STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

H. H. Vonharten, Appellant, vs. South Carolina Department of Motor Vehicles, Respondent.	Docket No. 14-ALJ-21-0604-AP **ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION OR FOR REHEARING**

This matter comes before the Administrative Law Court (ALC or Court) pursuant to an appeal from a Final Order and Decision of the South Carolina Office of Motor Vehicle Hearings (OMVH) revoking Appellant's driver's license and driving privileges based upon a finding that Appellant is physically disqualified from safely operating a motor vehicle. On December 29, 2014, Appellant filed his appeal with this Court. On June 9, 2015, this Court issued a decision upholding OMVH's revocation of Appellant's driver's license.

On June 17, 2015, Appellant filed a Motion for Reconsideration or for Rehearing. Appellant moves on the ground that OMVH erred in admitting into evidence and considering the December 31, 2013, letter from Dr. Paul Mazzeo. This letter included reports of statements Appellant's family members made to Mazzeo, as well as Mazzeo's medical opinion about Appellant's condition. Appellant argues this letter was never authenticated at the hearing and constitutes inadmissible hearsay.

With respect to the argument that the document was not authenticated, Rule 901, South Carolina Rules of Evidence (SCRE), provides that a document must be identified and authenticated before it can be admitted into evidence. A document can be identified and authenticated in a variety of ways, such as through a witness that can provide testimony the document is what it is claimed to be. Rule 901(b)(1), SCRE. Appellant's argument that the OMVH decision should be overturned on this basis fails for two reasons. First, Appellant failed to make a timely objection that the document required authentication. The only objection raised at the hearing was the hearsay objection. A contemporaneous objection, including the grounds for the objection, is required to preserve a purported error for review. State v. Tucker, 324 S.C. 155, 175, 478 S.E.2d 260, 270

(1996). Moreover, the Administrative Procedures Act does not require a strict application of the South Carolina Rules of Evidence in administrative hearings. S.C. Code Ann. 1-23-30 (2005); City of Spartanburg v. Parris, 251 S.C. 187, 190-91, 161 S.E.2d 228, 229 (1968) (holding that the right to cross-examine witnesses in regard to serious matters exists as a requirement of due process). Therefore, I find no error in the Hearing Officer declining to exclude Mazzeo's letter on the ground it was not authenticated.

Appellant next argues that it was error to admit Mazzeo's letter because it constitutes hearsay. SCRE 801(c) provides that hearsay is a "statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Mazzeo's letter was admitted into evidence at the hearing to prove his opinion about Appellant's condition. Appellant's argument is correct. Mazzeo's letter was entered into evidence to prove the information it contained and, therefore, is hearsay. There are a number of exceptions to the hearsay rule. Rule 803, SCRE. At the OMVH hearing, the Hearing Officer allowed in statements made by Appellant's family to Mazzeo, which he included in his letter. She concluded that these statements were an exception to the hearsay rule because they were made for the purpose of medical diagnosis or treatment. Rule 803(4), SCRE. The Hearing Officer did not rule on whether or not the entire letter constituted hearsay or if any of the hearsay exceptions applied.

Appellant argues that a doctor cannot simply write a letter containing his opinion, but must take the stand, testify, and be subject to cross examination. This Court will not reverse the Hearing Officer's ruling as to the admissibility of Mazzeo's letter. A trier of fact, like the Hearing Officer in this case, is given considerable latitude in ruling on the evidence in a case. In South Carolina, a trier of fact's ruling on the admissibility of evidence will not be overturned on appeal absent abuse of the trier of fact's discretion. State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997). Such an abuse of discretion is not evident in the record before me. As noted above, the South Carolina Rules of Evidence are not strictly applied in quasi-judicial administrative hearings such as the one at issue. The hearing at issue was conducted to review a decision based upon the advice of the medical advisory board pursuant to S.C. Code Ann. § 56-1-221. Subsection (C) provides that the medical advisory board may base its advice upon records and reports; examinations by members of the board or their designees; and examinations, medical records and opinions provided by the licensed driver. Mazzeo's letter was one of the records and reports relied upon by the board, and

therefore, it was appropriate for the hearing officer to review the evidence that supported the board's opinion.

Furthermore, a decision should not be reversed based upon a Hearing Officer's erroneous ruling on the admissibility of evidence unless Appellant shows he was prejudiced by the ruling. State v. Sosebee, 284 S.C. 411, 326 S.E.2d 654 (1985); State v. Sullivan, 227 S.C. 35, 282 S.E.2d 838 (1981). Appellant has not shown how he was prejudiced by the admission of Mazzeo's letter at the hearing. The Hearing Officer did not solely rely on Mazzeo's letter. Her decision is supported by other substantial evidence in the record. As discussed in greater detail in this Court's June 9, 2015, order, there is overwhelming evidence in the record to support the Hearing Officer's decision. In her written order, the Hearing Officer stated that "based upon the evidence before [her], particularly regarding [Appellant's] neurological condition," she decided to revoke Appellant's license. Earlier in the order, she summarized the information about Appellant's neurological condition. The evidence before her was not limited to Mazzeo's letter; the Hearing Officer was also presented with medical forms completed by Dr. Samuel Little, the assessment performed by Richard Craner, and Appellant's own testimony at the hearing about his dementia. The written order and the record in this case make it clear that the decision is supported by substantial evidence other than Mazzeo's letter. Therefore,

IT IS HEREBY ORDERED that Appellant's Motion for Reconsideration or for Rehearing is **DENIED.**

AND IT IS SO ORDERED.

Deborah Brooks Durden

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

July 7, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, 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).

Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

July 7, 2015
Columbia, South Carolina

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July 20, 2015

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: H.H. Vonharten v. South Carolina Department of motor Vehicles
Appellate Case No.: 2015-001491

Dear Ms. Kitchings:

Enclosed for filing, in amendment of the original filing in the above referenced matter, is the following:

1. The Order of the Honorable Administrative Law Court Judge Deborah Brooks Durden, filed June 9, 2015;

2. The Notice of Motion and Motion to Reconsider or for Rehearing, filed on behalf of Appellant on June 16, 2015;

3. The Order Denying Appellant's Motion for Reconsideration or For Rehearing, filed by Judge Durden on July 7, 2015.

4. The Appellant's Notice of Appeal, originally file with the Court of Appeals July 14, 2015.

Please accept items 1-3 as an amendment and a cure to deficiencies in the Appellant's original Notice of Appeal, Item number four, above.

Thank you for your kind assistance.

Very truly yours,

James H. Moss, Esquire

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