

The Supreme Court of Washington

COA No. 40948-8

No. 82297-2

Shirley O. Daniels, Pro Se

Appellant

v.

The Dental Quality Assurance Commission

Response Brief (Reply)

Shirley O. Daniels
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New York, NY 10017
212-733-5135 (temporary number)

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2010 JUN -1 AM 10:36
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1/26/08

DQAC AND AG O'NEAL PERPETRATE A FRAUD ON THE COURTS

000001 and other documents were removed from the certified agency record because to include them would prove that AG O'Neal and DQAC were perpetrating a fraud on the courts. Those other documents that AG O'Neal removed included the following:

- 00064 Case Reviewer for 2005-07-0001DE, Patient A, was Dr. Russel B. Timms - a memorandum dated October 6, 2005 asks Dr. Timms: "After your review, please provide your recommendation of each case on worksheets and submit to our office. If you have any questions, please contact me"
- 00066 Another memorandum, dated November 15, 2005 was written to Dr. Timms with a handwritten remark about additional information for case # 2005-07-0001DE Patient A. There is a request for the three color photos. These three color photos and the associated x-ray are requested so that Dr. Timms can make his decision as to the next step in the process.
- 00067 November 9, 2005, Dr. Timms, Commission reviewing member returned the case and requested that Mr. Kozar obtain the three color photos before he made his decision as to what to do with the case.
- 00068 A note was written by Inv. Kozar saying that he received the x-ray and the 3 color photos.
- 00071 is a receipt and a note made by Inv. Kozar saying that he received the three color photos and one PA of tooth number 30, taken 7/15/2005 for Patient Ken Henson

THE PROCESS

In 2005, Patient A made a complaint. The process had begun. Mr. Kozar represents the next step in the process; investigation. The next step in the process is to request an answer from the an answer from the dentist at whom the complaint is aimed.

Alteration of the Record

Evidently, AG O'Neal and AG Carpenter have the power and the influence to direct which documents are included in the agency record after it has been certified. Documents that are added after the briefs have been written (CP 812 and 813) do not happen at the initiation of the Superior Court Clerk; Ms.O'Neal had to initiate the inclusion of these documents.

Another document that was removed from the agency record was the declaration of my former attorney in the 2006 hearing, Ms. Cynthia McDonald. Mr. Bales reported to me that he could not find this document; I do not have the power or the influence to conjure up documents that have gone missing; especially when they speak to the misconduct of the AG, in this instance, AG Stephen Carpenter and Health Law Judge John Kuntz.

Structural error is indefensible. Whenever, I have discovered evidence in this consolidated case; both Mr. Carpenter and Ms. O'Neal have no problem altering the record, the transcript and other court documents. I am therefore requesting automatic reversal and the return of my dental license.

Ms.O'Neal stated in her brief that the Sixth Amendment Confrontation Clause is meant only for criminal cases; but the Nguyen v. Department of Health concluded that these disciplinary hearings are quasi-criminal in nature; therefore this is a Constitutional violation."The reviewing court must grant relief if the Board's order violates the constitution, exceeds statutory authority (the billing issue related to Patient A), is the result of faulty procedure, involves an error in interpreting or applying the law, is not supported by the evidence, omits issues requiring resolution involves improper rulings, or is arbitrary and capricious." Clausing, 90 Wn. App. at 870

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Other documents removed from the agency record are:

1. The declaration of Ms. Cynthia McDonal, my attorney of record for the 2006 disciplinary hearing. I requested that Ms. McDonald's declaration, which was taken by 2007 co-attorney , Christopher Bawn. I requested this document from Superior Court Clerk, John Bales and his supervisor, Betty Gould; neither was able to find this declaration.

2. AG O'Neal removed the progress file of Patient C, one of three patients whose file allegedly contained the substantial evidence that prompted the emergency summary suspension. After Ag O'Neal found out that the Dental Commission closed Patient C's complaint, no action taken; AG O'Neal changed the charge to: Failure to cooperate with the Commission: Improper Notice..

No matter what the charge was; the progress file of Patient C was part of the record of the show cause hearing; and as such was part of the agency record. Removal of the file causes one to conclude that Ms. O'Neal wanted to hide something; and we won't know what that is until the file is replaced. Structural error.

The motion to reverse is being sent as well and primarily provides evidence of the misconduct and structural error in the 2006 hearing.

scd
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MC PUBLIC #2

Shipe, Joshua (DOH)

From: R.B. TIMMS DDS [rbtdds@cascadenetworks.net]
Sent: Wednesday, October 12, 2005 4:08 PM
To: Josh Shipe
Subject: REQUEST FOR ADDITIONAL INFORMATION

JOSH:

Please have ISU obtain additional information as delineated below:

2005-07-0501 RE Daniels - Please obtain the photos referred to on page 24
of the file, taken by subsequent treating dentist - Dr. Hackley

2005-07-0611 RE ST Please obtain copies of "Post-op - Notes in Computer
CA from 2/24/04 and "post-op - notes in computer (illegible)
as noted on page 38 of the file

--
No virus found in this outgoing message.

Checked by AVG Anti-Virus.

Version: 7.0.344 / Virus Database: 267.11.14/131 - Release Date: 10/12/2005

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DANIELS, DDS
Inv.00070

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Scanned

000001 - is the email from Dr. Timms to Johnathan Shipe, dated October 12, 2005, requesting additional information. The body of the document is difficult to read because of the print.

"Josh,

Please have ISu obtain additional information as delineated below

2005-07-0001 DE Daniels -Please obtain the photos referred to on page 24 of the file, taken by subsequent treating dentist - Dr. Hackney

2005-07-0011DE SU Please obtain copies of "Post-op -Notes in computer from 2,04,04 and post op - notes in computer (illegible) as needed on page 33 of the file
(This does not pertain to me)

A copy will be mailed because of the poor quality of this document.

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SUPPLEMENT THE RECORD OR IN THE ALTERNATIVE REVERSE
(No. 07 2 00829 0)

"If the dqac refuses to submit the complete administrative record, this court should reverse the Respondent's determination." This motion uncovered Ms. O'Neal's misconduct. Ms. O'Neal had removed and concealed documents from the "certified agency record" (2007). Ms. O'Neal was compelled to return 9 of the 18 concealed documents.

Two of the documents that Ms. O'Neal had removed and concealed were CP 800 and CP 809, what were the documents between 800 and 809? Both documents revealed that DQAC had requested docket number (06-11-A-1052DE) for Patients A and B. The docket number was requested five months before the so-called emergency summary suspension was issued. To me, this means that DQAC knew there was no imminent danger. The docket number was issued November 21, 2006 and the so-called emergency summary suspension was issued April 13, 2007. See, Binder #1, Page 1-3, Deputy Exec. Director wrote: evidence for all allegations can be found in the progress files of Patients A, B, and C.

Ms. O'Neal removed and concealed the progress file of Patient C. At some point in time, DQAC had membership hear Patient C's complaint; after hearing the complaint; DQAC closed the complaint, no action taken. Rather than drop the charge; Ms. O'Neal removed and concealed the progress file from the agency record. She then changed the charge to: Failure to cooperate with the Commission - Improper Notice¹, a procedural due process violation. Rule 3.4 RFC An attorney shall not

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"unlawfully obstruct another party's access to evidence or unlawfully alter or destroy or conceal a document having potential evidentiary value.

I read Patient C's complaint and I could not find any standard of care issues. Patient C's complaint was logged into DQAC December 2005 and I was asked to provide an answer to her complaint in 2007; when that complaint was well past the 171 days for handling a regular complaint (WAC 246-14). I then requested the information for complaints passing threshold as well as DQAC's guidelines, this was interpreted by DQAC as failure to cooperate with the Commission.

If DQAC had been truly concerned about public safety, all three complaints were available to be heard during the Sept. 2006 hearing.

The two other documents that Ms. O'Neal removed that are related to the imminent danger hoax are (CP 795 and 796). These two documents were entitled: Individual Case Summary reports and they revealed the age of the complaints, at the time the docket numbers were issued; (508 days old and 224 days old; Patient A and B respectively.) It also showed that there were no steps taken related to the imminent danger.

There was no indication, in Binder 1 where the information regarding the ex parte show cause file is contained, that Judge Kuntz informed panel members of the timelines, or what they represented and the importance of following those rules.

The question is: Did Ms. O'Neal remove those documents to prevent the show cause panel from seeing them and coming up with a different verdict? Did the panel review documents?

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WAC 246-14-030-What happens if a Time Period Expires?- A basic time period in handling complaints cannot be extended unless an extension is granted. (None was granted

WAC 246-14-040-Initial assessment of reports-All reports will be reviewed for imminent danger within two working days. If imminent danger is identified, the report will be immediately forwarded for processing.

WAC 246-14-070- Limited Extensions of Basic Time Period- If good cause exists, limited extension of the basic time periods may be granted by the executive director of the program for initial assessment, investigation, and case disposition stages.

WAC 246-14-120- Notice of Applicable Time Periods-Affected credential holders, applicants, and complainants will be notified of applicable time periods and the possibility of extensions as soon as possible consistent with effective case management.

Ritter v. Board of Commissioners, 96 Wn.2d 503, 637 P.2d 940 (1981);

Administrative law and Procedure-Deprivation of Right of Due Process- Agency's Rules. An Administrative body must follow its own rules and regulations when it conducts a proceeding which can deprive a person of a benefit or entitlement.

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IMMINENT DANGER - DEATH AND NEAR DEATH SITUATIONS THAT ACTUALLY REQUIRED AN EMERGENCY SUMMARY SUSPENSION BUT DID NOT GET ONE WHY? (See Lang v. Dept. of Health)

Dr.'s Lang and Paxton, oral surgeons - allowed their dental assistants (unlicensed) to routinely inject their patients with general anesthesia, often when they were not in the room. They would allow their dental assistants to inject general anesthesia during surgery. A patient almost died and had to be brought back with Narcan. An employee reported them. We have multiple occurrences of deliberate illegal activity involving dental assistants performing life threatening procedures; and on at least one occasion resulting in near death. In contrast to the allegation made by Patient A, we have a single occurrence of an alleged unidentified dental assistant who allegedly dropped an instrument on the floor and picked it up and used it in the patient's mouth. (AR 880) AG O'Neil asks Patient A if he had any doubt that the instrument was dropped on the floor and was picked up and used in his mouth and he replied: No.

1.12 (finding of fact/2007); the author writes: "Patient A thought that the dental assistant reused the dental tool after it was dropped on the floor. It is not clear whether or not the dental assistant used this dental tool after she dropped the tool on the floor. Several dental tools look similar; therefore it would be difficult for a patient

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to be certain that the same tool was used by the dental assistant, especially when considering where the dental tray was located."

FINDING OF FACT 1.13 - The author writes: "The assistant should have changed her gloves. The gloves may have been contaminated from the floor". However, this statement is not factual it is conjecture; and there was no testimony regarding gloves v. no gloves.

This is a perfect example that Judge Canner did not write these findings of fact. This person does not understand exactly what is supposed to go into the findings of fact. His statement about the gloves is not supported by any evidence, whatsoever. I believe that Dr. Grubb wrote these findings.

However, the doubt expressed in these findings are a cause for dismissal of charges related to imminent danger; and if the author did not believe one part of his complaint why would he readily believe another; especially when the charge that Patient A made stating that the dental assistant placed a permanent crown was dismissed?

The charge remains that I failed to properly supervise or train my dental assistants. However, Dr. Grubb testified to the following: He had "no info." in regards to training records to review training records of assistants." "What I have is the statement of Patient A with regards to what he observed that assistant doing." (hearsay upon hearsay testimony. (AR 1014). Dr. Grubb's testimony is worthless and should be stricken from the record because DQAC's use of him as their expert witness is in violation of CR 26(g).

DQAC, Ms.O'Neil deliberately did not provide Dr. Grubb with my training records because they are above and beyond what the ordinary dentist does. Training records can be located on pages (CP 515-530,). Automatic reversal of license revocation.

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OTHER CASES OF IMMINENT DANGER

"Parties also have a right to an opinion that is consistent with past agency decisions, or explains the reasons for departing from precedent. An opinion that is inexplicably contrary to other agency decisions reached on similar facts is a due process violation". See, Charles A. Field Delivery Service v. Roberts, 66 N.Y.2d 516 (1985)

Lang v. Dept. of Health resulted in a \$5000 fine and a cease and desist order. Neither Paxton or Lang showed any empathy or remorse for their patients; nor did they seem to understand that they had consistently placed all of their patients requiring general anesthesia in danger. Dr. Paxton was a former Board member.

Laney v. Dept of Health, oral surgeon, took weekend courses to perform plastic surgery, below the neck, in his office. Dr. Laney had numerous high dollar lawsuits. Dr. Laney removed a lot of fat from the neck; the patient lost consciousness; and instead of immediately calling 911; Dr. Laney attempted to revive him in his office. The patient died. Dr. Laney showed no remorse. Punishment consisted of continuing education courses and a \$4000 fine. Dr. Laney refused to take the continuing education courses prescribed. There were no charges of failure to cooperate with the Dental Commission. Dr. Laney was a former Commission member.

Dr. Robert Solomon - No charges filed against him, no emergency summary suspension. Dr. Solomon learned a controversial drug detox program by reading. He performed the detox program under general anesthesia. A patient died who had diabetes and sleep apnea and because of those conditions, specifically, the general anesthesia was contraindicated in patients who had sleep apnea. No charges were filed, no emergency summary suspension; obviously no concern for public safety.

Dr. Clem Pellet, Bellvue, had two patients die soon after being treated in his office. He was not found at fault in either case, and his case does not even appear of the credential's website (DOH)

Different treatment for some of the dentists listed is cronyism. Dr's Paxton and Laney were former board members.

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DQAC does not provide a definition for imminent danger in WAC 246-14; I believe it was left out so that DQAC can use this lack of definition to insert whatever situation they want. This lack of definition is ripe for DQAC abuse of discretion.

Since DQAC deviated from precedent in my case; an automatic reversal is in order with restoration of my dental license. "The reviewing court must grant relief if the Board's order violates the constitution, exceeds statutory authority, is the result of faulty procedure, involves error in interpreting or applying the law, is inconsistent with agency rules, or is arbitrary and capricious." Clausen, 90 Wn. App. at 870.

Ms. O'Neal also removed and concealed the 3 color photos related to Dr. Hackney's complaint (Patient A) (2007). These were 3 color photos that Dr. Hackney and DQAC said showed the huge defect that Dr. Hackney said I left in the crown. (CP 00024) is Dr. Hackney's chart note for Patient A; and, although there are multiple standard of care issues with this "evidence", namely there are no signatures of Dr. Hackney or anyone else (below the standard of care); there is a notation regarding the 3 color photos. However, if the 3 color photos showed the defect; Ms. O'Neal would not have removed and concealed them. In contrast, my two experts testified, after reviewing the x-ray, that they found the crown margin to be sealed. (AR 1091, 1130, 1169). This is the only clear cogent and convincing evidence provided.

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"Clear cogent and convincing evidence is required in various criminal proceedings or where the proceedings threaten the individual involved with a significant deprivation of liberty or with stigma. Riley Hill Gen. Contractors, Inc. v. Tandy Corp., 303 Or., 390, 737 P.2d, 595, 602 (1987)

The dshs matter was introduced in order to stigmatize me in the press

There existed a DQAC document that said that the DSHS matter was outside the jurisdiction of DQAC. Perhaps, that document is with the nine other documents that Ms. O'Neal did not return to the agency record. DQAC made the decision to go outside of the agency record.

Ms. O'Neal wrote in the footnotes (13) of the final order that the DSHS matter was added for dispositional

purposes." The agency can make the decision to go outside of the agency record, as is permissible to take official notice (in this case they are lies). However, the private party has a due process right to notice of this intention. Thus failure to provide a party with advance warning of an intention to go outside of the record, and a failure to provide an opportunity to rebut, is a due process violation. See, e.g., Cohen v. Ambach; 112 A.D.2d 497 (3rd Dept. 1984) (failure to inform pharmacist that agency would take official notice of standards for advertising in the public interest.")

DQAC'S MISCONDUCT LEADS TO DOUBLE JEOPARDY

Prehearing Order #6 - (See P.14) - Judge Kuntz granted summary judgment for two of the three charges related to Patient 3. Judge Kuntz failed to redact the dismissed charges as he said he would. Judge Kuntz allowed Mr. Carpenter to relitigate all charges, over at least seven objections from my attorney, Ms. McDonald. Final

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ly after my attorney's last objection, Commission panel member Peterson asks: "Is the panel still supposed to consider all three of these or are we supposed to consider only one? Kuntz: "You're only considering 1.83 (AR 1401) and that was whether or not Dr. Daniels referred Patient 3 to the oral surgeon. The FINAL ORDER CAME BACK 16 DAYS LATE AND I HAD BEEN FOUND GUILTY OF ALL THREE CHARGES.

DOUBLE JEOPARDY - is in harmony with res judicata. Res judicata prevents courts from re-litigating the same issues which have already been subject to final judgment. (Ashe v. Swenson, 397 U.S. 436 (1970)). Double Jeopardy is punitive not remedial. It is a procedural defense and forbids that a defendant be tried twice for the same crime or the same set of facts. Double Jeopardy applies to the States. (Benton v. Maryland) The 2006 hearing

DOUBLE JEOPARDY IS INVOKED BY PROSECUTOR O'NEAL'S WRITING OF THE 2007 FINAL ORDER

The author writes at the end of the conclusions: "The Respondent's pattern of substandard practice in various areas of dental care compounded by dishonest billing, failure to cooperate with a Commission investigation, and presentation of deceptive testimony clearly demonstrates that her continued practice of dentistry would place the public at an unreasonable risk of harm. "The Respondent's completion of the remedial education outlined in the 2006 Commission order would not sufficiently protect the public. The Respondent demonstrated a lack of remorse/empathy to her patients for the results of her substandard care or remorse for her dishonest behavior. Allowing the Respondent to return to the practice of dentistry would place the public at an unreasonable risk from substandard care, dishonest billing and obstruction of Commission investigations. The timely completion of investigation is critical in the the protection of the public.

The 2006 final order, findings of fact and conclusions of law were reproduced in their entirety, by DQAC, in the final order of the 2007 hearing. No explanation was provided regarding the including the final order of the 2006 hearing, word for word.

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Consequently, it was as though they were being retried; especially since the author states that the " Respondent's completion of the remedial education in the 2006 Commission order would not sufficiently protect the public." By the time, the emergency summary suspension was issued; I had completed all required continuing education. In fact, it was completed in March 2007; therefore, my license was unrestricted. I had paid those dues. DQAC's purpose for taking my license was to steal my business and to make sure that I did not provide competition. DQAC was involved with the erection of a community health center that they erected two blocks from my office; and in 2006, *DSBS placed liens on all the property I owned, including my dental office. DQAC' continuing actions served to stigmatize me and ultimately ended in the loss of my license, my business and my reputation. Reputational loss of liberty; a due process violation.

WHO WROTE THE FINAL ORDER? - the findings of fact are supposed to be factual. The author of the final order, by statute is supposed to be the Commission panel and the ALJ. The ALJ is supposed to be neutral. The author is deliberately being inflammatory and makes statements that are not supported by any evidence. Judge Canner was afraid to do her job because of Ms. O'Neal; but Judge Canner had no personal animosity towards me, that I could discern. Allen v. Louisiana State Board of Dentistry.

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543 So.2d 908 (La 1989) "The Respondent in a licensing proceeding successfully challenged his suspension on the basis of the prosecutor's involvement in the preparation of the final order. The Louisiana Supreme Court held that this method of issuing the final order, violated the State Administrative Procedures Act and the Respondent's due process right to a neutral adjudicator. As to the Due Process Clause, the court reasoned that the prosecutor's drafting of the order had deprived the respondent of the Constitutionally required neutral and detached adjudicator. Instead of findings entered by a neutral decision maker, the respondent received the findings of his adversary. We simply do not know what factual findings and credibility judgments the board actually made. The lack of findings by the board also deprived the respondent of meaningful judicial review." *Bruteyn v. State Dental Council and Examining Board*: 380 A.2d, 497, 502 (Pa. Cmwlth. 1977).

"A Due process claim based on prosecutorial misconduct requires (1) proof of misconduct and (2) prejudice to such an extent that the defendant is denied a fair trial. U.C.S.A. Constitutional

The clear cogent and convincing standard is retroactive - *Robinson v. City of Seattle*, 119 Wn.2d, 34, 77-78. 830 P.2d 318, cert. denied, 506 U.S. 1028 (1992)

In the 2006 hearing, in Judge Kuntz final order, Judge Kuntz write that preponderance of the evidence was the standard; but

he had applied the clear cogent and convincing standard, as well; but he failed to say where and to what.

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THE WHOLE RECORD

"Finding of fact must be supported by the evidence that is substantial when viewed in the light of the "whole record" before the court." Val v. Department of Licensing 77 Wn. App. 838, 894 P.2d 1352

"Substantial evidence presented will not pass the substantial evidence test unless the "whole record" is entered. General Truck Drivers v. Turcios

"We may grant relief from an agency's order if the order is not supported by the evidence that is substantial when viewed in the light of the "whole record" before the court. Edison v. Department of Licensing 48275-1-1, Oct. 15, 2001

The Standard of Care for diagnosing decay is x-rays (AR 1203). I made this statement while testifying under oath. The transcript has been altered, more than once. Altered, or unaltered, the fact remains that the standard of care for diagnosing decay is x-rays. DQAC erred when they allowed themselves to entertain a dentist making allegations using photographs. Initially, the photographs were not good and a request was made by DOH Inv. Nancy Maxsom, in her June 26, 2006 letter, for high gloss paper because it was more diagnostically readable; a request was also made for "new photographs". New Photographs would mean taking pictures again; how could that be

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acceptable? If Dr. Busaca had taken x-rays, the gross decay that he alleged would have been there, the end. Certainly, DQAC knows that.

Dr. Busaca was expected to testify at 3:00PM; Ag O'Neal wanted to have his "partial" record entered into evidence, (AR 863); but my attorney objected because she thought a partial record would be confusing and provide the wrong picture (AR 863). Judge Canner decided to admit Dr. Busaca's partial record if Ms O'Neal would call Dr. Busaca and confirm that he would be bringing his whole record. (AR 873) I have confirmation that Dr. Busaca is bringing his own file. Judge Canner has been successfully deceived: "As long as I have confirmation.(AR 873) Ms. Amamillo: "My client still objects. Since Ms. O'Neal already knew that Dr. Busaca would not be bringing his whole record she started her examination and completed it; and it wasn't until my attorney started cross that it was discovered that Dr. Busaca had not brought his whole record. When asked why he had not brought his whole record; he responded that he didn't think it was relevant. (AR 944,945) (Automatic dismissal of charge) RPC 3.4- "An attorney shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal documents having potential evidentiary value."

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DR. BUSACA EXPECTS TO MAKE ALLEGATIONS WITHOUT PROVIDING PROOF

Ms. Amamillo: Q. "I note that throughout your testimony you talk about decay and clear decay. However, when you had the opportunity to take a picture of the obvious decay, you didn't take advantage of that, and then you replaced the filling and then took a picture, and now you say obvious decay. Would it not have been more appropriate to describe the decay by taking an actual picture of it?" Busaca: "I thought if you ask these three dentists, I would say. It would seem to me that these three dentists, can judge for themselves exactly what the old fillings look like. I would say that the vast majority of dentists would assume that there was decay under there regardless of whether or not I took a shot of it or not. So, I sort of felt like it was irrelevant."

Ms. O'Neal makes inflammatory remarks in the foot notes of the 2007 final order. "Respondent deceptively claims that she had almost completed 8,9,10, and 11." Only facts are supposed to be written in the findings of fact and those facts are supposed to be supported by the evidence.

The evidence, from the testimony of Dr. Busaca, contradicts

Ms. O'Neal's inflammatory, reckless remarks. Dr. Busaca: (AR 965) "I don't know on 10 or 11, whether or not she replaced the fillings. I have no way of knowing that."

"Risk of error is high in a proceeding wishing to revoke a dental license. Risk increases where the agency acts as investigator, prosecutor and decision maker. Risk of erroneous deprivations is further aggravated when one recalls the ultimate standard of conduct is almost entirely subjective. Nguyen cf. Televik v. 3161 W. Rutherford St. 120 Wn.2d, 68, 838 P.2d 1325 (1992)

Ms. O'Neal is the prosecutor, and as such, she should not be writing the final order. In Allen v. Louisiana State Board of Dentistry - the Respondent in a licensing proceeding successfully challenged his suspension on the basis of the prosecutor's involvement in the preparation of the final order. The Court held that this method of issuing the final order, violated the state administrative procedure act and the respondent's due process right to a neutral adjudicator.

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THE CAMERA

Q. Did you take photographs of Patient B on more than one date? Busaca: Yes, (12/7 and May, June when I replaced all of those; all of those fillings.

Dating the photographs

Q. So, it doesn't relate to the date the picture was taken? Busaca: It's hard to say. Q. What's your recollection of the precise date the photos were taken. Probably, 12/20, I wrote 12/27. It's hard to say because the dental assistant may have written... because we do phtos on birthdays.

Dr. Busaca was allowed by Ms. O'Neal and DQAC to make allegations against another dentist using photographs; instead of the standard of care for dentistry, x-rays. (AR 1203). Photographs can be altered. It's clear that Dr. Busaca did not know what picture was taken when.

DOH INVESTIGATOR NANCY MAXSOM ASKS DR. BUSACA TO TAKE NEW PHOTOS?

On June 20, 2006, DOH Maxsom wrote a letter to Dr. Busaca asking him for his treatment records; x-rays and new photos.

Dr. Busaca's complaint was logged into DQAC April 7, 2007.

WHY WAS DQAC ASKING FOR NEW PHOTOS: ONE CAN CONCLUDE THAT THE PHOTOS THAT THEY HAD RECEIVED FROM DR. BUSACA WERE NOT GOOD AND/OR DID NOT SHOW WHAT DR. BUSACA SAID THEY SHOWED..

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Dr. Busaca's descriptions of his allegations do not represent clear cogent and convincing evidence and therefore do not support the charge. They are as follows:

"It looks like certain fillings were never done."

"Yes, they looked to appear to be older composites, Yes."

"What I'm looking at is; I'm looking at restorations that appear that appear to be old fillings."

"Because they appeared to have decay under them, several did have decay. Q. And, when they appeared to have decay under them could you tell whether or not they'd been entered into or not? Busaca: "There's no way to tell." (AR 948 and 949.

X-rays are the standard of care because if Dr. Busaca had taken a good x-ray, if decay had been present, that's all that would have been necessary, the end.

Dr. Busaca's chart had many standard of care issues that DQAC had to be aware of and they included:

1. no medical history in the patient's chart.
2. Dr. Busaca correctly identified that because of Patient B's acid reflux disease that Ibuprofen was contraindicated, yet he continued to dispense Ibuprofen to Patient B; so much so that she stopped taking it, when it was offered.
3. Dr. Busaca took very few x-rays. In fact, on Patient B's second visit to Dr Busaca's office, Dr. Busaca removed two of the fillings that I had done without taking an x-ray (an act that is below the standard of care) or a photo (12/20/).
4. Dr. Busaca prescribed prescription medications for Patient B's medical condition of acid reflux. Dr. Busaca is not a medical doctor.
5. During the taking of Patient B's medical history; Patient B informed me that she was allergic to latex. Dr. Busaca used rubber gloves on Patient B and did not find out that Patient B was allergic to latex until he received my medical history.

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PUNISHMENT

"In the context of imposing a penalty, courts often say they will set aside a penalty only if they find it "shocking". See, Pell v. Board of Education, 34 N.Y.2d 222 (1974)

The essence of the emergency suspension /revocation is the complaint about Patient A stating that the dental assistant placed a instrument in his mouth after she' picked it up off the floor. (AR 880) He said he had no doubt this occurred. Finding of Fact (2007) 1.2

"Patient A thought that the dental assistant reused a dental tool after it was dropped on the floor. It is not clear whether or not the dental assistant used the dental tool after she dropped it on the floor. Several tools look similar; therefore, it would be difficult for a patient to be certain that the same tool was used by the dental assistant; especially when considering where the dental tray was located." Finding of Fact 1.13 The gloves may have been contaminated from the floor. The assistant should have changed her gloves.

I don't believe the incident ever occurred. Finding of Fact 1.12 sounds as though the author of the final order doesn't think so either, not now.

Finding 1.13 is not factual. There were no facts in evidence regarding gloves v. no gloves. The author says her gloves may have been contaminated. This is conjecture and the findings of fact are supported by the evidence that is true. You can't make stuff up because it was DQAC's intention to revoke my license. This is shocking. Please reverse

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THURSTON COUNTY SUPERIOR COURT APPEAL

Initially, my appeal of the DQAC decision was before H Judge Strophy, who retired this year, and therefore, it is likely that he would have been less susceptible to political pressures.

I appeared before Judge Tabor twice to request a stay. On both occasions, my request was denied. Judge Tabor was aware that Ms. O'Neal had removed and concealed documents from the "certified agency record"; and knew that those documents showed that the so-called emergency summary suspension was a hoax. Yet, Judge Tabor found no error in the following: (1) the misconduct of Kuntz, Carpenter, or AG O'Neal, Judge Kuntz refusing to allow my attorney to cross examine a witness, the double jeopardy, the fact that the show cause hearing did not use the clear cogent and convincing standard, the fact that the 2006 final order was 16 days late, the 2007 final order was 6 days late; etc.

Judge Tabor was up for re-election, for the first time he was against a lawyer for his bench. There were other seats available to this lawyer; but for some reason he chose to oppose Tabor; according to the Olympian newspaper, this was very strange. If the judge's livelihood is being threatened by a lawyer running against him or her, the appearance of

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lack of impartiality must exist. Even if the judge and attorney are able to place their professional responsibilities above their personal biases, it is inevitable that the parties will perceive an appearance of bias or impropriety. This leaves both parties of the litigation with a legitimate basis for questioning the legal process." "A possible temptation for the judge is to forget the burden of proof and generate a biased decision making process." Tumey. 273 U.S. at 532.

I maintain that this is exactly what happened.

On June 8, 2009, the U.S. Supreme Court issued a split decision regarding the standards for a judge's recusal in cases where one of the parties has made substantial election donations to a judge's campaign. The question was whether a West Virginia Supreme Court Justice's failure to recuse himself from participation in his principal financial supporter's case violated the Due Process Clause of the 14th Amendment. The Court held that Due Process requires recusal under these circumstances and issued clarification on the standards for a judge's recusal for due process compliance.

Due to Judge Tabor's decision; whereupon, he found no errors whatsoever, I requested that Judge Tabor disqualify himself and strike his ruling, he declined. I did not receive a fair decision, because Judge Tabor clearly rendered a biased decision in order to keep his bench.

I affirm that a copy of the Response Brief was sent to Ms. Kim O' Neal via US mail on May 28, 2010.

James C. Keenan

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