

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE ALASKA BOARD OF DENTAL EXAMINERS**

In the Matter of)	
)	
GLENN E. LOCKWOOD, DDS)	OAH No. 14-0874-DEN
_____)	Agency No. 2014-001145

**CONSOLIDATED ORDER GRANTING PARTIAL SUMMARY ADJUDICATION
AND DECISION AFFIRMING BOARD’S DENIAL OF THE PETITION**

I. Introduction

The Division of Corporations, Business and Professional Licensing (“Division”) filed a motion for summary adjudication of all issues¹ raised in Dr. Lockwood’s appeal of a decision by the Alaska Board of Dental Examiners (“Board”) to deny his Petition for Reinstatement of dental license #925 (“Petition”). The Respondent, Dr. Lockwood, also moved for summary adjudication and requested that: (1) the Board’s denial of the Petition be rejected, and (2) that there be a finding that the Board should have applied AS 08.01.075(d) and the terms of the Consent Agreement when considering the Petition, rather than applying 12 AAC 28.925 or AS 08.36.110.

For the reasons set forth herein, the Division’s motion for summary adjudication concerning the denial of Dr. Lockwood’s Petition is granted in part. Because Dr. Lockwood had not yet fully complied with the terms of a consent agreement between Dr. Lockwood and the Division at the time he submitted his Petition, his Petition was premature and the Division’s motion is granted insofar as it pertains to the denial of the Petition on that ground. The Respondent’s motion for summary adjudication is denied. This result resolves the ultimate issue in this case, establishing that Dr. Lockwood may not be licensed at this time.

II. Facts

On September 16, 1996, Dr. Lockwood was issued Alaska Dental License #925, which expired on December 31, 2010.² Dr. Lockwood mailed his Biennial Dental License Renewal application for the period of January 1, 2011 through December 31, 2012 (“Renewal

¹ The two issues raised in Respondent’s appeal are: (1) whether the Board should have denied the Petition; and (2) whether the Board should have applied the standards of AS 08.01.075(d) to the Petition rather than 12 AAC 28.925 or AS 08.36.110.

² Stipulated Facts, at p. 1.

Application”) to the Division on December 31, 2010.³ The Division received the Renewal Application on January 6, 2011.⁴ The Division advised Dr. Lockwood that his Renewal Application was incomplete.⁵ Consequently, Dr. Lockwood’s dental license was not renewed and went into a lapsed state effective December 31, 2010.⁶

The Division filed an Accusation against Dr. Lockwood on September 4, 2013 to revoke, suspend or impose disciplinary action against him in connection with his Alaska dental license.⁷ This Accusation was referred to the Office of Administrative Hearings for a hearing in OAH Case No. 13-1280-DEN.⁸ Dr. Lockwood and the Division entered into a consent agreement⁹ in OAH Case No. 13-1280-DEN, which the Board adopted on December 6, 2013.¹⁰

A. Terms of the Consent Agreement

Under the terms of the Consent Agreement, Dr. Lockwood’s license was suspended retroactively for a three-year period beginning March 1, 2011.¹¹ The Consent Agreement also provided that:

At the end of the period of suspension, if Respondent **has complied with all provisions of the Consent Agreement**, he may petition the Board of Dental Examiners for reinstatement of his dental license. At that time, Respondent **must prove compliance with the terms of the consent agreement**¹²

One of the terms of the Consent Agreement stated that:

Respondent agrees to **attend eight (8) hours of appropriate training on Ethics as approved by the Board or its agent**. This shall be completed within twelve (12) months from the effective date of this Agreement.¹³

The Consent Agreement further provided that:

It is the intent of the parties to this Agreement to provide for the compromise and **settlement** of all issues **that have or could be raised** in the Accusation now pending against Respondent to

³ Stipulated Facts, at p. 1.
⁴ Stipulated Facts, at p. 1.
⁵ Stipulated Facts, at p. 1.
⁶ Stipulated Facts, at p. 1.
⁷ AGO 000164 – AGO 000171.
⁸ Stipulated Facts, at p. 2.
⁹ AGO 000098 – AGO 000103.
¹⁰ Stipulated Facts, at p. 3.
¹¹ Stipulated Facts, at p. 3.
¹² AGO 000100 (emphasis added).
¹³ AGO 000102 (emphasis added).

revoke, suspend, or impose disciplinary sanctions against Respondent's license¹⁴

B. Dr. Lockwood's Petition

Dr. Lockwood filed his Petition on March 3, 2014.¹⁵ In his Petition, Dr. Lockwood admitted that he had not yet completed the eight (8) hours of ethics training mandated by the Consent Agreement.¹⁶

The Board considered Dr. Lockwood's Petition during its regularly scheduled meeting on May 16, 2014.¹⁷ On May 21, 2014, the board issued its written notification denying Dr. Lockwood's Petition.¹⁸ When the Board denied Dr. Lockwood's Petition, it cited two reasons for its decision. First, the Board explained that Dr. Lockwood had failed to meet the requirements of the Consent Agreement because he had not completed eight hours of ethics training.¹⁹ Secondly, the Board noted that 12 AAC 28.925(b)(4) – a regulation pertaining to dental licenses that had lapsed for at least one year but less than five years – required Dr. Lockwood to meet the qualifications for a license under AS 08.36.²⁰

The qualifications for a license under AS 08.36 are set forth in AS 08.336.220, which requires an applicant for a license to provide certification that:

- (1) the applicant has not had a license to practice dentistry revoked, suspended, or voluntarily surrendered in Alaska or in another state;²¹
- (2) the applicant is not the subject of an adverse decision based upon a complaint, investigation review procedure or other disciplinary proceeding within the five years immediately preceding application, or of an unresolved complaint, investigation, review procedure, or other disciplinary proceeding, undertaken by a state . . . dental licensing jurisdiction;²²

¹⁴ AGO 000099.

¹⁵ Stipulated Facts, at p. 3.

¹⁶ AGO 000016.

¹⁷ Stipulated Facts, at p. 3.

¹⁸ Stipulated Facts, at p. 4.

¹⁹ Stipulated Facts, Exh. B, at p. 1; *see also* AGO 000009.

²⁰ Stipulated Facts, Exh. B, at p. 1; *see also* AGO 000009.

²¹ AS 08.36.110(a)(1)(C).

²² AS 08.36.110(a)(1)(D).

- (3) the applicant is not the subject of an adverse report from the National Practitioner Data Bank . . . that relates to criminal or fraudulent activity.²³

The Board in its written notification explained that Dr. Lockwood had not met the requirements of AS 08.36.110(a)(1)(C), AS 08.36.110(a)(1)(D), and 08.36.110(a)(1)(F).²⁴ He failed to meet those requirements, the Board said, because his dental license in California was revoked in 2011²⁵ and he had been convicted of four counts of Felony Tax Evasion.²⁶

On May 30, 2014, Dr. Lockwood through his counsel filed his appeal of the Board's denial of his Petition.

III. Discussion

Summary adjudication in an administrative proceeding is the equivalent of summary judgment in a court proceeding.²⁷ It is a means of resolving disputes without a hearing where the central underlying facts themselves are not in contention, but only the legal implications of those facts. Under these circumstances, an evidentiary hearing is not required.²⁸

In evaluating a motion for summary adjudication, all facts are to be viewed and inferences drawn, in the light most favorable to the party against whom judgment may be granted.²⁹

A. Dr. Lockwood Has Not Fully Complied with the Terms of the Consent Agreement

The Consent Agreement requires Dr. Lockwood to prove compliance with the Consent Agreement *at the time he petitions the Board for reinstatement*.³⁰ In other words, compliance with *all* the terms of the Consent Agreement is a condition precedent for Dr. Lockwood to

²³ AS 08.36.110(a)(1)(F).

²⁴ Stipulated Facts, Exh. B.

²⁵ The revocation of his California dental license in 2011 meant that Dr. Lockwood does not satisfy either AS 08.36.110(a)(1)(C) – requiring that he did not have a license revoked or suspended in Alaska or another state – or AS 08.36.110(a)(1)(D), which required that he not be the subject of an adverse decision based upon a complaint, investigation, or disciplinary proceeding within the five years immediately preceding an application for a dental license. *See* Stipulated Facts, Exh. B.

²⁶ AS 08.36.110(a)(1)(F) requires that an applicant for a dental license not be the subject of an adverse report from the National Practitioner Data Bank or the American Association of Dental Examiners Clearinghouse for Board Actions that relates to criminal or fraudulent activity, or dental malpractice. Dr. Lockwood's felony tax evasion conviction thus means that he cannot not satisfy the requirements of AS 08.36.110(a)(1)(F).

²⁷ *See, e.g., Schikora v. State, Dept. of Revenue*, 7 P.3d 938, 940-41, 946 (Alaska 2000).

²⁸ *Smith v. State of Alaska*, 790 P. 2d 1352, 1353 (Alaska 1990).

²⁹ *Samaniego v. City of Kodiak*, 2 P.3d 78, 82-83 (Alaska 2000).

³⁰ AGO 000100.

petition the Board after his period of suspension has ended.³¹ One such term in the Consent Agreement is the completion of eight hours of ethics training *approved by the Board*.³²

There is nothing in the record suggesting that Dr. Lockwood sought or obtained approval from the Board to attend any specific ethics courses.³³ It is also undisputed that Dr. Lockwood had not completed the ethics training mandated by the Consent Agreement³⁴ prior to filing the Petition.³⁵ While Dr. Lockwood submitted documents showing that he had attended a number of continuing education courses of a substantive nature³⁶ from 2011 through 2013, there simply is nothing in the record demonstrating that he completed any ethics courses.³⁷ Moreover, there is no evidence in the record showing that Dr. Lockwood has completed any continuing education courses – ethics training or otherwise – since the date the Board approved the Consent Agreement³⁸ in December of 2013.

Because Dr. Lockwood had not yet completed the mandated ethics training prior to filing the Petition,³⁹ summary adjudication in favor of the Division with regard to the denial of the Petition on this particular ground is granted. If Dr. Lockwood files a new Petition for Reinstatement, he will need to prove that he completed the mandated ethics training – *i.e.* ethics training approved by the Board – by December 6, 2014 in order to comply with all the terms of the Consent Agreement.

B. The Applicability of 12 AAC 28.925 to the Reinstatement of Dental License #925

The Division also justified the Board’s initial denial of Respondent’s Petition on the grounds that 12 AAC 28.925 and AS 08.36.110 were applicable to the Petition because this was a “lapsed” license. Respondent argued that Dr. Lockwood’s license should not be deemed a “lapsed” license under 12 AAC 28.925, and that the Board should have applied AS 0.801.075(d) and the terms of the Consent Agreement when considering the Petition instead.

³¹ AGO 000100.

³² Stipulated Facts, Exh. A, at p. 5.

³³ See AGO 000001 *et seq.*

³⁴ AGO 000016

³⁵ AGO 000021.

³⁶ See AGO 000029 – AGO 000084

³⁷ See AGO 000029 – AGO 000084.

³⁸ The last continuing education course that Dr. Lockwood completed was a one-credit course he took on July 7, 2013 entitled “Understanding the Clinical Applications of a Snap-On Appliance 185”. See AGO 000048; see also AGO 000009.

³⁹ AGO 000024.

These arguments need not be addressed here.⁴⁰ Dr. Lockwood's first hurdle to clear in connection with his Petition was compliance with all the terms of the Consent Agreement. Since there was non-compliance with one of the terms of the Consent Agreement, Dr. Lockwood never cleared that first hurdle. Consequently, the issue of whether Dr. Lockwood satisfied the other requirements for reinstatement of his license and what those requirements should be is simply not relevant at this time, because Dr. Lockwood did not get past that first hurdle in his quest for reinstatement.

IV. Conclusion

For the reasons set forth herein, the Respondent's Motion for Summary Adjudication is DENIED while the Division's Motion for Summary Adjudication is GRANTED in part. The Board's decision on May 16, 2014 to deny Respondent's Petition is affirmed.

DATED this 22nd day of September, 2014.

Signed

Kathleen A. Frederick
Administrative Law Judge

Adoption

The Alaska Board of Dental Examiners adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of December, 2014.

By: Signed

Signature
Thomas J. Wells

Name
President

Title

[This document has been modified to conform to the technical standards for publication.]

⁴⁰ Even if this issue were ripe, it may be incapable of being resolved through summary adjudication. The Consent Agreement refers to "the intent of the parties . . . to provide for the compromise and settlement of all issues that have or could be raised in the Accusation . . . against Respondent." See AGO 000099. Accordingly, there are underlying factual issues regarding whether the appropriate standard for reinstatement could have been raised in the Accusation and the parties' intent in entering into the Consent Agreement.