

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

**RECEIVED**

MAY 22 2019

SC Court of Appeals

Cyril J. Okadigwe, Appellant,

v.

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

Appellate Case No.: 2017-001339

---

Appeal from the Administrative Law Court  
S. Phillip Lenski, Administrative Law Judge

---

**PETITION FOR REHEARING**

---

The Appellant, pursuant to Appellate Court Rule 221, hereby petitions this Court for a rehearing in this matter on the grounds that the Court overlooked and/or misapprehended the following facts and law:

1. The Court overlooked and misapprehended that the Board of Pharmacy indefinitely suspended the Appellant's license on April 24, 2014 without providing conditions to be met by Appellant prior to the reinstatement of his license. The Administrative Law Court, J. Lenski, remanded, Okadigwe v SC Dept. of Labor, Licensing and Regulation, Docket No. 14-ALJ-11-0521-AP (R. pp. 15-23) to the Board of Pharmacy. In the Order of Remand, the Court found that the Board has abused its discretion by imposing an indefinite suspension of the Appellant's license without prescribing conditions to be met during the suspension as required by SC Code Ann. § 40-1-

129(A)(3). After 23 months of having his license indefinitely suspended, the Appellant met with the Board on March 16, 2016 to consider the Order on Remand. The Board issued an Order on Remand (Public) and (Private) on June 3, 2016 (R. pp. 9-14) which imposed the most severe sanctions and conditions that the Board had ever imposed upon a pharmacist's license as a condition of reinstatement.

2. The Court overlooked and misapprehended that in excluding the Affidavit of John C. Ruoff, PhD from the record the Court was in error. The Affidavit was placed in the record, before the Administrative Law Court, and was part of the record before this Court (R. pp. 59-63). Dr. Ruoff's Affidavit and analysis reviewed all Public Orders of the Board from 2009 through August 22, 2016 and revealed that:

Upon remand, the Appellant's license (R. Ph. 8738) was indefinitely suspended without a stay, an accompanying probationary period or a time to reapply. Since there is no drug or alcohol abuse involved, he was not required to enter into a contract with RPP, abstain from mood altering substances or submit to drug testing. Appellant's conditions for lifting his suspension include that he retake and successfully complete the North American Pharmacist Licensure Exam and Multistate Pharmacy Jurisprudence Examination. No other licensee in this study was required to retake the North American Pharmacist Licensure Exam, although successful completion of the Multistate Pharmacy Jurisprudence Examination is not infrequently required. Unlike any other licensee, he is required to successfully complete the Medication Safety Course offered by the University of Oregon. Unlike any other licensee, Appellant is required to take 30 hours of ACPE (Accreditation Council for Pharmacy Education) continuing education credits rather than CME (Continuing Medical Education) in addition to his normally required continuing education courses. Clearly, the requirements for lifting the suspension for Mr. Okadigwe are very different from the requirements for any other licensee. (R. p. 60, Line 26 - p. 65, Line 11).

In order to present this analysis as relevant evidence before the Board, the Appellant would either have had to assume the Board's decision was going to be arbitrary and capricious, prior to the Board's actual decision, or he would have had to have been omniscient to foresee the Board's action.

Comparative evidence of the arbitrary and capricious action of the Board only became relevant once the Board issued its decision. The Appellant should have been allowed to supplement the Record on Appeal to include relevant matter pursuant to Appellate Court Rule 212. In this case, an administrative decision reached without reasoned judgment, lacking adequate determining principles or rational basis, or governed by no fixed rules or standards, is arbitrary. Deese v State Board of Dentistry, 286 S.C. 182, 332 S.E.2d 539 (Ct. App. 1985).

3. The Court found that “An agency need not exercise its discretion identically in every case.” This overlooks and misapprehends the fact that the Board’s action was more severe than that imposed on any other licensee (R. pp. 59-63) and included a requirement that Appellant complete a Medication Safety Court at the University of Oregon, (R. p. 11) when in fact, the University of Oregon does not even have a pharmacy school. When the Board exercises its discretion in such a wildly disproportionate way it acts arbitrarily and capriciously, and violates the Appellant’s constitutional guaranteed rights to due process and equal protection.

4. The Court found that the ALJ did not err in finding the Board did not deprive Appellant of his due process and equal protection rights. The Court overlooked and misapprehended the fact that Appellant was denied fundamental fairness, and treated more severely than any other licensee who was disciplined by the Board.

The guiding principle most often stated... is that the constitutional guarantee of equal protection of the laws requires that all persons shall be treated alike under like circumstances, and conditions. Thompson v SC. Commission on Alcohol and Drug Abuse, 229 S.E.2d 718 (1976).

“Due process is violated when a party is denied fundamental fairness”, Hipp v SC DMV, 673 S.E.2d 416, 417 (2009). Substantive due process prevents an individual from being deprived of life,

liberty or property for arbitrary reasons. Worsley Co, Inc. v Town of Mt. Pleasant, 528 S.E.2d 657 (2000). Such disparate treatment between the sanctions imposed upon the Appellant, and those imposed upon other licensees was unreasonable, and had no national basis and is therefore a denial of equal protection. Daniel v Cruz, 231 S.E.2d 293 (S.C. 1977), Samson v Greenville Hospital, 369 S.E.2d 665 (1988).

5. For the foregoing reasons, the Appellant petitions the Court to rehear this case.

Columbia, South Carolina

May 22, 2019

Respectfully submitted,



Herbert E. Buhl, III  
2204 Devine Street  
Columbia, SC 29205  
803-799-3767  
hbuhl@bellsouth.net  
SC Bar No. 1000

ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

MAY 22 2019

SC Court of Appeals

Cyril J. Okadigwe, Appellant,

v.

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

Appellate Case No.: 2017-001339

---

Appeal from the Administrative Law Court  
S. Phillip Lenski, Administrative Law Judge

---

**CERTIFICATE OF SERVICE**

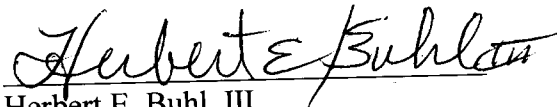
---

I, Herbert E. Buhl, III, attorney for Appellant, do certify that I have this day served a copy of the attached Petition for Rehearing on counsel of record listed below by causing same to be deposited in the United States mail, postage prepaid, and addressed as follows:

T. Kyle Tennis, Esquire  
S.C. Department of Labor,  
Licensing and Regulation  
P.O. Box 11329  
Columbia, SC 29211

Columbia, South Carolina

May 22 2019



Herbert E. Buhl, III  
2204 Devine Street  
Columbia, SC 29205  
(803)799-3767  
hbuhl@bellsouth.net

ATTORNEY FOR APPELLANT