
21 the most wonderful, caring husband that I've
22 known, but I've never been married before.
23 But he, he has, he has really dedicated his
24 life to preparing himself to serve the people
25 of South Carolina. That's why he went to New

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1 York, to come back to serve the people of
2 South Carolina. And you know, we've had some
3 little glitches along the way, but -- (witness
4 becomes emotional) -- it's as I told Mr.
5 Ritchie, when all of this originated in South
6 Carolina, it was, it was a really hard time in
7 our life. I mean, we had that -- my father
8 died, his mother died, and our children were
9 in a almost fatal car accident. And some of,
10 some of the things that we decided upon might
11 not have been the best, but at the time, we
12 did our best. And you know, I just hang on to
13 the words that, you know, God just loves us
14 and He's seen us through so much. And we are
15 stronger people and He has a purpose for all
16 of this that we have gone through. And we
17 just, we just look to Him for guidance and to
18 reveal Himself to us as to what He wants us to
19 do with what we have learned. And we know all
20 the things work well for those that love the
21 Lord according to his purpose.

22 DR. TRIMMIER: All right. Praise the Lord.

23 MR. SPOON: Thank you, Ms. Trimmier. I don't have
24 any questions for Ms. Trimmier. I do have a
25 couple of questions, generally.

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In the Matter of Edward Perry Trimmier -

1 DR. GOINS: Thank you, Ms. Trimmier. Thank you.
2 MS. TRIMMIER: I didn't mean to start crying.
3 DR. GOINS: No. That's fine.
4 MR. SPOON: I understand.
5 MS. TRIMMIER: I mean, it's just --
6 DR. GOINS: That's fine.
7 MS. TRIMMIER: -- my heart --
8 DR. TRIMMIER: Well, we're all --
9 DR. GOINS: That's right.
10 DR. TRIMMIER: -- in forgiveness --
11 DR. GOINS: That's right.
12 DR. TRIMMIER: -- of whatever's taking place.
13 RE-EXAMINATION OF DR. TRIMMIER BY THE BOARD:
14 DR. GOINS: It's fine, fine. Thank you so much.
15 Dr. Trimmier, did you say you had -- were you
16 -- I think I missed part of the application.
17 For the state of New York, you're not on
18 probation --
19 A. It's --
20 DR. GOINS: -- until 2011?
21 A. -- it is on probation until 2011. They put that --
22 put me on probation due to what occurred in South
23 Carolina.
24 DR. GOINS: All right.
25 A. It wasn't anything in New York. And that -- they

In the Matter of Edward Perry Trimwiler -

1 did it in 2005 because the Georgia Board, for some
2 reason, called them. They didn't put it on
3 probation in 2002 when the event occurred. They
4 did it in 2005. So six years is 2011. And --

5 DR. GOINS: Okay.

6 A. -- anyway -- but I mean, that's totally --

7 DR. GOINS: So that's, on your New York license?

8 A. Right.

9 MR. RITCHIE: He never took any -- I'm sorry.

10 A. Go ahead.

11 MR. RITCHIE: Madam President, he never took any
12 action in New York to address it.

13 DR. GOINS: Right.

14 MR. RITCHIE: It was just an administrative,
15 reaction to what happened in South Carolina.

16 DR. GOINS: Okay. Thank you.

17 DR. ALTERMAN: And you were primarily treating
18 children in Georgia or not?

19 A. I was not -- adults.

20 DR. ALTERMAN: Okay. And when you were in South
21 Carolina, you were primarily treating
22 children?

23 A. I had a small part of the practice was children. I
24 was doing a lot of cosmetic dentistry in crown and
25 bridge prosthodontics. I was trained in that at

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In the Matter of Edward Perry Trimmier -

1 the VA Medical Center in DC. My mentor was a
2 prosthodontist, and so I was doing that. But then,
3 the South Carolina Dental Association -- I was --
4 which I was a member in, I think, the Pee Dee group
5 -- said that people were needed to help with
6 children because there's a backlog in that area of
7 South Carolina. And so I offered my services as a
8 dentist/anesthesiologist to help. So I worked with
9 someone from Head Start, and they would bring the
10 children over, a nurse would. And I would see
11 them, treat them. And as they said, there wasn't
12 any problem with the children. The work was done.
13 I mean, the women, ladies, single mothers would
14 bring them. They'd be staying up because they're
15 crying. They'd go home and the work was done and
16 there wasn't any more crying. They'd go back to
17 work and everything was fine. So that's, that's
18 what took place. It was like a small part of the
19 practice, one day a week. That was --
20 DR. WADE: Sheridan, before you start your
21 questions, I just wanted to make sure I
22 understand your application. What I'm seeing
23 here is that on -- in 2003 until 2007 you
24 worked for Family Dental in Marietta, Georgia;
25 is that right?

In the Matter of Edward Perry Trimmer -

1 A. Family Dentistry and Anesthesiology. It was -- I
2 bought a practice and then it was -- it was Family
3 Dentistry, and it became Family Dentistry and
4 Anesthesiology.

5 DR. WADE: Okay. And then you left there in 2007
6 and --

7 A. Yes.

8 DR. WADE: -- opened up your own practice; is that
9 what happened?

10 A. I sold that practice.

11 DR. WADE: Okay.

12 A. I was treating -- the Hispanic community had a need
13 there. But then someone came in that spoke fluent
14 spanish, an oral surgeon and his wife. And so he
15 could do some of what I was doing, but yet, knew
16 better spanish. Now, I did learn spanish well, but
17 that was a really growing area of that, of that
18 part of the city. And so they came in and took
19 over, and they're doing a great job.

20 DR. WADE: But you were -- it has your contract
21 work on your application. That's what I'm
22 trying to understand. Was that, was that --
23 did you own the practice, or --

24 A. In two thousand --

25 DR. WADE: -- or were you a contract provider?

In the Matter of Edward Perry Trimmer -

1 A. -- 2003 to two thousand -- the end of 2006, I owned
2 the practice, but I worked for another dentist. I
3 was what they call a independent contractor.

4 DR. WADE: So what -- and who was that?

5 A. Sir?

6 DR. WADE: And where was that?

7 A. Well, it was in Georgia.

8 DR. WADE: Which -- what practice was it?

9 A. Atlantic Dental Care -- Atlanta Dental Care.

10 DR. WADE: So on your -- I mean, I'm just, I'm just
11 trying to understand your --

12 A. Yes, sir.

13 DR. WADE: -- what you've been doing.

14 A. Right. That's right.

15 DR. WADE: So you left, you left in 2006 from
16 Family Dental Care in Marietta, Georgia,
17 right?

18 A. Right. I sold it.

19 DR. WADE: You sold that in 2006 or 2007?

20 A. Well, it was at the end of two thousand -- the
21 contract actually was 2006 in December. But then,
22 under that contract, I was to be around for
23 collections for a year.

24 DR. WADE: Okay.

25 A. And then, after that, I went to work for Atlanta

In the Matter of Edward Perry Trimmer -

1 Dental Care, helping in the prosthodontic -- in
2 prosthodontics again.

3 DR. WADE: We don't have that on here, right? On
4 your application?

5 A. Yes. It should be.

6 DR. WADE: I'm just not seeing it in there.

7 MR. RITCHIE: Madam President, maybe I could help
8 clarify for a moment.

9 DR. GOINS: It's just 2007 to 2009.

10 DR. ALTERMAN: It just says contract --

11 DR. GOINS: It just says --

12 DR. ALTERMAN: -- work with your name.

13 DR. GOINS: -- contract work.

14 A. Right.

15 MR. RITCHIE: So I think what they're asking, Dr.
16 Trimmer, is, who did you provide contract
17 services to in that two-year period?

18 DR. WADE: Right.

19 DR. GOINS: Right.

20 A. Atlanta Dental Care.

21 DR. WADE: Okay. So you did not own your own
22 practice at that time?

23 A. That's correct. Yes, sir, Dr. Wade -- independent
24 contractor.

25 DR. ALTERMAN: For the same one practice?

In the Matter of Edward Perry Trimmer -

1 A. Yes. I just stayed there.

2 DR. ALTERMAN: Okay.

3 DR. GOINS: Okay. Sheridan?

4 MR. SPOON: Would this be a good time?

5 DR. GOINS: Yes.

6 EXAMINATION OF DR. TRIMMER BY MR. SPOON:

7 Q. All right. Dr. Trimmer --

8 A. Yes, sir.

9 Q. -- and Mr. Ritchie, just -- I'd like to ask a
10 couple questions and try to give you my
11 understanding, which I think is fairly consistent,
12 procedurally and historically, date-wise and
13 everything else, with the history that you have and
14 the testimony that's been given. I think it's
15 fairly consistent. But I did want to ask you a
16 couple of questions, and you can just direct your
17 answers to the, to the Board members. In this
18 application process -- and you know I'm not -- Mr.
19 Ritchie understands that we're not, we're not
20 sitting here in a traditional, oppositional,
21 adversarial role because, unlike those situations,
22 the burden is on the applicant rather than the
23 State. But having said that, I just want to
24 confirm a couple of things. This application --
25 even before the application came in, is it correct

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In the Matter of Edward Perry Trimmer -

1 to say that there was a 2002 Consent Agreement in
2 South Carolina that you entered into?
3 A. Yes.
4 Q. In 2002?
5 A. Uh-huh.
6 Q. And the terms of that Consent Agreement and the
7 admissions that are outlined there -- there were
8 five counts. They were misdemeanor counts, and
9 they involved federal claims of filing false
10 reimbursement, right? That was in Georgetown
11 County.
12 A. Right. I think they called in up-charging.
13 Q. And that was a conviction in criminal court also,
14 of course. And that led to the Consent --
15 Complaint and Consent Agreement here with the State
16 Board?
17 A. Yes, sir.
18 Q. And the terms of that, back in 2002, there was a
19 six-year suspension of your license; is that
20 consistent with what you remember of the South --
21 A. It was stayed.
22 Q. -- South Carolina Consent Agreement?
23 MR. RITCHIE: It was stayed.
24 A. It was stayed.
25 Q. It was in the South Carolina -- I'm sorry -- give

In the Matter of Edward Perry Trimmer -

1 me one moment.

2 MR. RITCHIE: It was stayed pending the compliance
3 of other matters, and it was ultimately
4 pardoned.

5 Q. And there was also, as part of that, the admission
6 that you made involving an advertising issue. And
7 I'm just looking at the South Carolina Consent
8 Agreement.

9 A. Yes. We talked about that last time.

10 Q. You had the claims, and you also had the
11 advertising issue as well?

12 A. That was part of the whole.

13 Q. Okay. That's in the Consent Agreement?

14 A. That's in that agreement. Yes, sir. Everything's
15 together.

16 Q. And do you recall if it was -- there was a \$25,000
17 fine as part of the sanction?

18 A. To -- for the Board.

19 Q. For this Board?

20 A. Yes. I paid that.

21 Q. All right. And essentially, in the state of
22 Georgia, where you were also licensed, it was very
23 similar that Georgia did essentially the same
24 thing? They --

25 A. They mirrored that.

In the Matter of Edward Perry Trimmer -

1 Q. -- had similar terms there in Georgia? Now -- and
2 that's why I say this application has a couple of
3 different chapters. In January of last year, 2009,
4 when we were considering this application, the --
5 you were on probation in Georgia at that time,
6 correct? Back in January of '09, you were on
7 probation in Georgia?

8 A. Correct.

9 Q. Okay. The Georgia order said that you would have
10 to petition the Georgia Board in order to terminate
11 your probation and that you would be eligible to do
12 that, essentially, around July of 2009, right?

13 A. That's correct.

14 Q. Okay. And now, in the meantime, your probation
15 would've ended in Georgia around September of 2009.
16 In -- since that time, there has been further
17 action that Georgia has taken, correct? Separate
18 action? And that action entailed the revocation of
19 your license that you took through an appellate
20 process. And it was --

21 A. Overturned.

22 Q. -- went up and down and came back to the Georgia
23 Board, so to speak. And what did the Georgia Board
24 do?

25 A. Well, the revocation was overturned.

In the Matter of Edward Perry Trimmier -

1 Q. Okay. What did they do instead?

2 A. And then they put it on suspension for two years.

3 Q. All right. And so they -- the State of Georgia, in
4 that, in that most recent situation in Georgia,
5 they suspended your license; is that accurate?

6 A. Yes.

7 Q. Okay. I'm also looking -- I can show you what page
8 it's on. The Board materials, it's on page 158. I
9 think you already made reference to it, and that's
10 from the state of New York where you also hold a
11 license. There's a letter there, at page 158, that
12 indicates that your New York license is on
13 something called supervised probation until
14 February of 2011?

15 A. That occurred as a -- due to what occurred in South
16 Carolina.

17 Q. All right. I'm not -- I'm just asking you if
18 that's true or false.

19 A. Well, it's not supervised probation. I'm not on --
20 it's not supervised.

21 Q. Okay. Well, let me get to the document. I don't
22 want to tell you wrong. Okay. On page 158 of the
23 Board, the Board book, in any event -- I'm sorry.
24 It says you're on --

25 DR. GOINS: Unsupervised.

In the Matter of Edward Perry Trimmer -

1 Q. -- unsupervised probation --

2 A. Yes.

3 Q. -- which ends in February of 2011.

4 A. That's correct.

5 Q. Okay. And they indicate that you'll receive a
6 letter when that ends.

7 A. Yes.

8 Q. Okay.

9 A. That's with Ms. Carr. I mean, they actually said I
10 could come back to New York and just give them a
11 call. So we're on good terms.

12 MR. RITCHIE: We provided that to the -- to your
13 office.

14 Q. Certainly. No. I'm just sort of trying to verify
15 some things for my own understanding.

16 A. Yes, sir.

17 Q. I think you indicated earlier that most recently in
18 Georgia, what had occurred was that you had
19 surrendered your license in Georgia --

20 A. Voluntary surrender.

21 Q. -- is that correct?

22 A. That's correct.

23 Q. You voluntarily surrendered your license in
24 Georgia?

25 A. That's correct.

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In the Matter of Edward Perry Trimmer -

1 Q. Let me ask you, what was the status of your license
2 in Georgia prior to that surrender?

3 A. That was the suspension pending -- which I could've
4 appealed. But you know, rather than keep going on
5 and rehashing the same thing, I just said, you
6 know, forgiveness is better.

7 Q. Are you saying that your license --

8 A. Put that to bed.

9 Q. -- are you saying that your license was suspended
10 just -- when you surrendered it?

11 A. Yes.

12 Q. Yes? Okay.

13 A. Yes.

14 Q. It was suspended when you surrendered it --

15 A. Yeah.

16 Q. -- correct?

17 A. Correct.

18 Q. Thank you for answering my questions.

19 A. Oh, you're welcome.

20 MR. SPOON: That's all the questions I have.

21 DR. GOINS: Thank you, Sheridan. Any other
22 questions from the Board?

23 RE-EXAMINATION OF DR. TRIMMIE BY THE BOARD:

24 DR. JONES: Where do you intend to practice?

25 A. Well, I'd like to practice in Spartanburg --

In the Matter of Edward Perry Trimmier -

1 DR. JONES: And --

2 A. -- or Charleston -- but Spartanburg.

3 DR. JONES: -- and you practice general
4 dentistry/prosthodontics?

5 A. General dentistry, with -- you know, I've submitted
6 also my anesthesia cases. Beforehand, I was doing
7 anesthesia. I mean, there hasn't ever been a
8 question about, you know, with a patient or any
9 type of thing. I've run into administrative
10 things, and I've learned to do better. I've
11 learned a lot, and I think I'd be able to run an
12 excellent practice and keep my hands tighter on the
13 practice and do an excellent job, business-wise and
14 with the patients.

15 DR. GOINS: Anything else? Okay. Thank you so
16 much --

17 DR. TRIMMIER: Thank you.

18 DR. GOINS: -- Mr. Ritchie --

19 MR. RITCHIE: Thank you.

20 DR. GOINS: -- Dr. Trimmier.

21 DR. TRIMMIER: Thank you.

22 DR. GOINS: We're going to move into Executive
23 Session --

24 DR. TRIMMIER: All right. Great.

25 DR. GOINS: -- at this time. Do I hear a motion?

In the Matter of Edward Perry Trimmer -

1 DR. DIXON: Make a motion to go into Executive
2 Session.
3 DR. ALTERMAN: Second.
4 DR. GOINS: Second.
5 DR. TRIMMIER: All right.
6 DR. DIXON: Thank you.
7 DR. GOINS: Thank you.
8 (Executive Session 11:07 a.m. - 11:51 a.m.)
9 DR. GOINS: Sheridan, would you like to --
10 MR. SPOON: If I can clarify -- state the --
11 DR. GOINS: Clarify, yeah.
12 MR. SPOON: -- motion that you want to --
13 DR. GOINS: Yes.
14 MR. SPOON: -- put up for a vote? As I understand
15 it, you're -- the motion that's on the floor
16 is, you've approved the application of the
17 applicant upon submission of a letter of good
18 standing -- licensure in good standing from
19 all states of licensure and, specifically,
20 Georgia and New York.
21 DR. GOINS: Yes. That is correct.
22 DR. DIXON: I make a motion that we will accept the
23 licensure when we have a letter of good
24 standing from both the states of New York and
25 Georgia.

In the Matter of Edward Perry Trimmier -

1 DR. GOINS: Do I have a second?
2 DR. ALTERMAN: Second.
3 DR. GOINS: All in favor?
4 BOARD MEMBERS: Aye.
5 DR. GOINS: Opposed? (No response).
6 MR. RITCHIE: Madam President, thank you --
7 DR. GOINS: Yes.
8 MR. RITCHIE: -- very much. I do want to make sure
9 I'm clear with the Board. Since we -- we
10 understand New York. We can -- that's
11 straightforward enough. But since Dr.
12 Trimmier voluntarily surrendered his license
13 in Georgia, the letter that would come back
14 from Georgia would be that he does not possess
15 a Georgia license. It would not be a letter -
16 - there would not be any license to be in good
17 standing.
18 DR. DIXON: Well, the one thing, though, that I
19 believe in his -- when he relinquished his
20 license -- let me find that. In your letter,
21 when you relinquished your license to Georgia,
22 you made a statement in there that, in order -
23 - if you ever wanted to reinstate your license
24 in Georgia that they would be able to access
25 your file.

In the Matter of Edward Perry Trimmier -

1 DR. TRIMMIER: Sure.

2 DR. DIXON: And we would just like that same
3 opportunity.

4 MR. RITCHIE: I agree with that. I'm trying to
5 make sure how I would phrase that.

6 DR. DIXON: In other words, we're -- our biggest
7 concern overall is that, for somebody to have
8 a license revoked, seems like a pretty harsh
9 thing for it to be a paperwork problem.

10 MR. RITCHIE: Right.

11 DR. DIXON: And then for them to suspend after they
12 revoked -- you know, after it went to the
13 judge -- that seems like that's pretty harsh.
14 And we just, we feel like we're missing some
15 of the gap in between there. And it may not
16 be true, but we would just like the
17 information to be able to say, well, we're
18 protecting the people of South Carolina.

19 DR. ALTERMAN: We feel like there's something there
20 we're not hearing.

21 DR. DIXON: And our job is to protect the state of
22 South Carolina.

23 MR. RITCHIE: Completely understand. So if I were
24 to ask Georgia to prepare a letter saying that
25 the status of his license has been voluntarily

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In the Matter of Edward Perry Trimmier -

1 terminated or surrendered, but in the event
2 that it is to be applied for, that all
3 applications, materials and all records should
4 be provided to South Carolina as well, is that
5 what you're asking me?

6 DR. DIXON: Well, I guess access to the file that
7 he would -- if he were going to go back to
8 Georgia, and he said, well, I'll be able to
9 access -- will give you permission to access
10 my file again.

11 MR. RITCHIE: Absolutely.

12 DR. DIXON: We would like to have the same access
13 to that file again.

14 MR. RITCHIE: Absolutely. Or --

15 DR. DIXON: Whether it be transcripts from the
16 hearing, the hearing themselves. What we're
17 just a little bit worried about is, it just
18 seems like that was such a harsh judgement for
19 a piece of paperwork not being --

20 MR. RITCHIE: I completely agree. I did not
21 represent Dr. Trimmier, but I, I agree with
22 your analysis.

23 DR. JONES: What I would like to know, maybe more
24 specifically, is what the status of Dr.
25 Trimmier's license, prior to it being

In the Matter of Edward Perry Trimmer -

1 voluntarily surrendered and the events of
2 whatever was leading up to that. I want to
3 know the specifics, not just that it was
4 revoked. I want to know the specifics, the
5 reason or the little what we're trying to get
6 at is not necessarily with Dr. Trimmer, but
7 for future policy, you know, what's to prevent
8 somebody coming in here who has screwed up in
9 several other states and those, those -- and
10 they just say, well, I'm going to give those
11 up and so I've hidden everything that's,
12 that's happened. I want to know those details
13 so we can make what I feel like is a more
14 informed decision.

15 DR. WADE: Because your license was in a state of
16 suspension when you voluntarily surrendered
17 it. And so, you know, our question is why?

18 DR. TRIMMIER: The anesthesia permit issue.

19 DR. WADE: No. That just seems awfully harsh just

20 --

21 DR. TRIMMIER: Well, it was.

22 DR. WADE: -- for paperwork.

23 MR. RITCHIE: Perhaps this would be a way to
24 resolve it --

25 DR. GOINS: It was suspended for two years.

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In the Matter of Edward Perry Trimmer -

1 MR. RITCHIE: -- how about if I submit a draft
2 letter for his review prior to submitting to
3 Georgia for their work. Would that, would
4 that be helpful?

5 MR. SPOON: A draft letter going to Georgia?

6 MR. RITCHIE: To Georgia, saying here's what we are
7 looking for. We need a letter from Georgia
8 that would identify these matters.

9 MR. SPOON: I mean, I'd be happy to look at it.
10 It's ultimately up to Georgia.

11 DR. DIXON: What I, what I would like for us to see
12 is -- obviously, you went through a trial --

13 MR. RITCHIE: Yes.

14 DR. DIXON: -- here over this. And obviously,
15 there was probably minutes or transcriptions
16 taken from that trial.

17 MR. RITCHIE: Or there's orders from the court.

18 DR. DIXON: Yeah. Transcription. And it -- the
19 punishment was just so harsh for, for what it
20 seems like it was. I mean, we probably
21 would've said, \$500 and a year's probation.

22 MR. RITCHIE: Usually, that's what they do.

23 DR. DIXON: It just seems so harsh that we're --
24 what we're afraid of is that we're, we're
25 missing the big picture. And if we could look

In the Matter of Edward Perry Trimmer -

1 at the transcript of that, that hearing, I
2 think that we would all feel a lot more
3 comfortable with the thing overall.

4 DR. GOINS: Uh-huh.

5 DR. TRIMMIER: I'd be happy to do that.

6 DR. DIXON: Does that sound agreeable to y'all,
7 too?

8 DR. GOINS: Uh-huh, uh-huh, uh-huh.

9 MR. RITCHIE: So a letter from New York, letter
10 from Georgia, upon receipt of those and
11 acceptance of those --

12 DR. DIXON: Transcriptions from the trial.

13 MR. RITCHIE: Transcripts.

14 DR. DIXON: Transcription from the trial.

15 MR. RITCHIE: Sure.

16 DR. JONES: Everything that you can do to
17 strengthen your case with what happened in
18 Georgia --

19 DR. TRIMMIER: Sure.

20 DR. JONES: -- we'll look at everything.

21 DR. TRIMMIER: Excellent. Thank you. I appreciate
22 it.

23 (Whereupon, at 11:58 a.m., the
24 proceeding in the above-entitled
25 matter was concluded.)

In the Matter of Edward Perry Trimmier -

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

Be it known that I, Terri A. Winiarski, Nationally Certified Court Reporter and Notary Public in and for the State of South Carolina, took the foregoing hearing at 10:36 a.m. on Friday, July 16th, 2010;

That the witnesses were duly sworn under penalties of perjury to testify the truth, the whole truth, and nothing but the truth;

That the foregoing 38 pages constitute a true and accurate transcription of the proceedings and all testimony given at that time to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any manner of its outcome.

In witness whereof, I have hereunto set my hand and seal this 12th day of August 2010.

Terri A. Winiarski

Terri A. Winiarski, CVR
Notary Public for South Carolina
My commission expires November 16th, 2015.

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February 10, 2011

Edward P. Trimmier, DDS.
C/O James H. Ritchie Jr.
Holcombe Bomar, P.A.
100 Dunbar Street – Suite 200
Spartanburg, SC 29304

RE: COMMISSIONER'S ORDER NO. 0021819

Dear Dr. Trimmier,

The Commissioner's Order under the above numbers had imposed a period of Probation on you with respect to your privilege to practice the Profession of Dentistry in the State of New York. Your period of Probation started on 02/13/05 and ended on 02/12/11.

Since you have complied with ALL the Terms of your Probation, we have

CLOSED THIS FILE.

Very truly yours,

**ARIANA MILLER
SUPERVISOR**

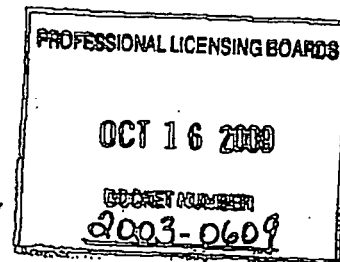
By: *Elizabeth Carr*

Elizabeth Carr
Sr. Investigator

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BEFORE THE GEORGIA BOARD OF DENTISTRY
STATE OF GEORGIA



GEORGIA BOARD OF DENTISTRY,
Petitioner,

v.

EDWARD P. TRIMMIER, D.M.D.,
Respondent,
License No. DN012482

OSAH DOCKET NO.

PLBD-DEN-0809225-33- Miller

AMENDED FINAL DECISION

An Initial Decision was docketed by the Office of State Administrative Hearings in the above-captioned matter on April 17, 2007. On March 28, 2008, the Board of Dentistry held a Final Review of the Initial Decision. On April 1, 2008, a Final Decision and Order which modified, among other matters, the decision of the Initial Decision and revoked the Respondent's license to practice dentistry, was docketed. Thereafter the Respondent sought judicial review of that Final Decision and Order in the Bibb County Superior Court.

On or about September 15, 2009, the Bibb County Superior Court entered an Order reversing the Board of Dentistry's decision to revoke the Respondent's license to practice dentistry. The Court's Order remanded the case to the Board with an order that it enter an Amended Final Decision that imposes the sanctions contained in the Initial Decision.

Wherefore, the Board of Dentistry enters this Amended Final Decision to amend the Decision portion of the Final Decision and Order so that the Decision portion shall now state:

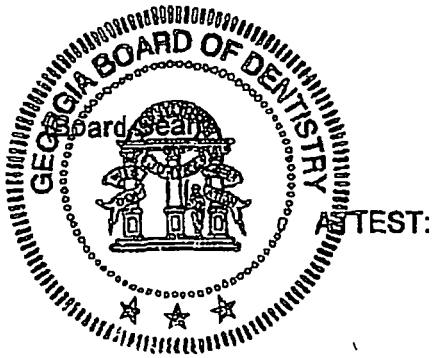
DECISION

In accordance with the Order of the Bibb County Superior Court, the Board hereby sanctions the Respondent's license to practice dentistry as follows:

The Respondent's license to practice dentistry shall be suspended indefinitely, commencing thirty days from the date of entry of this Amended Final Decision in this matter. The Respondent shall be eligible to petition the Board for the lifting of such suspension and restoration of his license at any time following his service of two years of suspension. Such petition shall include appropriate evidence that the Respondent has fully and continuously complied with the laws of the United States and the State of Georgia, as well as any applicable rules of the Georgia Board of Dentistry. Lifting of the Respondent's suspension and restoration of his license shall be in the discretion of the Board, but said discretion shall not be abused. If the Board should deny the petition, the Respondent may request a hearing to determine whether the Board has abused its discretion, and he may submit a subsequent petition no sooner than one year following denial of his prior petition. If the Board should grant the Respondent's petition, the Respondent's license shall be restored and placed on probation under such terms and conditions as the Board deems necessary for the protection of the public. In addition, the Respondent shall pay a fine of \$1,000.00 to the Board within thirty days of the entry of the Amended Final Decision in this matter.

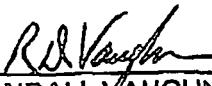
SIGNATURE(S) ON FOLLOWING PAGE

SO ORDERED, this 9th day of October, 2009.



GEORGIA BOARD OF DENTISTRY

STEPHAN F. HOLCOMB, D.M.D.,
President



RANDALL VAUGHN
Division Director
Professional Licensing Boards Division

#554300

E.T. 133

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BEFORE THE GEORGIA BOARD OF DENTISTRY

IN THE MATTER OF:)

EDWARD PERRY TRIMMIER, D.M.D.,)
License No. DN012482)

Respondent.)

DOCKET NO.

PROFESSIONAL LICENSING BOARDS

APR 14 2010

DOCKET NUMBER

2010-1120

VOLUNTARY SURRENDER

I, EDWARD PERRY TRIMMIER, D.M.D., holder of an interest in License No. DN012482 to practice as a dentist in the state of Georgia pursuant to O.C.G.A. Ch. 11, T. 43, as amended, hereby freely, knowingly and voluntarily surrender said license to the Georgia Board of Dentistry. I hereby acknowledge that this surrender shall terminate my license completely, and I knowingly forfeit and relinquish all right, title and privilege of practicing as a dentist and my right to renew my license to practice dentistry in the state of Georgia, unless and until such time as my license may be reinstated, in the sole discretion of the Board.

I understand that I have a right to a hearing in this matter, and I hereby freely, knowingly and voluntarily waive such right. I also understand that should the Board entertain any request for reinstatement, the Board shall have access to my file.

This surrender shall become effective immediately upon acceptance thereof by the Georgia Board of Dentistry and docketing by the Division Director of the Professional Licensing Boards for the Office of the Secretary of State. I understand that this document will be considered a public record.

REMAINDER OF PAGE INTENTIONALLY BLANK

Sworn to and subscribed
before me this 6 day
of April, 2010.

Edward Perry Crimmier, D.M.D.
EDWARD PERRY CRIMMIER, D.M.D.,

Respondent

Brian B. Church
NOTARY PUBLIC
My commission expires: 11-8-2012

ACCEPTANCE OF SURRENDER

The voluntary surrender of License No. DN012482 is hereby accepted by the Georgia
Board of Dentistry, this 9th day of April, 2010.

GEORGIA BOARD OF DENTISTRY

BY:

Stephen C. Holcomb, DMD
President

ATTEST:

R.D. Vaughn
RANDALL D. VAUGHN
Division Director



APPLICATION FOR REINSTATEMENT OF LICENSE / CERTIFICATE

Application must be fully completed with all requested information and documentation supplied. Application fee of \$75.00 (cashier's check or money order only) must accompany application. Application fee is non-refundable and non-transferable. The application form itself is a public document obtainable under the Freedom of Information Act.

I HEREBY APPLY FOR REINSTATEMENT: ☒ Dental License ☐ Dental Hygiene License ☐ Technician Certificate

Year my SC license/certificate was originally issued: 1999

SC license/certificate number: 3600

Year my SC license/certificate was last renewed: 2001

Year in which I last practiced my profession: 2009

If your SC license/certificate has been inactive or expired for six (6) or more years, you may be required to complete a Board-approved re-entry program.

Applicant's Name Trimmier Edward P.
Last First Middle Suffix (Jr, III)

Name that you retired your license under: Same

Preferred Mailing Address 233 N. Fairview Avenue Spartanburg SC 29302
Street City State Zip

Home Address Same
Street City County State Zip

Current Office Address N/A
Street City County State Zip

Home Phone (864) 582-0616 (cell) Business Phone (404) 803-0720 Business Fax ()

Do you need special accommodations in order to take an examination? Yes ☒ No. If yes, please specify:

Intended place of practice (if known):

Street/Box City State Zip Telephone

Have you had any action or malpractice claims taken against your license, been placed on probation or convicted of a felony in South Carolina or any other state in the past five (5) years? Yes ☒ No.

If yes, please give place, date and circumstances (use additional paper if necessary):

*The Social Security Number (SSN) is not subject to disclosure as public information. The disclosure of the SSN for identification purposes is authorized and mandated by federal statutes requiring state dental boards to report to the Healthcare Integrity and Protection Data Bank (HIPDB) and the National Practitioner Data Bank (NPDB), among other things.

APPLICATION FEE: Cashier's Check or Money Order in the amount of \$75.00 to be made payable to: LLR - Board of Dentistry. Application fee is non-refundable and non-transferable. Submit application and fee to: SC Department of Labor, Licensing and Regulation - Board of Dentistry, PO Box 12517, Suite 306, Columbia, SC 29211.

SC	1999	3600	12/31/03	SERTA
NY	4/1996	046464-1	11/30/99	NERB Combined
GA	12/2001	012482	12/31/09	SERTA

CONTINUING EDUCATION:

List below C.E. courses you have taken within the past two (2) years in order to satisfy the *required number of hours as follows: Dentist - 28 hours; Dental Hygienist - 14 hours; Dental Technician - 8 hours.

COURSE TITLE	DATE	HOURS
Hinman Dental Meeting	03/2009	18
Hinman Dental Meeting	03/2010	18

*Total Hours: 36

List below the CPR course you completed in order to receive current CPR certification.
(Dental and Dental Hygiene Applicants only)

COURSE TITLE	DATE	HOURS
Healthcare Professionals		
BBS: Adult, Child, Infant, Emergency & AED Skills	Jan 2009	All day

List below an infection control / HIV / AIDS course (two-hour minimum) you have taken within the past two (2) years:

COURSE TITLE	DATE	HOURS
Blood Borne Pathogens	Jan 2009	All day

THIS CERTIFIES THAT THE INFORMATION SUBMITTED BY ME IN THIS APPLICATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF

SIGNATURE

DATE

Sworn to before me this 6 day of April, 20 10

NOTARY PUBLIC

Affix Seal Here

My Commission Expires: 11-8-2012

ALL APPLICANTS for reinstatement must successfully complete the SC Dental Practice Act (jurisprudence) Examination. If you hold or have ever held a license to practice in another state, you must provide:

- (1) **VERIFICATION OF LICENSURE FORM:** The enclosed Verification of Licensure Form is to be completed by each State Board wherein you now hold or have ever held a license, and is to be mailed directly to the Board office; and
- (2) **NATIONAL PRACTITIONER DATA BANK:** It is your responsibility to self-query the NPDB for a certified report of any pending or final disciplinary actions or malpractice actions against any license you have ever held in any state. Upon receipt of this report, you are to forward it immediately to the Board office. You may contact NPDB at: P.O. Box 10832, Chantilly, VA 20153; 1-800-767-6732; www.npdb-hipa.com.

In addition, ALL DENTAL AND DENTAL HYGIENE APPLICANTS for reinstatement must also provide:

- (1) **DETAILED RESUME** of your dental practice since license has been retired;
- (2) **PROOF OF CURRENT CPR CERTIFICATION;**
- (3) **PROOF OF IMMUNIZATION** against or immunity to the Hepatitis B virus.



Revised 07/09

AFFIDAVIT OF ELIGIBILITY

Pursuant to Section 8-29-10 SC Code of Law, **ALL** applicants for a South Carolina license after July 1, 2008 are required to complete and sign this Affidavit of Eligibility.

Section A: LAWFUL PRESENCE in the United States.

I, (please print your full name) Dr. Edward P. Timmier, swear or affirm under penalty of perjury under the laws of the State of South Carolina that (check 1, 2 or 3 below):

1. ☒ I am a United States citizen or legal permanent resident eighteen years of age or older; or
2. ☐ I am not a US citizen but am lawfully present in the US as evidenced by one of the following
 - a. ☐ I am a qualified alien as defined in 8 U.S.C. sec 1641, eighteen years of age or older.
 - b. ☐ I am a nonimmigrant under the "Immigration and Nationality Act," Federal Public Law 82-414 as amended, eighteen years of age or older.
3. ☐ I am not physically present in the US under 8 U.S.C. sec 1621 (c) (2) (c) or employed in the US pursuant to 8 U.S.C. 1621 (c) (2) (a) (check either a or b below):
 - a. ☐ I am a US citizen, not physically present or employed in the United States.
 - b. ☐ I am a Foreign National, not physically present or employed in the United States.

If you selected either 3.a. or 3.b., you do not need to complete Section B. Skip to Section C.

Section B: Secure and Verifiable Document.

This section must be completed if you checked number 1 or 2 in Section A.

1. Please check one of the following acceptable secure and verifiable documents. Complete documentation must be provided upon request only.
 - ☐ Any South Carolina Driver License, South Carolina Driver Permit or South Carolina Identification Card, expired less than one year.
 - ☒ Out-of-state issued photo Driver's License or photo identification card, photo driver's permit expired less than one year. State: Georgia
 - ☐ Valid Temporary Resident Card
 - ☐ Certificate of Naturalization with intact photo
 - ☐ Certificate of (US) Citizenship with intact photo
 - ☐ Other: (Name of verifiable document) _____

(If issued by a state agency, include both the state and agency name.)

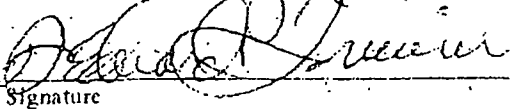
4. What is the secure and verifiable document number? 050961636

5. What is the expiration date of your secure and verifiable document? Dec. 21, 2011
(month/day/year)

(If you hold a document without an expiration date, such as a military ID or naturalization certificate, write
N/A.)

Section C: Attestation.

- I understand that this sworn statement is required by law because I have applied for or hold a professional or commercial license regulated by 8 U.S.C. sec. 1621. I understand that state law requires me to provide proof that I am lawfully present in the United States. I may also be required to provide proof of lawful presence.
- I understand that in accordance with section 8-29-10 false statements made herein are punishable by law. I state under penalty of perjury that the above statements are true and correct.
- I am the person identified above and the information contained herein is true and correct to the best of my knowledge. I understand that under South Carolina law, providing false information is grounds for denial, suspension or revocation of a license, certificate, registration or permit.
- I understand that the above information must be disclosed to the Department of Labor, Licensing and Regulation upon request and is subject to verification.


Signature

4/6/10
Date

Edward P. Trimmer, DMD

Please print your name as shown on your secure and verifiable document.

Professional License Type: Dentistry

License Number (if already licensed): 3600

The South Carolina Code of Laws requires that every individual who applies for an occupational or professional license provide a social security or alien identification number for use in the establishment, enforcement and collection of child support obligations and for reporting to certain databanks established by law. Failure to provide your social security number for these mandatory purposes will result in the denial of your licensure application. Social security numbers may also be disclosed to other governmental regulatory agencies and for identification purposes to testing providers and organizations involved in professional regulation. Your social security number will not be released for any other purpose not provided for by law.

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p.2

American
Red Cross

Register, we can save a life

This recognizes that	
Edward Trimmier	
has completed the requirements for	
CPR-Adult Child &	
Infant	
Instructed by	
Cowpens Nat. Battlefie	
Date completed	6/9/2010
The American Red Cross recognizes this certificate	
is valid for	1 year(s) from completion date.

E.T. 142



SOUTH CAROLINA
DEPARTMENT OF PROBATION, PAROLE,
AND PARDON SERVICES
COLUMBIA, SC



CERTIFICATE OF PARDON

KNOW ALL MEN BY THESE PRESENTS:

It having been made to appear to the SOUTH CAROLINA BOARD OF PROBATION, PAROLE, AND PARDON SERVICES that Edward Trimmier SS# 250-80-8576 and SID # 1425781 who was convicted of Filing False Claims (5 cts.) on October 5, 2000 in the county of Georgetown has lived as a law abiding citizen since satisfying sentence and it being the opinion of the said South Carolina Board of Probation, Parole and Pardon Services that the Pardoning of this prisoner is not incompatible with the welfare of society, and it appearing further that the Board is satisfied he will abide by all laws of this State.

It is therefore ORDERED that said Edward Trimmier BE PARDONED, effective January 30, 2007 and by this action, is absolved from all legal consequences of the above stated crime and conviction, and all his civil rights are restored.

In witness whereof this Certificate bearing the approval of the South Carolina Board of Probation. Parole and Pardon Services is issued this date, February 2, 2007.

By order of:

SOUTH CAROLINA BOARD OF PROBATION,
PAROLE AND PARDON SERVICES

By:

Quendryn A. Beight
Director of Parole Board Support Services

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

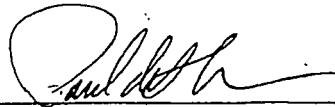
Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

NOTICE OF APPEAL

Appellant above-named appeals the Order of the Honorable John D. McLeod, dated May 15, 2011 [sic] (actually 2012) and Order of the Honorable John D. McLeod, dated March 22, 2011 [sic] (actually 2012). Appellant received written notice of entry of the last Order on May 15, 2012.



Paul D. de Holczer, Esquire
Moses & Brackett, PC
Post Office Box 100261
Columbia, South Carolina 29202-3261
(803) 461-2317
Attorney for Appellant

Columbia, South Carolina
June 11, 2012

Other Counsel of Record:
Sheridan H. Spoon, Esquire
LLR Office of General Counsel
Post Office Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4473
Attorney for Respondent

FILED

JUN 12 2012

SC ADMIN. LAW COURT 144

141

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and is in compliance with the Supreme Court's Order dated August 13, 2007.


Paul D. de Holczer, Esquire (SC Bar No. 6905)
Moses & Brackett, PC
Post Office Box 100261
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(803) 461-2317
Attorney for Appellant

Columbia, South Carolina
October 8, 2012

E.T. 145

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

PROOF OF SERVICE

I, the undersigned, Iris W. Jennings, on behalf of the Law Firm of Moses & Brackett, PC, attorneys for the Appellant, in the above-captioned matter, do hereby certify that a copy of the foregoing has been served upon opposing counsel and/or parties by placing same with the U.S. Postal Service, postage prepaid, at Columbia, South Carolina, this 11th day of October, 2012.

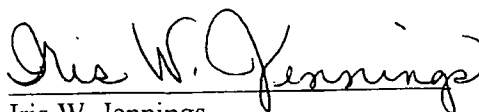
Served: Sheridan H. Spoon, Esquire
LLR Office of General Counsel
Post Office Box 11329
Columbia, SC 29211 1329

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OCT 11 2012

SC Court of Appeals

Document(s): Appellant's Record on Appeal



Iris W. Jennings
Paralegal for Paul D. de Holczer

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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OCT 04 2012

APPEAL FROM THE ADMINISTRATIVE LAW COURT SC Court of Appeals

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

**AMENDED DESIGNATION OF MATTER TO
BE INCLUDED IN THE RECORD ON APPEAL**

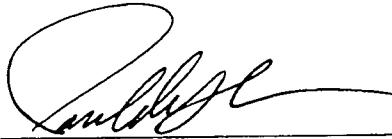
Appellant proposes the following be included in the Record on Appeal:

1. Order Denying Motion for Rehearing dated May 15, 2011 [sic] (actually 2012);
2. Order of Judge John D. McLeod of March 22, 2011 [sic] (actually 2012);
3. Order on the Appellant's Motion for Reinstatement of July 28, 2011;
4. Order of Felicia L. Goins, DDS of July 29, 2010;
5. Public Consent Order dated September 22, 2003;
6. Consent Order of December 7, 2002;
7. Appellant's Motion for Reconsideration, to Alter or Amend Judgment;
8. Appellant's Memorandum in Support of Appellant's Motion for Reconsideration, to Alter or Amend Judgment;
9. Transcript of Appellant's Motion for Reconsideration before the State Board of Dentistry of July 15, 2011;
10. Transcript from Reinstatement Hearing dated July 16, 2010;
11. Letter from State Education Department of New York of February 10, 2011;

E.T. 147

12. Amended Final Decision filed October 16, 2010;
13. Voluntary Surrender through Georgia Board of Dentistry dated April 14, 2010;
14. Application for Reinstatement of License /Certificate dated April 6, 2010;
15. Certificate of Pardon dated February 2, 2007;
16. Notice of Appeal filed June 12, 2012;

I certify that this designation contains no matter which is irrelevant to this appeal.



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Moses & Brackett, PC
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(803) 461-2317
Attorney for Appellant

October 4, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 04 2012

APPEAL FROM THE ADMINISTRATIVE LAW COURT

SC Court of Appeals

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

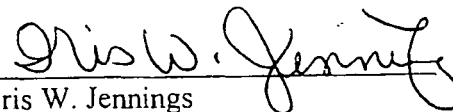
South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

PROOF OF SERVICE

I, the undersigned, Iris W. Jennings, on behalf of the Law Firm of Moses & Brackett, PC, attorneys for the Appellant, in the above-captioned matter, do hereby certify that a copy of the foregoing has been served upon opposing counsel and/or parties by placing same with the U.S. Postal Service, postage prepaid, at Columbia, South Carolina, this 4th day of October, 2012.

Served: Sheridan H. Spoon, Esquire
LLR Office of General Counsel
Post Office Box 11329
Columbia, SC 29211 1329

Document(s): Appellant's Amended Designation of Matter to be included in the Record on Appeal


Iris W. Jennings
Paralegal for Paul D. de Holczer E.T. 149

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

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Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

Paul D. de Holczer
Direct Dial: (803) 461-2317
Email: pdeholczer@mkb-law.com

October 4, 2012

HAND-DELIVERED

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED

OCT 04 2012

SC Court of Appeals

Re: Edward P. Trimmier, D.M.D., Appellant v. South Carolina Department of Labor,
Licensing and Regulation, Board of Dentistry, Respondent
C/A No.: 11-ALJ-11-0453-AP
Appellate Case No.: 2012-212267
MB File No.: 012256.01

Dear Ms. Kitchings:

Enclosed for filing is the original and one (1) copy of the Amended Designation of Matter to be included in the Record on Appeal for the above referenced matter. Also enclosed is the Proof of Service. Please file and return a clocked copies to our courier. Should you have any questions, please feel free to contact me or my assistant, Iris Jennings at 461-2324.

With kind regards, I am

Yours truly,

MOSES & BRACKETT, PC



Paul D. de Holczer, Esquire

PDH:iwj
Enclosures

cc w/enclosures:
Sheridan H. Spoon, Esquire
LLR Office of General Counsel
Post Office Box 11329
Columbia, SC 29211 1329

E.T. 150

Edward P. Trimmier, DMD
233 North Fairview Avenue
Spartanburg, SC 29302

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

APPELLANT'S FINAL BRIEF

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SC Court of Appeals

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Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

APPELLANT'S FINAL BRIEF

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Attorney for Appellant

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II. The Administrative Law Court erred by failing to find that the Board's imposition of a subsequent sanction, after a consent order and dependent upon the discretion of the Georgia Board, is made upon unlawful procedure and affected by an error of law.	
III. The Administrative Law Court erred by failing to find that the Board's imposition of a subsequent sanction, after a consent order and dependent upon the discretion of the Georgia Board, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record.	
IV. The Administrative Law Court erred by failing to find that the Board's imposition of a subsequent sanction, after a consent order and dependent upon the discretion of the Georgia Board, is arbitrary, capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion.	
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STATEMENT OF ISSUES ON APPEAL

- I. Did the Administrative Law Court err by failing to find that the Board's imposition of a non-statutory sanction, dependent upon the discretion of the Georgia Board, is in violation of S.C. Code Ann. § 40-1-110 (1) and in excess of the statutory authority of the agency?
- II. Did the Administrative Law Court err by failing to find that the Board's imposition of a subsequent sanction, after a consent order and dependent upon the discretion of the Georgia Board, is made upon unlawful procedure and affected by an error of law?
- III. Did the Administrative Law Court err by failing to find that the Board's imposition of a subsequent sanction, after a consent order and dependent upon the discretion of the Georgia Board, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record?
- IV. Did the Administrative Law Court err by failing to find that the Board's imposition of a sanction, after a consent order and dependent upon the discretion of the Georgia Board, is arbitrary, capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion?

STATEMENT OF THE CASE

Appellant, licensed as a dentist in Georgia, South Carolina and New York, at various times, has been subject to disciplinary action in all three states based upon his misdemeanor conviction for filing false claims with the South Carolina Medicaid program. [R. p. 2]. No patient harm was ever alleged. On December 7, 2002, pursuant to a Consent Order entered into between Appellant and Respondent, Appellant admitted various violations of the Dental Practice Act and that those violations constituted misconduct as alleged by the South Carolina State Board of Dentistry, Respondent (hereinafter, "the Board" or Respondent). Respondent, among other provisions, imposed upon Appellant a fine of \$25,000.00; required Appellant to complete a pre-approved ethics course; suspended his license for six (6) years, immediately stayed; and placed his license in a probationary status for six (6) years. [R. p. 22]. The Consent Order took effect immediately upon receipt by Appellant or his counsel. [R. p. 24]. Before Appellant's license probation expired, he was granted a Pardon for his misdemeanor conviction by order of the South Carolina Board of Parole and Pardon Services. [R. p. 140].

Appellant was licensed as a dentist in the State of Georgia on December 28, 2001. [R. p. 12]. Upon notice of the matters pending in South Carolina, the State of Georgia, Georgia Board of Dentistry (hereinafter, "Georgia Board"), initiated its own investigation and prosecution. The Georgia Board entered into a Public Consent Order with Appellant on September 12, 2003. [R. p. 12]. Appellant was placed under stayed suspension. [R. p. 16]. Thereafter, the Georgia Board revoked Appellant's Georgia license. Appellant appealed the revocation of the Georgia Board to the Bibb County (Georgia) Superior Court. On or about September 15, 2009, the Bibb County Superior Court reversed the Georgia Board's decision

to revoke Appellant's license and remanded the case to the Georgia Board [R. p. 128]. The Georgia Board then issued an Amended Final Decision on October 9, 2009 which suspended Appellant's Georgia license indefinitely. [R. p. 128]. After litigating these matters over several years in Georgia, Appellant ultimately surrendered his Georgia license on April 9, 2010. [R. p. 131; R. p. 118, lines 1-20].

On or about April 6, 2010, Appellant asked Respondent to reinstate his South Carolina dental license because of his compliance with and completion of the requirements imposed by the South Carolina Consent Order as well as his expressed desire and intention to return to practice in South Carolina. [R. p. 133]. At a hearing on July 16, 2010, Appellant informed Respondent that he had surrendered his Georgia license. [R. p. 116, lines 17-25]. Appellant testified in the hearing on July 16, 2010 that his license was under suspension when he surrendered it. [R. pp. 112 - 117, lines 1-20]. Appellant expressed his desire to return to South Carolina to practice dentistry. [R. p. 94, line 24 - p. 95, line 15; p. 101, lines 5-9]. Following this hearing, Respondent issued its Order on July 29, 2010 [R. p. 10] which assumed the existence of a licensing relationship and provided that Appellant

... may be issued a license to practice dentistry in this state subject to the following terms and conditions: 1. Applicant must provide documentary evidence satisfactory to the Board that his license and/or certificates from Georgia, New York and any other states of licensure are in good standing, whether active or inactive.

[R. p. 8 and p. 10]. Respondent's Order of July 29, 2010 thus added a further requirement which Appellant was required to satisfy before Respondent would permit him to practice dentistry in South Carolina. Appellant did not appeal this Order. [R. p. 10].

On July 15, 2011, Appellant again came before Respondent pursuant to his application to have his South Carolina license reinstated. Appellant again asked that his

license be reinstated because of his compliance with and completion of the requirements imposed by the Consent Order as well as his expressed desire and intention to return to practice in South Carolina. Appellant provided documentary evidence satisfactory to the Board that his inactive license from New York was and is in good standing. [R. p. 8 and p. 127]. Appellant supplied a copy of a letter from the Georgia Secretary of State which indicated that Appellant's license status was "Suspended" and also reminded the Board that, on or about April 9, 2010, he had surrendered his license to practice dentistry in the state of Georgia [R. p. 131] in lieu of petitioning for reinstatement. [R. p. 58, lines 2-17]. The Board recognized that, because Appellant had surrendered his license in Georgia, he would have to start anew the licensing process in Georgia if he were to return to the practice of dentistry in Georgia. [R. p. 58, lines 8-11].

On or about July 28, 2011, Respondent issued its Order On The Applicant's Motion For Reinstatement (Public). [R. p. 8]. Although this third order stated that Appellant satisfied the Board that his New York license is in good standing, it also stated that Appellant "did not provide similar documentation concerning his former Georgia license." Respondent's Order granted Appellant's request for reinstatement of his South Carolina license to practice dentistry, "subject to the following condition:"

The Applicant shall provide written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time.

[R. p. 8]. Appellant timely appealed to the Administrative Law Court which issued its Order on March 22, 2012 [R. p. 2]. The Administrative Law Court reaffirmed its March Order by Order Denying Motion for Rehearing [R. p. 1] issued on May 15, 2012. Appellant filed his

Notice of Appeal on June 12, 2012. [R. p. 141].

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT ERRED BY FAILING TO FIND THAT THE BOARD'S IMPOSITION OF A NON-STATUTORY SANCTION, DEPENDENT UPON THE DISCRETION OF THE GEORGIA BOARD, IS IN VIOLATION OF S.C. CODE ANN. § 40-1-110 (1) AND IN EXCESS OF THE STATUTORY AUTHORITY OF THE AGENCY.

In South Carolina, S.C. Code Ann. § 1-23-380 governs the circumstances in which an appellate body may reverse or modify an agency decision. That section sets forth, in relevant part:

(B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In 2002, Appellant entered into a Consent Order with the Board and admitted various violations of the Dental Practice Act. These acts were financial in nature and did not involve patient harm. The Consent Order did not make a finding that Appellant was not, or is not, competent to practice dentistry or lacks appropriate education and training. The Consent Order imposed various sanctions, none of which referenced Appellant's licensure in the State

of Georgia or made Appellant's South Carolina license dependent upon his licensure in Georgia. Thereafter, Appellant entered into a Public Consent Order in Georgia and was disciplined by the Georgia Board. After a successful appeal of sanctions imposed by the Georgia Board, Appellant ultimately surrendered his Georgia license in 2010.

At a hearing on July 16, 2010, at which Appellant applied for reinstatement to practice in South Carolina, Appellant informed Respondent that he had surrendered his Georgia license. Respondent then issued an order which made issuance of a license to practice dentistry in this state dependent upon "documentary evidence satisfactory to the Board that his license and/or certificates from Georgia, New York and any other states of licensure are in good standing, whether active or inactive." Appellant testified candidly in the hearing on July 16, 2010 that his license was under suspension when he surrendered it.

At a hearing on July 15, 2011, Appellant again came before Respondent asking that his license be reinstated because of his compliance with and completion of the requirements imposed by the Consent Order. Appellant satisfied the Board that his New York license was active and in good standing. The Board rejected Appellant's position that he had no "active or inactive" license in Georgia and, therefore, need not show that it was in good standing. The Board recognized that, because Appellant had surrendered his license in Georgia, he would have to start anew the licensing process in Georgia if he were to return to the practice of dentistry in Georgia.

By the Order of July 28, 2011, the Board ordered that Appellant's "motion to have his license reinstated is granted" While the Board granted Appellant's request for reinstatement, Respondent issued an order which made that grant dependent upon "written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia

license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time.” This requirement effectively served to negate the ostensible outcome of the order granting Appellant’s request for reinstatement. The Board explicitly made Appellant’s licensure in South Carolina dependent upon a determination by the Georgia Board. The Board has essentially delegated to the Georgia Board of Dentistry the authority to determine whether or not Appellant should be allowed to practice dentistry in South Carolina. This delegation of authority is impermissible and without statutory authority. In another case involving delegation of authority, our Supreme Court found this to be impermissible:

DHEC's practice has been to delegate to the counties the authority to determine consistency through the counties' issuance of LOCs [“letters of consistency”]. We conclude this delegation of authority is impermissible. S.C. Code Ann. § 44-96-290(F) does not give a county veto authority over decisions made by DHEC. There is no statutory authority providing a county's consistency determination is determinative of the ultimate permitting decision. Although Section 44-96-290(F) requires a proposed facility comply with local standards, it does not designate the county as the final arbiter on whether the proposed facility complies with its local zoning, land use, and other ordinances. In this case, DHEC withdrew its initial decision to issue the permit in error because it based its decision solely on Newberry County's withdrawal of the LOC. The SWPMA authorizes DHEC to “issue, deny, revoke or modify permits, registrations, or orders under such conditions as the department may prescribe . . . for the operation of solid waste management facilities.” S.C. Code Ann. § 44-96-260(2) (2002). DHEC, not the county, is charged with ensuring such facilities meet the requirements for permitting.

.....

We reverse the decision of the circuit court because substantial rights of SRRI have been prejudiced. The finding of the circuit court the revocation of the consistency determination compelled denial of the permit is affected by error of law.

Southeast Resource Recovery, Inc. v. South Carolina Department of Health & Environmental

Control, 358 S.C. 402, 595 S.E.2d 468 (2004). There is no statutory authority providing that the decisions or discretion of another state's licensing body is determinative of the ultimate licensing decision delegated to the Board.

While the Board may "cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who . . . has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined;" the Board has not explicitly done so here. S.C. Code Ann. § 40-1-110 (1996). The Board's original sanctions were imposed and have been satisfied. Instead, the Board has placed an unreasonable requirement on Appellant which is not provided for under the statutory scheme: The requirement that Appellant engage with the Georgia Board on his former licensure in Georgia. Having surrendered his Georgia license while it was suspended, Appellant cannot engage with the Georgia Board to have his suspension lifted since he currently has no Georgia license. Appellant has no professional relationship with Georgia and no Georgia licensure, either active or inactive.

Appellant argues that the sanction imposed is unnecessary for the protection of the public, is unsupported by substantial evidence, is punitive, arbitrary and capricious. "When making this determination, the Board must insure that the sanction imposed is consonant with the purpose of these proceedings." Wilson v. State Board of Medical Exam'rs, 305 S.C. 194, 406 S.E.2d 345, 346 (1991). Any sanctions imposed should not just seek to discipline the physician but also to protect the health, and welfare of the people. Id.

In the present case, Appellant entered into a Consent Order with Respondent. That Order did not require that "Applicant must provide documentary evidence satisfactory to the Board that his license and/or certificates from Georgia, New York and any other states of

licensure are in good standing, whether active or inactive.” This requirement at issue in this matter was only imposed after the Consent Order and was imposed on a record which shows that Appellant surrendered his Georgia license while it was under suspension. In other words, Respondent created a condition which either inadvertently frustrates Appellant or which is calculated to frustrate Appellant. [R. p. 117, lines 1-19].

Furthermore, this requirement, this further sanction, is not reasonably related to any demonstration or proof of Appellant’s competency to practice dentistry in South Carolina. At no point in these proceedings has Appellant’s competency or proficiency been at issue. Respondent has not shown how the public is protected by this further sanction. Lack of licensure in another jurisdiction is not, in itself, an indication that a practitioner lacks competency or proficiency. Appellant provided documentary evidence satisfactory to the Board that his inactive license from New York is in good standing. [R. p. 8]. New York has not imposed upon Appellant the additional requirement imposed by Respondent.

II. THE ADMINISTRATIVE LAW COURT ERRED BY FAILING TO FIND THAT THE BOARD’S IMPOSITION OF A SUBSEQUENT SANCTION, AFTER A CONSENT ORDER AND DEPENDENT UPON THE DISCRETION OF THE GEORGIA BOARD, IS MADE UPON UNLAWFUL PROCEDURE AND AFFECTED BY AN ERROR OF LAW.

Rather than repeat in full the arguments offered in the other sub-parts herein, Appellant alleges that said arguments, and the record as a whole, clearly point to the a sanction made upon an unlawful procedure and affected by an error of law. Should this Honorable Court deem otherwise, said sub-parts are incorporated into this sub-part as though fully reiterated verbatim.

The South Carolina State Board of Dentistry has supervision of the practice of

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dentistry in this state. S.C. Code Ann. § 40-15-10. The Board “may cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who . . . has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined” S.C. Code Ann. § 40-1-110 (1) (b). In this case, the Board has already disciplined Appellant by consent, and he has satisfied the conditions imposed by the Board by consent in that discipline. The subsequent requirement imposed by the Board is essentially an “ex post facto” requirement and was imposed in a manner that violates substantive and procedural due process and fundamental fairness. SCDOR, et al. v. Sandalwood Social Club, d/b/a Spinners Resort and Marina, 5014 (S.C.Ct.App. 8-1-2012); Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 636 S.E.2d 598 (2006).

The additional requirement imposed by the Board violates substantive due process and was imposed in a manner that violates substantive due process and fundamental fairness.

Our courts have unequivocally found a license to practice medicine to be property.

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. A “legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt.” We have held that the standard for reviewing all substantive due process challenges to state statutes, including economic and social welfare legislation, is whether the statute bears a reasonable relationship to any legitimate interest of government. “The purpose of the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts regardless of the fairness of the procedures used to implement them.” “The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific

employment." "It cannot be doubted that a man's trade or profession is his property." Likewise, the practices of medicine and physical therapy by properly licensed individuals undoubtedly are cognizable property interests rooted in state law. We conclude Section 40-45-110(A) does not violate Appellants' substantive due process rights. While Appellants possess a property right to practice their profession when duly licensed by their respective governing bodies, their exercise of that right is subject to the Legislature's police power to enact statutes and regulations aimed at enhancing the public welfare in the practice of medicine and related professions. The statute prohibiting employment relationships between physicians and physical therapists bears a reasonable relationship to a legitimate interest of government, and the Legislature has not engaged in an arbitrary or wrongful act in enacting the statute.

Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 483-484, 636 S.E.2d 598 (2006) (citations omitted). In this case, the additional requirement imposed by Respondent does not bear a reasonable relationship to a legitimate interest of government.

The additional requirement imposed by the Board violates procedural due process and was imposed in a manner that violates procedural due process and fundamental fairness.

The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual's property or liberty interest, generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review. Procedural due process requirements are not technical; no particular form of procedure is necessary. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. Appellants' argument is without merit because their right to procedural due process was not violated. The hearing at issue was not a contested case involving an individual licensee, but was a regularly scheduled meeting at which the Board discussed an issue of statutory interpretation and Board policy.

Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 484-485, 636 S.E.2d 598 (2006) (citations omitted). Unlike the case in Sloan, the hearing at issue was a contested case

involving an individual licensee and the additional requirement was imposed by the Board after the Consent Order. Consent Orders in disciplinary matters are similar to plea agreements in criminal cases in that they are offered at the discretion of the licensing board and in that they economically expedite the disposition of contested licensing matters.

It is generally recognized that immunity agreements and plea agreements are to be construed in accordance with general contract principles. Accordingly, this court should not read terms or conditions into the contract that the parties did not intend. The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully.

State v. Compton, 366 S.C. 671, 677-678, 623 S.E.2d 661 (Ct.App. 2005) (citations omitted).

Appellant waived his rights upon the acceptance of the terms offered by the Board in the Consent Order.

The Board is now imposing a requirement on Appellant which is not provided for under the statutory scheme. Moreover, compliance with the requirement is outside Appellant's control, as Appellant cannot compel the Georgia Board to act. This delegation to the Georgia Board of Dentistry of the authority to determine whether or not Appellant should be allowed to practice dentistry in South Carolina is without statutory authority, prejudices the substantial due process rights of Appellant and constitutes an error of law.

Southeast Resource Recovery, Inc. v. South Carolina Department of Health & Environmental Control, 358 S.C. 402, 595 S.E.2d 468 (2004).

III. THE ADMINISTRATIVE LAW COURT ERRED BY FAILING TO FIND THAT THE BOARD'S IMPOSITION OF A SUBSEQUENT SANCTION, AFTER A CONSENT ORDER AND DEPENDENT UPON THE DISCRETION OF THE GEORGIA BOARD, IS CLEARLY ERRONEOUS IN VIEW OF THE RELIABLE, PROBATIVE AND SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD.

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Rather than repeat in full the arguments offered in the other sub-parts herein, Appellant alleges that said arguments, and the record as a whole, clearly show that the Board's decision is erroneous in view of the reliable, probative and substantial evidence on the whole record. Should this Honorable Court deem otherwise, said sub-parts are incorporated into this sub-part as though fully reiterated verbatim.

As set forth above, this case is before the Administrative Law Court as an appeal of an agency action pursuant to S.C. Code Ann. § 1-23-600 (2012) of the Administrative Procedures Act (APA) upon appeal from a Final Order of a licensing board or commission. As such, the Administrative Law Judge sits in an appellate capacity under the APA rather than as an independent finder of fact. In South Carolina, the provisions of the APA -- specifically S.C. Code Ann. § 1-23-380(5) -- govern the circumstances in which an appellant body may reverse or modify an agency decision.

A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. Bilton v. Best Western Royal Motor Lodge, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The well-settled case law in this state has also interpreted "substantial evidence" to mean that a decision will not be set aside simply because reasonable minds may differ on a judgment. Lark v. Bi-Lo, 276 S.C. 130, 276, S.E.2n 304 (1981). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E.2d 388 (1995).

In the case at hand, there is absolutely no evidence in the record that Appellant is a danger to the health, safety, and welfare of the public or that obtaining licensure in Georgia

would protect the public. The Board's further sanction is not reasonably related to any demonstration or proof of Appellant's competency to practice dentistry in South Carolina. At no point in these proceedings has Appellant's competency or proficiency been at issue. Respondent has not shown how the health, safety, and welfare of the public is protected by this further sanction. Lack of licensure in another jurisdiction is not, in itself, an indication that a practitioner lacks competency or proficiency.

The Board may be expected to argue that Appellant is claiming his voluntary surrender of his Georgia license deprives the Board of jurisdiction. SCDOR v. Club Rio, 392 S.C. 636, 709 S.E.2d 690 (Ct. App. 2011). This argument misstates Appellant's position and is without evidentiary foundation. Appellant entered into a Consent Order with the Board and admitted various violations of the practice act and that those violations constituted misconduct as alleged by the Board. Upon notice of the matters pending in South Carolina, the Georgia Board initiated its own investigation and prosecution and entered into a Public Consent Order with Appellant on September 12, 2003. [R. p. 12]. Appellant has entered into Consent Orders in both states admitting his trespasses and submitting himself to discipline. It is only now, when Respondent seeks to impose an additional sanction on him, and one with which it is impossible for him to comply, that he seeks relief. While it is true that Appellant's voluntary surrender of a license does not deprive the licensing authority of jurisdiction, that principle was established in a case in which the voluntarily surrendered license was a South Carolina license and the licensing authority was a South Carolina political subdivision responsible for issuing the license. In this case, the license is a Georgia license over which the Board has no jurisdiction.

Unlike the matter in Club Rio, Appellant acknowledges this argument does not

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preclude the Board from disciplining Appellant in this matter. As stated above, Appellant acknowledges the Board “may cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who . . . has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined . . .” S.C. Code Ann. § 40-1-110 (1) (b). Respondent issued its Order on July 29, 2010 [R. p. 10] which provided that Appellant

. . . may be issued a license to practice dentistry in this state subject to the following terms and conditions: 1. Applicant must provide documentary evidence satisfactory to the Board that his license and/or certificates from Georgia, New York and any other states of licensure are in good standing, whether active or inactive.

[R. p. 8; p. 10]. Appellant did not appeal this additional sanction. Appellant now argues that he has no license in Georgia, whether active or inactive, and therefore need not show that it is in good standing. The gravamen of Appellant’s argument is that if he is bound by this additional requirement because he did not appeal it, then it must be strictly construed against the Board and Appellant must be deemed to have satisfied this requirement.

Respondent’s order granting Appellant’s request for reinstatement of his South Carolina license to practice dentistry made that reinstatement subject to a different condition:

The Applicant shall provide written evidence to the Board which is satisfactory, in the Board’s discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time.

[R. p. 8]. Appellant has appealed this order and this condition because, while he accepts the Board’s power to discipline him, he argues that discipline must be for the protection of the

public and not merely punitive, consonant with the statutory powers of the Board and not imposed in such

a way that violates due process. The discipline the Board seeks to impose now is unjust, violates due process, is merely punitive, arbitrary, capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion.

IV. THE ADMINISTRATIVE LAW COURT ERRED BY FAILING TO FIND THAT THE BOARD'S IMPOSITION OF A SANCTION DEPENDENT UPON THE DISCRETION OF THE GEORGIA BOARD IS ARBITRARY, CAPRICIOUS AND CHARACTERIZED BY A ABUSE OF DISCRETION OR CLEARLY UNWARRANTED EXERCISE OF DISCRETION.

Rather than repeat in full the arguments offered in the other sub-parts herein, Appellant alleges that said arguments, and the record as a whole, clearly show the Board's imposition of an additional sanction, dependent upon the discretion of the Georgia Board, is arbitrary, capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion. Should this Honorable Court deem otherwise, said sub-parts are incorporated into this sub-part as though fully reiterated verbatim.

In this case, Appellant consented to the Board's disciplinary action and specific sanctions or requirements as conditions to licensure. He complied with these requirements. Upon notice of the matters pending in South Carolina, the Georgia Board initiated its own investigation and prosecution and the Board is disciplining Appellant based upon Georgia's prosecution. Upon Appellant's application for reinstatement, and apparently as an afterthought, Respondent added a new requirement.

The imposition of this further sanction, after a consent order and without any finding

that this sanction is necessary or advances the mission or purpose of the Board, is punitive, arbitrary, capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion. Although Appellant could have continued with litigation and appeals to the Georgia Board, once he surrendered his license this particular requirement became impossible for the Appellant to perform. Even if Appellant had the financial resources to engage the Georgia Board for more years than he already has, Appellant has no power to compel the Georgia Board to act in any particular way.

CONCLUSION

Respondent imposed a requirement upon Appellant which either inadvertently frustrates Appellant or which is calculated to frustrate Appellant. In either case, the creation of this requirement, and the conditions under which the requirement was created, cannot be said to be just and non-punitive. Respondent is effectively denying Appellant licensure in South Carolina not for the protection of the public, but because of the imposition of what is, in effect, a punitive "ex post facto" requirement or interpretation of its own order. Respondent does not show how this particular requirement, not provided for by statute, protects the public or is preferable to that discipline prescribed by statute. For the reasons stated above, Respondent's grant of Appellant's motion for reinstatement should be modified to delete the offending requirement. In the alternative, the matter should be remanded for Respondent to reinstate Appellant's license subject to such conditions as are prescribed by statute and appropriate to protect the public.

Respectfully submitted,



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November 7, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

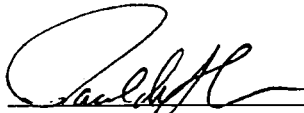
Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that Appellant's Final Brief complies with Rule 211(b).



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that Appellant's Final Brief complies with Supreme Court
Order of August 13, 2007.



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

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John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

SC Court of Appeals

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

PROOF OF SERVICE

I, the undersigned, Iris W. Jennings, on behalf of the Law Firm of Moses & Brackett, PC, attorneys for the Appellant, in the above-captioned matter, do hereby certify that a copy of the foregoing has been served upon opposing counsel and/or parties by placing same with the U.S. Postal Service, postage prepaid, at Columbia, South Carolina, this 8th day of November, 2012.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 2012-212267

Edward P. Trimmier, D.M.D., ...Appellant

v.

South Carolina Department of Labor, Licensing and Regulation, South Carolina State
Board of Dentistry.....Respondent

FINAL BRIEF OF RESPONDENT

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JAN 22 2013

SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

1. WAS THE BOARD WITHIN ITS DISCRETION TO GRANT APPELLANT'S LICENSE SUBJECT ONLY TO RECEIVING FURTHER DOCUMENTATION FROM GEORGIA WHEN HE SURRENDERED HIS GEORGIA LICENSE WHILE UNDER SUSPENSION AND APPEARED BEFORE THE SOUTH CAROLINA BOARD EIGHTEEN MONTHS BEFORE HE WAS ELIGIBLE FOR REINSTATEMENT IN GEORGIA?

STATEMENT OF THE CASE

Edward Trimmier, DMD, is or has been licensed in three states. He has been disciplined in all three; Georgia, New York and South Carolina. The Georgia Dental Board, having placed Appellant on indefinite suspension by order dated October 9, 2009, stated that he could petition the Board to end the suspension after two years. This would have been approximately October 9, 2011.

Dr. Trimmier chose to surrender his Georgia license on April 14, 2010, and apply for reinstatement of his lapsed South Carolina license eighteen months before he would have been eligible to ask the Georgia Dental Board to end his indefinite suspension.

Dr. Trimmier appeared before the South Carolina Board on July 29, 2010 and July 28, 2011. On both occasions, the South Carolina Dental Board granted his license application subject only to *'receipt of written evidence to the Board, which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time.'* (R. 8,9).

Dr. Trimmier appealed and the decision of the Board was affirmed in its entirety by the Administrative Law Court.

ARGUMENT

I. Pursuant to Appellate Practice Rule 208(b) (2) and 220(e), Respondent first argues and so moves that this appeal should be dismissed, and the decision of the Administrative Law Court affirmed, based upon the holding of the Administrative Law Court below and in accordance with the Board's and the ALC's decision that the Dental Practice Act permits re-licensure at the discretion of the Board after a period of six years.

S.C. Code Ann. §40-15-170, provides in pertinent part that re-licensure of a dentist in this state after an absence of over six years is at the discretion of the Board.

S.C. Code 40-15-170 If an individual's license to practice dentistry or dental hygiene is revoked by another state for cause this shall, in the discretion of the board, constitute grounds for revocation of his South Carolina license. The license of a dentist or dental hygienist who does not either reside or practice in South Carolina for a period of six successive years is considered inactive. The time spent in active service by any person in the armed forces or public health service of the United States or with the Veterans' Administration is not construed as absence from or failure to practice in the State. Relicensing after an absence of over six years may be made at the discretion of the board upon proof of high professional fitness and moral character.

Appellant is properly subject to the requirements of Section 170 for purposes of licensure. He was first licensed in South Carolina in 1999, was disciplined by Consent Agreement in 2002, and allowed his license to lapse on March 1, 2003. The record in this case indicates that Appellant maintained a Georgia address from March 2003 to May 2010 (R. 56). Further, he was employed in Georgia from March 2003 to March 2007 and from March 2007 to October 2009 in Marietta and Atlanta, Georgia, respectively.

This court, according to its rules, may affirm the decision of the ALC for this or any other ground appearing in the record. The ALC properly found that Dr. Trimmier has been absent for six years and as such this fact is adequate grounds to affirm the ALC's decision absent a showing that there has been an abuse of discretion or that the statute permitting same is invalid.

II. This appeal should be dismissed because the S.C. Dental Board granted Appellant's application for licensure. It acted within its discretion in requiring additional information from Georgia prior to final approval of the license application. Appellant provided documentation satisfactory to the Board from the State of New York and is rightfully being asked to do the same for the State of Georgia.

Contrary to Appellant's argument, the decision of the Board as affirmed in full by the ALC is not the imposition of a non-statutory sanction. It is not the imposition of any sanction at all. Although he had been disciplined before in South Carolina prior to his application for reinstatement, Appellant was not disciplined by the Board in any fashion in this case. The plain language of the Board order(s) in this matter clearly demonstrates that the proceedings before the Board were application hearings. Additional discipline was not considered nor imposed.

Appellant has failed to do what both the Georgia Dental Board and the South Carolina Dental Board may reasonably require, specifically, that he follow their orders. Appellant has not presented any evidence to the Board concerning his efforts to petition the Georgia Board or to obtain information from them clarifying whether they would end his suspension if asked to do so. As such, the Appellant has not carried his burden. He has provided evidence from New York but not Georgia and thus the record in this case is incomplete. It does not contain enough information for the board to make a decision that protects the public.

Section 40-15-170 of the Dental Practice Act provides that re-licensure of a dentist in this state after an absence of over six years is at the discretion of the Board. Dr. Trimmier falls into this category. He was first licensed in 1999 in South Carolina. In 2002, he was disciplined by consent agreement by the S.C. Dental Board for filing false claims for reimbursement, misleading advertising and failure to properly assign his auxiliary personnel. (R. 22) He did not renew his license in 2003 and he reapplied for licensure in 2010. (R. 133)

S.C. Code 40-15-170 If an individual's license to practice dentistry or dental hygiene is revoked by another state for cause this shall, in the discretion of the board, constitute grounds for revocation of his South Carolina license. The license of a dentist or dental hygienist who does not either reside or practice in South Carolina for a period of six successive years is considered inactive. The time spent in active service by any person in the armed forces or public health service of the United States or with the Veterans' Administration is not construed as absence from or failure to practice in the State. Relicensing after an absence of over six years may be made at the discretion of the board upon proof of high professional fitness and moral character. (emphasis added)

Also, Sections 70 and 130 of Title 40, Chapter 1 of the S.C. Code of Laws clearly provide the power and duty behind the Board's decision in this case.

S.C. Code 40-1-70. Powers and duties of boards.

The powers and duties of regulatory boards include, but are not limited to:

- (1) determining the eligibility of applicants for examination and licensure;*
- (2) examining applicants for licensure including, but not limited to:*
 - (a) prescribing the subjects, character, and manner of licensing examinations;*
 - (b) preparing, administering, and grading the examination or assisting in the selection of a contractor for the preparation, administration, or grading of the examination;*
- (3) establishing criteria for issuing, renewing, and reactivating the authorizations to practice of qualified applicants, including the issuance of active or permanent, temporary, limited, and inactive licenses, or other categories as may be created;*
- (4) adopting a code of professional ethics appropriate to the profession or occupation which it licenses or regulates;*
- (5) evaluating and approving continuing education course hours and programs;*
- (6) conducting hearings on alleged violations of this article and regulations promulgated under this article;*
- (7) resolving consumer complaints, where appropriate and possible;*
- (8) disciplining persons licensed under this article in a manner provided for in this article;*
- (9) promulgating regulations which have been submitted to the director, at least thirty days in advance of filing with Legislative Council as required by Section 1-23-30. (emphasis added)*

S.C. Code 40-1-130. Board's authority to sanction.

A board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the respective board. A board must deny authorization to practice to an applicant who has failed to demonstrate the qualifications or standards for licensure contained in the respective board's licensing act. The applicant shall demonstrate to the satisfaction of the board that the applicant meets all the requirements for the issuance of a license. (emphasis added)

Appellant speculates in his brief regarding what may or may not satisfy the Board at a later date, and argues that since Appellant has no Georgia license, his premature and voluntary surrender in lieu of a petition to the Georgia Board should be rewarded by the South Carolina Dental Board by a grant of complete licensure upon the theory that the surrender means not only that he does not have a Georgia license now, but that he never had one. (Appellant's Brief, p.5)

While this argument is without any merit, Appellant is correct in stating that South Carolina does not by law have reciprocity with Georgia for dental licensure; however, the Dental Practice Act provides at Section 40-15-140 that an applicant who holds a license or certificate from any jurisdiction shall certify that he has not violated any of the provisions of the Dental Practice Act governing his prior license or practice or operation.

The South Carolina Court of Appeals held in SCDOR v. Club Rio, 392 S.C. 636, 709 S.E.2d 690 (2011) that a surrender of an alcoholic beverage license does not deprive the licensing authority of jurisdiction. In *Club Rio*, the club's surrender of its rights under the [alcoholic beverage] license did not deprive the tribunal of jurisdiction to consider the DOR revocation proceedings. Although the Dental Board is not engaged in a revocation or other disciplinary proceeding here, *Club Rio* is instructive because of Appellant's argument here that his voluntary surrender means that he does not have a Georgia dental license and that, therefore, licensure in South Carolina should proceed without reference to his Georgia license status. Similar rationale and public protection concerns led the *Club Rio* court to conclude that this argument, if accepted, would have permitted the club owner to avoid being banned from receiving a new beer and wine permit in the future.

S.C. Code 40-15-140. Examination of applicants for licenses or registration; issuance of licenses or certificates; reexamination.

It is the duty of the Board to examine (or cause to be examined) all qualified applicants for a license to practice dentistry or dental hygiene or who desire to be registered as dental technicians in this State. No examination is required to be registered as an orthodontic technician. Prior to admittance to the examination or the registration of an orthodontic technician, each applicant shall produce evidence satisfactory to the Board

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that he possesses good moral character. If the Board refuses an applicant admission to the examination or registration as an orthodontic technician because of unsuitable moral character the Board shall notify the applicant in writing and set forth in detail the reason supporting the Board's decision. An applicant who holds a license or certificate from any jurisdiction shall certify that he has not violated any of the provisions of the Dental Practice Act governing his prior license or practice or operation. (emphasis added)

Despite Section 140's statutory requirement of good standing in other states, Appellant seemingly is arguing that the surrender of his Georgia license precludes the South Carolina Board from asking anything further from him with regard to Georgia. If this were true, all applicants with licenses in other states or applicants for licensure by credentials under Section 275 of the Dental Practice Act could merely surrender their other state licenses temporarily while applying in South Carolina to avoid South Carolina's consideration of disciplinary actions in other states.

At no time has the Dental Board in South Carolina required Dr. Trimmier to petition for and be granted licensure in Georgia. (Appellant's Brief, p. 5) They have merely requested that he comply with both the Georgia and South Carolina orders by obtaining from the Georgia Board additional documentation that his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time if he wishes to pursue re-licensure in South Carolina.

The Appellant has created his own "bureaucratic paradox" (Appellant's Brief, p.6) here by surrendering a suspended license. He has not, as requested by the Board, 'provided documentation that his Georgia license either was in good standing at the time of the voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time'. (R. 8)

This Court has held in an analogous situation, Michael A. Paulin vs. SCDLLR, 07-ALJ-11-0447-AP (2007), that a surrender of a professional license does not deprive it of jurisdiction. S.C. Code Ann. §§ 40-1-150 and 40-2-150 provide that voluntary surrender of one's license "does not preclude the board from taking disciplinary action against the

licensee," including revocation. S.C. Code Ann. §§ 40-1-150 & 40-2-150 (2001 & Supp. 2006). S.C. Code Ann. §§ 40-1-110(h) and 40-2-110(A) (1) provide that the Board may revoke Paulin's license based on his felony conviction. That felony is a crime of moral turpitude. State v. McFarlane, 279 S.C. 327, 332, 306 S.E.2d 611, 614 (1983) ("[C]riminal sexual conduct with a minor in any degree is a crime of moral turpitude."). S.C. Code Ann. § 40-1-115 gives the Board jurisdiction over actions of current and former licensees and over any action that arises during the licensure period. S.C. Code Ann. §§ 40-1-115 (2001 & Supp. 2006). The conduct underlying the guilty plea and resultant felony conviction occurred while Paulin was an active licensed accountant. Other jurisdictions have similarly rejected the argument that voluntary relinquishment of a license deprives the Board of disciplinary jurisdiction. See, e.g., Cross v. Colo. State Bd. of Dental Exam'rs, 552 P.2d 38 (Colo. App. 1976); Gilpin v. Bd. of Nursing, 837 P.2d 1342 (Mont. 1992), overruled on other grounds; Erickson v. State ex. rel. Bd. of Med. Exam'rs, 938 P.2d 625 (Mont. 1997); Gares v. N.M. Bd. of Psychologist Exam'rs, 798 P.2d 190 (N.M. 1990); Gaddy v. Okla. State Bd. of Osteopathy, 554 P.2d 1375 (Okla. 1976); Delozier v. State, 631 A.2d 228 (Vt. 1993).

At both hearings, Board weighed the testimony and evidence presented and rendered a decision which should not be disturbed on appeal. It is clearly within the Board's discretion to require the information mandated by Section 140 of the Dental Practice Act before final approval of an application.

The Dental Board's decision and the decision of the ALC is well-supported by the evidence and should be affirmed. An Administrative Law Judge may not substitute his judgment for that of the agency unless the agency's determination is affected by error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. S.C. Code Ann. § 1-23-380(A) (6) (Supp. 2001); Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

An exercise of discretion by an administrative agency should not be disturbed unless there is an abuse of discretion evidenced by a showing that the action of the agency was

arbitrary or unlawful. 73A C.J.S. Public Administrative Law and Procedure § 223a (1983). An administrative sanction cannot be said to be unduly harsh if it is within the Board's authority to impose. *South Carolina Bd. of Examiners in Optometry v. Cohen*, 256 S.C. 13, 180 S.E.2d 650 (1971).

This tribunal should not substitute its judgment for that of the Board unless the Board's action was influenced or controlled by some erroneous view of the law, was without substantial evidence to support it, or amounted to a manifest abuse of discretion. *State v. White*, 218 S.C. 130, 61 S.E.2d 754 (1950).

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *Joint Legislative Comm. v. Huff, et al.*, 320 S.C. 241, 464 S.E.2d 324 (1995). See also *Glover by Cauthen v. Suitt Constr. Co.*, 318 S.C. 465, 458 S.E.2d 535 (1995) (primary rule of statutory construction requires that legislative intent prevail if it can reasonably be discovered in language used construed in light of intended purpose). All rules of statutory construction are subservient to the one that legislative intent must prevail if it reasonably can be discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *Kiriakides v. United Artists Communications, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994). The determination of legislative intent is a matter of law. *Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 459 S.E.2d 841 (1995).

CONCLUSION

For all of the foregoing reasons, this appeal should be dismissed with prejudice and without oral argument.

January 22, 2013

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 2012-212267

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JAN 22 2013

SC Court of Appeals

Edward P. Trimmier, D.M.D., ...Appellant

v.

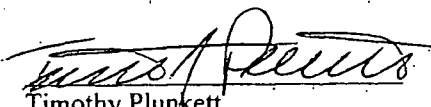
South Carolina Department of Labor, Licensing and Regulation, South Carolina State Board of
Dentistry.....Respondent

PROOF OF SERVICE

I, the undersigned, Timothy Plunkett, on behalf of the South Carolina Department of Labor, Licensing and Regulation, South Carolina State Board of Dentistry, attorney for the Respondent, in the above-captioned matter, do hereby certify that a copy of the foregoing has been served upon The Clerk's Office, South Carolina Court of Appeals by hand delivering this on the 22nd day of January, 2013.

Served: The Clerk's Office
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

Document(s): Final Brief of Respondent


Timothy Plunkett
Law Clerk for
Sheridon Spoon, Attorney for Respondent
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Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 2012-212267

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Edward P. Trimmier, D.M.D., ...Appellant.

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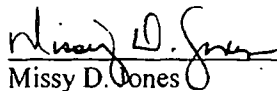
South Carolina Department of Labor, Licensing and Regulation, South Carolina State Board of
Dentistry.....Respondent

PROOF OF SERVICE

I, the undersigned, Missy D. Jones, on behalf of the South Carolina Department of Labor, Licensing and Regulation, South Carolina State Board of Dentistry, attorney for the Respondent, in the above-captioned matter, do hereby certify that a copy of the foregoing has been served upon opposing counsel and/or parties by placing same with the U.S. Postal Service, postage prepaid, at Columbia, South Carolina, this 18th day of January, 2013.

Served: Paul D. de Holczer
Moses Koon & Brackett, PC
Post Office Box 100261
Columbia, South Carolina 29202

Document(s): Final Brief of Respondent



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Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Edward Trimmier, DMD, Appellant,

v.

South Carolina Department of Labor, Licensing and
Regulation, State Board of Dentistry, Respondent.

Appellate Case No. 2012-212267

Appeal From The Administrative Law Court
John D. McLeod, Administrative Law Judge

Opinion No. 5154
Heard April 11, 2013 - Filed July 3, 2013

AFFIRMED

Paul Dezso de Holczer, deHolczer Law PC, of Columbia,
for Appellant.

Sheridon Hunter Spoon, South Carolina Department of
Labor, Licensing and Registration, of Columbia, for
Respondent.

KONDUROS, J.: Edward P. Trimmier appeals the order of the Administrative Law Court (ALC) affirming the South Carolina State Board of Dentistry's (the Board's) order granting his request for relicensure conditioned upon his provision of written evidence regarding the status of his Georgia license. We affirm.

FACTS/PROCEDURAL HISTORY

Trimmier has been licensed in Georgia, New York,¹ and South Carolina during his career as a dentist. He has been the subject of disciplinary action in South Carolina and New York arising out of his conviction in 2002 for filing false claims with the South Carolina Medicaid program.² The Board and Trimmier entered into a disciplinary consent agreement dated December 7, 2002. Trimmier's license was suspended for six years, which was stayed to probation provided he paid a civil penalty of \$25,000 and completed eight hours of Board-approved ethical training and education. Trimmier complied with the consent agreement but discontinued practicing in South Carolina and moved to Georgia.

In 2003, the Georgia Board of Dentistry (the Georgia Board) suspended Trimmier's license for six years with it being actively suspended for the first ninety days, and the remainder of the time he would be on probation. This sanction was the result of a consent agreement with the Georgia Board³ after it discovered Trimmier submitted an application for a sedation permit that falsely indicated he had never been convicted of a crime. The Georgia Board issued a probationary sedation permit when it had no knowledge of these misleading responses.

In 2004, the Georgia Board again reprimanded Trimmier for performing a procedure on a patient while sedated after the probationary sedation permit he had received lapsed. Although there were no accusations of patient endangerment, the Georgia Board revoked his license. Trimmier appealed the revocation and won. The circuit court ordered the Georgia Board to dispense less severe sanctions. Therefore, beginning October 2009, Trimmier was on indefinite suspension but could go before the Georgia Board for reinstatement after two years. Instead of waiting the two years and reapplying, or simply doing nothing, Trimmier voluntarily surrendered his Georgia license in April 2010.

¹ The status of Trimmier's New York license is not at issue in this appeal.

² Trimmier was also reprimanded for publishing a misleading advertisement suggesting he was a specialist in pediatric dentistry and failing to properly supervise auxiliary personnel.

³ The 2003 Georgia Consent Order also required Trimmier to complete sixteen hours of coursework in professional ethics, twelve hours of coursework in risk management, and the course on Law, Ethics, and Professionalism at the Medical College of Georgia. Additionally, he was fined \$20,000.

Trimmier moved to South Carolina and decided to practice here. He petitioned to have his South Carolina license reinstated.⁴ His greater than six-year absence from practice in South Carolina meant his license here was inactive and he had to seek relicensure. At that hearing, conducted in July 2010, the Board inquired into the status of Trimmier's Georgia and New York licenses.

Q. You voluntarily surrendered your license in Georgia?

A. That's correct.

Q. Let me ask you, what was the status of your license in Georgia prior to that surrender?

A. That was the suspension pending - - which I could've appealed. But you know, rather than keep going on and rehashing the same thing, I just said, you know, forgiveness is better.

Q. Are you saying that your license - -

A. Put that to bed.

Q. - - are you saying that your license was suspended just -- when you surrendered it?

A. Yes

Because the Board had concerns about the facts underlying Trimmier's apparently ongoing issues with the Georgia Board, the Board members requested transcripts and information regarding those proceedings. The record is unclear if Trimmier provided any additional information, but the Board issued an order later that month granting his South Carolina license upon the condition that he "provide documentary evidence satisfactory to the Board that his license and/or certificates

⁴ Trimmier was pardoned for his misdemeanor convictions in 2007.

from Georgia, New York [,] and any other states of licensure are in good standing, whether active or inactive."⁵

Trimmier subsequently filed a motion for the Board to reconsider its order and another hearing was held. The issue of the Georgia license was again a subject of much discussion.

Q. So you would submit that your license - - I just want to be clear. I know this is probably asking the same question over. You submit that your license to practice in Georgia is in good standing but inactive?

A. Yes

Trimmier's attorney tried to clarify the issue.

Q. In other words, there were no charges against him in Georgia when he took this inactive status?

A. [Attorney] When he took the status in Georgia I believe everything had been resolved in front of the court. He had taken an appeal at some point. It had been resolved to the extent that he was now back at square one to reapply in Georgia and rather than go through all the rigmarole and effort and expenditure, he just said I'm done with Georgia.

A. [Trimmier] See you later[.] Says I owe no fees[.] I'm fine. Everything's good with them.

Again, the Board granted Trimmier's license conditional upon proof of "written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or

⁵ Trimmier provided a letter from New York, which the Board found satisfactory, that indicated he completed the period of probation he was on in that state and his filed was closed.

otherwise, against his license at that time." Trimmier appealed this order to the ALC, which affirmed the Board's order. This appeal followed.

STANDARD OF REVIEW

The review of decisions from the ALC is governed by section 1-23-380(5) of the South Carolina Code (Supp. 2012), which states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

LAW/ANALYSIS

I. Violation of Section 40-1-110(1)

Trimmier argues the Board exceeded its statutory authority by conditioning his relicensure upon action by the Georgia Board and because such a requirement was not a part of the 2002 consent agreement. We disagree.

Section 40-1-110 of the South Carolina Code (2011) states: "In addition to other grounds contained in this article and the respective board's chapter: (1) A board may cancel, fine, suspend, revoke, or restrict the authorization to practice" Because Trimmier elected to let his license lapse in South Carolina, his application for licensure in 2010 was not a continuation of the 2002 proceedings but a new

request to be licensed in the State. Consequently, the authority granted to the Board under section 40-1-110(1), which relates to disciplinary action by the Board, is irrelevant to this appeal and cannot serve as a basis for reversing the ALC's decision.

II. Unlawful Procedure

Trimmier also argues the Board's decision was made upon unlawful procedure because it delegated the Board's decision making authority to Georgia. We disagree.

Section 40-15-170 of the South Carolina Code (2011) provides:

If an individual's license to practice dentistry or dental hygiene is revoked by another state for cause this shall, in the discretion of the board, constitute grounds for revocation of his South Carolina license. The license of a dentist or dental hygienist who does not either reside or practice in South Carolina for a period of six successive years is considered inactive. . . . Relicensing after an absence of over six years may be made at the discretion of the board upon proof of high professional fitness and moral character.

Section 40-15-140 of the South Carolina Code (2011) states, "An applicant who holds a license or certificate from any jurisdiction shall certify that he has not violated any of the provisions of the Dental Practice Act governing his prior license or practice or operation." Under section 40-15-170, the Board may revoke a license based solely on the revocation of a dentist's license in another State.

The Board is permitted discretion in determining whether to issue a license and may require the candidate to demonstrate "high professional fitness and moral character." S.C. Code Ann. § 40-15-170. Requiring Trimmier to provide documentation he was not currently facing any new or additional charges before the Georgia Board was well within the Board's discretion in light of Trimmier's past failures to comply with various requirements of the practice of dentistry. Furthermore, sections 40-15-140 and -170 specifically contemplate the Board's consideration of a license applicant's standing in other states. Any argument the Board should disregard Trimmier's license in Georgia because he voluntarily

surrendered it is completely without merit. Ignoring the status of a professional license in another State could permit a dentist or other professional to forum shop to a new location in order to avoid admonition in another State. Consequently, we find the ALC did not abuse its discretion in affirming the Board's decision.

III. Substantial Evidence

Next, Trimmier argues the Board erred because substantial evidence in the record demonstrates he cannot comply with the condition imposed. We disagree.

"Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action." *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 20, 507 S.E.2d 328, 332 (1998). "Furthermore, the possibility of drawing two inconsistent conclusions from the evidence does not prevent a court from concluding that substantial evidence supports an administrative agency's finding." *Id.* at 21, 507 S.E.2d at 332.

Trimmier's own testimony provides substantial evidence supporting the Board's decision to condition his relicensure on proof of good standing in Georgia. According to him "everything was good" with the Georgia Board when he surrendered his license. Trimmier asserted, and his counsel agreed, the only impediment in being reinstated in Georgia was administrative, not disciplinary. The surrender of Trimmier's license indicates his license is "terminated" but only "unless and until such time as [his] license may be reinstated, in the sole discretion of the [Georgia] Board."

This evidence substantially supports that Trimmier can obtain documentation evidencing he has complied with the sanctions imposed against him in Georgia and is eligible to apply for reinstatement, or Trimmier can actually apply for reinstatement in Georgia. Consequently, substantial evidence supports the condition imposed by the Board can be achieved even if it is, in Trimmier's opinion, burdensome.

IV. Arbitrary and Capricious

Finally, Trimmier argues the Board's decision was arbitrary and capricious. We disagree.

"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985).

The determination by the Board to condition Trimmier's licensure upon sufficient proof of good standing in Georgia rationally relates to a protection of the public's interest. Trimmier has, on more than one occasion, been reprimanded by the boards governing his chosen field. The requirements placed upon dentists are in place to protect the citizenry and ensure the public has access to safe and trustworthy dental care. Requiring further explanation and demonstration of good standing with the Georgia Board is rationally related to fulfilling this purpose. Therefore, we conclude the Board's decision was neither arbitrary nor capricious, and the ALC did not abuse its discretion in affirming it.

CONCLUSION

Based on all of the foregoing, the decision of the ALC is

AFFIRMED.

HUFF and WILLIAMS, JJ., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

APPELLANT'S PETITION FOR REHEARING

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SC Court of Appeals

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INTRODUCTION

Pursuant to Rule 221(a), SCACR, the Appellant, Edward P. Trimmier, D.M.D. (hereinafter, "Appellant" or "Trimmier"), respectfully petitions this Court for a rehearing of Opinion No. 5154, dated July 3, 2013. A Rehearing is necessary when the Court has misinterpreted or overlooked an argument made by a party. Rule 221(a), SCACR; See also Kennedy v. S.C. Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001).

STANDARD OF REVIEW

The review of decisions from the ALC is governed by section 1-23-380(5) of the South Carolina Code (Supp. 2012), which states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

LAW/ANALYSIS

I. Violation of Section 40-1-110(1)

The Court of Appeals summarizes Appellant's argument referencing Section 40-1-110 of the South Carolina Code (2011): "Trimmier argues the Board exceeded its statutory authority by conditioning his relicensure upon action by the Georgia Board and because such a requirement was not a part of the 2002 consent agreement." Although Appellant respectfully submits that this argument should prevail, Appellant understands that this Court has rejected the argument that his application for licensure in 2010 was a continuation of the 2002 proceedings and, further, that this Court has held that the authority granted to the South Carolina Board (hereinafter, "Board") under section 40-1-110(1) is irrelevant to this appeal and cannot serve as a basis for reversing the ALC's decision. This is a part of Appellant's argument but not the whole of Appellant's argument. The Court has misinterpreted or overlooked arguments made by Appellant.

Appellant also argues that, if the Board is to condition his South Carolina license on any matters arising or occurring in the State of Georgia, it must give him notice and an opportunity to be heard on those matters. The Board has not done so. The record shows that the Board has received extensive material relating to matters in Georgia (much of which is available by download from the internet), but has not actually conditioned Appellant's license on any matters arising or occurring in the State of Georgia. There is no evidence that the Board has considered the underlying facts of matters in Georgia and, if it has done so, it has not argued in this appeal or otherwise demonstrated in the record

that it has done so. The record bears evidence that the Board has not inquired into the procedure or facts underlying any matters in Georgia.

The consideration of the Georgia matters is confined to merely rejecting what Appellant has offered by way of "written evidence to the Board . . . that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time." Having received all the public orders of the Georgia Board, the Board has not shown how or why what it has received is unsatisfactory to these purposes. The Board has not offered clear guidance as to exactly what would constitute "satisfactory" written evidence. The imposition of a vague requirement with undefined standards ("written evidence to the Board which is satisfactory, in the Board's discretion") is arbitrary and capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion. "The mere recital of the discretionary decision is not sufficient to bring into operation a determination that discretion was exercised. It should be stated on what basis that discretion was exercised." Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997), State v. Smith, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). An agency's findings may "not be based upon surmise, conjecture, or speculation, but must be founded on evidence of sufficient substance to afford a reasonable basis for it." Mullinax v. Winn-Dixie Stores, Inc., 318 S.C. 431, 458 S.E.2d 76 (Ct. App. 1995).

II. Unlawful Procedure

Appellant's argument that the Board should disregard his Georgia license because he voluntarily surrendered that license was based, in part, upon the contractual argument which the Court has rejected by stating his application for licensure in 2010 was not a continuation of the 2002 consent agreement. This is only a part of Appellant's argument and the Court has misinterpreted or overlooked arguments made by Appellant. The Court of Appeals summarizes Appellant's argument that the Board's decision was made upon unlawful procedure because it delegated the Board's decision making authority to Georgia. The Court cites Section 40-15-170 of the South Carolina Code (2011) which provides:

If an individual's license to practice dentistry or dental hygiene is revoked by another state for cause this shall, in the discretion of the board, constitute grounds for revocation of his South Carolina license. The license of a dentist or dental hygienist who does not either reside or practice in South Carolina for a period of six successive years is considered inactive. . . . Relicensing after an absence of over six years may be made at the discretion of the board upon proof of high professional fitness and moral character.

Appellant concedes that, pursuant to Section 40-15-170, the Board may revoke a license based solely on the revocation of a dentist's license in another State. Of course, Appellant's Georgia license was suspended and surrendered, not revoked; and the South Carolina Board did not revoke Appellant's license but ostensibly granted it, although upon grounds impossible for Appellant to satisfy. Appellant concedes further that, the Board is permitted discretion in determining whether to issue a license and may require the candidate to demonstrate "high professional fitness and moral character." S.C. Code Ann. § 40-15-170. The Board has not made a finding that Appellant lacks high

professional fitness and moral character or required that Appellant demonstrate high professional fitness and moral character. The Board arbitrarily predicates its evaluation of Appellant's professional fitness and moral character upon the actions of the Georgia Board.

In this case, the Board has ordered that, "The Applicant shall provide written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time." The Board has not charged Appellant with lacking high professional fitness and moral character. The Board has not asked or invited Appellant to supply documentation or evidence that he has high professional fitness and moral character. The Board has not afforded Appellant an opportunity to demonstrate high professional fitness and moral character. The Board has access to Georgia documentation provided by Appellant, through online publication and through agency reciprocity and knows that Appellant has no power or authority to compel Georgia to supply additional documentation. Appellant cannot prove a negative: that "... [Appellant] was not currently facing any new or additional charges before the Georgia Board."

The Board has recognized that, because Appellant had surrendered his license in Georgia, he would have to start anew the licensing process in Georgia if he were to return to the practice of dentistry in Georgia. [R. p. 58, lines 8-11]. Under these particular circumstances, the Board has imposed an unlawful procedure – requiring Appellant to

start anew the licensing process in Georgia – and made a decision to withhold approval of Appellant’s license upon this unlawful procedure. The Board should give Appellant clear, objective criteria, within Appellant’s power to accomplish, which affords Appellant an actual, not ephemeral, opportunity to satisfy the Board and regain his license. Vague instruction, subjective criteria, and requiring Appellant to do something he has no power to do (force Georgia to respond to the Board) constitutes unlawful procedure and cannot satisfy the due process requirements demanded by our laws and constitutions. A board’s decision to impose a sanction must be consonant with the purpose of its proceedings. Wilson v. State Bd. of Med. Exam’rs, 305 S.C. 194, 406 S.E.2d 345 (1991). The Board must meticulously weigh the public interest and need for the continued services of qualified medical professionals against the countervailing concern that society be protected from professional ineptitude. Id. See also Huber v. State Board of Physical Therapy Examiners, 316 S.C. 24, 446 S.E.2d 433 (1994).

III. Substantial Evidence

Appellant argues the Board erred because substantial evidence in the record demonstrates he cannot comply with the condition imposed, but the Court has misinterpreted or overlooked an argument made by Appellant: Appellant also argues that there is no substantial evidence supporting the imposition of the requirement that, because Appellant has surrendered his license in Georgia, he start anew the licensing process in Georgia as if he were to return to the practice of dentistry in Georgia. [R. p. 58, lines 8-11]. Appellant also argues that there is no substantial evidence supporting the

imposition of the requirement that he provide additional unspecified "written evidence to the Board which is satisfactory, in the Board's discretion, that shows his Georgia license either was in good standing at the time of his voluntary surrender and/or that there were no disciplinary or other impediments, pending or otherwise, against his license at that time." The record is clear that Appellant was under suspension when he surrendered his license. Appellant has been candid about this and the Board has received this information without rebuttal. [R. p. 58, lines 2 - 17; R. p. 116, lines 17 - 25; R. p. 128; R. p. 131; R. p. 118, lines 1 - 20] Appellant testified in the hearing on July 16, 2010 that his license was under suspension when he surrendered it. [R. pp. 112 - 117, lines 1 - 20].

There is no evidence in this record which substantially supports the argument that Appellant can, under these circumstances (surrender under suspension) obtain documentation evidencing he has complied with the sanctions imposed against him in Georgia and is eligible to apply for reinstatement there. There is only evidence that the Board has rejected the sum and substance of the extensive material in the record regarding the Georgia Board. While it is true that Appellant can actually apply for reinstatement in Georgia (with no guarantee that he would be reinstated), Appellant has been clear that he does not wish to practice in Georgia. [R. p. 94, line 24 - p. 95, line 15; p. 101, lines 5 - 9]. The Board recognized that, because Appellant had surrendered his license in Georgia, he would have to start anew the licensing process in Georgia if he were to return to the practice of dentistry in Georgia. [R. p. 58, lines 8 - 11]. Such a requirement is not rationally related to the protection of the public in South Carolina. There is no substantial evidence in the record to support this requirement. Furthermore, it

is in excess of the statutory authority of the Board to require that Appellant seek reinstatement in Georgia.

IV. Arbitrary and Capricious

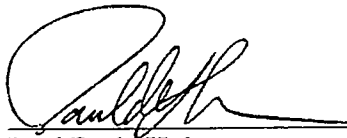
"A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." Deese v. S.C. State Bd. of Dentistry, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). The Court held that the determination by the Board to condition Trimmier's licensure upon sufficient proof of good standing in Georgia rationally relates to a protection of the public's interest and is neither arbitrary nor capricious. The Court has misinterpreted or overlooked an argument made by Appellant. The determination by the Board to reject the extensive Georgia material and to effectively condition Appellant's licensure upon Appellant's provision of unspecified information outside the reach of Appellant is arbitrary, capricious and violates fundamental fairness. The Board has not requested any information or held any inquiry about the facts giving rise to Appellant's discipline in Georgia; rather, the Board is conditioning Appellant's licensure upon the provision of unspecified documentation related to Georgia's disposition of his Georgia license – which, as has been shown, was surrendered under suspension. Furthermore, the Board's decision, requiring that Appellant start anew the licensing process in Georgia, is arbitrary, capricious and violates fundamental fairness.

The Board concedes that Appellant has satisfied the State of New York [R. p. 8 and p. 127] as to his discipline in Georgia and South Carolina and knows that Appellant engaged in extensive, expensive litigation in Georgia, and even prevailed in Georgia's courts against the Georgia Board [R. p 131; R. p. 118, lines 1 - 20]. Rather than exercise its own discretion with regard to the underlying charges in Georgia, the Board is interposing the discretion of the Georgia Board as an impediment to Appellant's relicensure. It is entirely within the discretion of the Georgia Board whether or not it will supply additional information to the South Carolina Board. Rather than conducting any impartial, independent inquiry of the underlying charges in Georgia and then drawing its own conclusions, the Board has arbitrarily and capriciously erected an impediment to Appellant's relicensure. The Board disingenuously argues that it has granted Appellant his license although it effectively denies Appellant his license based upon vague and subjective criteria and the exercise, or non-exercise, of discretion by the Georgia Board.

CONCLUSION

For the reasons detailed above, the Appellant, Edward P. Trimmier, D.M.D., respectfully requests this Honorable Court for an Order granting a Rehearing to address those arguments of Appellant which have been misinterpreted or overlooked.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Paul de Holczer", written over a horizontal line.

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Attorney for Appellant

July 15, 2013

E.T. 211

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Case No. 11-ALJ-11-0453-AP

Edward P. Trimmier, D.M.D. Appellant,

v.

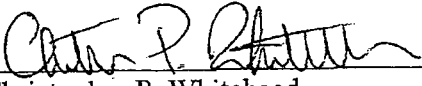
South Carolina Department of Labor, Licensing and Regulation,
State Board of Dentistry. Respondent.

PROOF OF SERVICE

I, the undersigned Christopher P. Whitehead, Esquire, on behalf of deHolczer Law PC, attorney for the Appellant in the above-captioned matter, do hereby certify that a copy of the following has been served upon opposing counsel and/or parties by placing same with the U.S. Postal Service, postage prepaid, at Columbia, South Carolina, this 17th day of July, 2013.

Served: Sheridan H. Spoon, Esquire
LLR Office of General Counsel
Post Office Box 11329
Columbia, SC 29211 1329

Document(s): Appellant's Petition for Rehearing


Christopher P. Whitehead

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55 Court of Appeals

The South Carolina Court of Appeals

Edward Trimmier, DMD, Appellant,

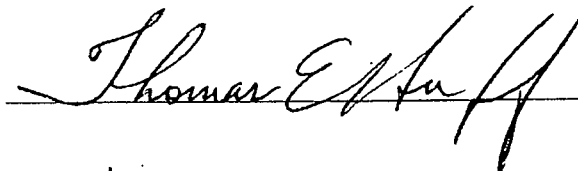
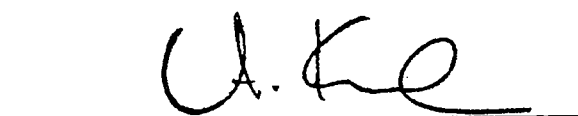
v.

South Carolina Department of Labor, Licensing and
Regulation, State Board of Dentistry, Respondent.

Appellate Case No. 2012-212267

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:
Paul Dezso de Holczer
Sheridon Hunter Spoon

FILED

27 August 2013