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THIS OPINION IS NOT FINAL UNTIL  
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*In the Missouri Court of Appeals*

WESTERN DISTRICT

BUFORD K. CASEBOLT, D.D.S.,            )  
  Appellant,                                    )  
  ) WD72213  
v.    )  
  ) ORDER FILED:  
MISSOURI DENTAL BOARD,            )                                    November 23, 2010  
  Respondent.                                    )

**Appeal from the Circuit Court of Cole County, Missouri**  
*The Honorable Patricia S. Joyce, Judge*

*Division One: James M. Smart, Jr., P.J., Mark Pfeiffer, and Cynthia L. Martin, JJ.*

**ORDER**

*Per curiam:*

Buford Casebolt appeals the judgment of the Missouri Dental Board revoking his dental license for at least one year. He makes numerous arguments on appeal, including claims pertaining to sufficiency of evidence, due process, equal protection, and sufficiency of findings. The judgment is affirmed. Rule 84.16(b).



*In the Missouri Court of Appeals*

WESTERN DISTRICT

BUFORD K. CASEBOLT, D.D.S.,            )  
  Appellant,                                    )  
  ) WD72213  
v.    )  
  ) MEMORANDUM  
MISSOURI DENTAL BOARD,                ) FILED: November 23, 2010  
  Respondent.                                    )

**MEMORANDUM SUPPLEMENTING ORDER  
AFFIRMING JUDGMENT PURSUANT TO RULE 84.16(b)**

This memorandum is for the information of the parties and sets forth the reasons for the order affirming the judgment.

**THIS STATEMENT DOES NOT CONSTITUTE A FORMAL OPINION OF THIS COURT. IT IS NOT UNIFORMLY AVAILABLE. IT SHALL NOT BE REPORTED, CITED OR OTHERWISE USED IN UNRELATED CASES BEFORE THIS COURT OR ANY OTHER COURT. IN THE EVENT OF THE FILING OF A MOTION TO REHEAR OR TRANSFER TO THE SUPREME COURT, A COPY OF THIS MEMORANDUM SHALL BE ATTACHED TO ANY SUCH MOTION.**

Buford Casebolt appeals the judgment of the Missouri Dental Board revoking his dental license for at least one year. He makes numerous arguments on appeal, including claims pertaining to sufficiency of evidence, due process, equal protection, and sufficiency of findings. The judgment is affirmed.

## Facts

The Missouri Dental Board ("Board") issued Buford Casebolt a license to practice as a dentist in 1982. In May 1998, the Administrative Hearing Commission found cause to discipline Dr. Casebolt's dental license for violations of drug laws. In December 1998, the Board, after hearing, suspended Casebolt's license for fourteen days followed by five years probation with certain terms and conditions, including abstention from the possession and consumption of controlled substances unless pursuant to a valid prescription.

In 2002, Casebolt tested positive for marijuana. His license was suspended for thirty days followed by five years of probation. In 2003, Casebolt again tested positive for marijuana. On November 25, 2003, his license was suspended for thirty days followed by five years of probation with certain terms and conditions, including participation in the Board's "Well-Being Program" (which required that Casebolt participate in periodic drug testing) and the following:

Respondent shall comply with ... all applicable federal and state drug laws ... and all federal and state criminal laws.

Respondent shall abstain *completely* from the use or consumption of alcohol.

(Emphasis added.)

On August 28, 2007, pursuant to the testing performed under the "Well-Being Program," Casebolt tested positive for marijuana and alcohol. On September 5, 2007, Casebolt again tested positive for marijuana and alcohol.

The Board filed a probation violation complaint. The Board held a hearing for the purpose of determining whether Casebolt violated the terms of his probation with the Board and, if so, what additional discipline, if any, should be imposed on his license to practice as a dentist. Casebolt appeared personally, with legal counsel.

Thereafter, the Board executed its findings of fact, conclusions of law, and disciplinary order, which states: "the dental license of Buford Casebolt, D.D.S. is REVOKED and Dr. Casebolt shall not apply for licensure for a period of not less than one year following the effective date of this Order of revocation." The order found:

20. Prior to August 28, 2007, at a date certain known only to Dr. Casebolt, Dr. Casebolt consumed marijuana and alcohol in violation of the Board's November 25, 2003 Order.

21. Prior to September 5, 2007, at a date certain known only to Dr. Casebolt, Dr. Casebolt consumed marijuana and alcohol in violation of the Board's November 25, 2003 Order.

At the hearing, the Board's evidence consisted of exhibit 1, an affidavit of Brian Barnett, Executive Director for the Board, which attached certain records. These records included reports from the United States Drug Testing Laboratories bearing test dates of August 30, 2007, and September 11, 2007, and indicating positive results for cannabinoids,<sup>1</sup> EtG, and EtS.<sup>2</sup> Exhibit 1 was admitted over Casebolt's objection.

Casebolt filed a petition for judicial review against the Board, pursuant to section 536.100. The circuit court affirmed the Board's order. Casebolt appeals to this court.

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<sup>1</sup> Cannabinoids indicate consumption of marijuana.

<sup>2</sup> EtG and EtS indicate consumption of alcohol.

## Standard of Review

"Article V, section 18 of the Missouri Constitution articulates the standard of judicial review of administrative actions." *Albanna v. State Bd. of Registration for Healing Arts*, 293 S.W.3d 423, 428 (Mo. banc 2009). "On appeal, this Court is charged with determining whether the agency actions 'are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record.'" *Id.* (quoting MO. CONST. art. V, sec. 18). "On appeal from the circuit court's review of an agency decision, this Court reviews the action of the agency, not the action of the circuit court." *Id.*

"Some confusion has developed regarding the appropriate level of deference to the decision of the agency." *Id.* "In *West v. Posten Const. Co.*, 804 S.W.2d 743 (Mo. banc 1991), this Court held that a reviewing court should consider the evidence underlying an agency decision in the light most favorable to the agency's findings." *Id.* "This Court expressly overruled that holding in *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. banc 2003)." *Id.* "*Hampton* held that, on appeal, a court reviewing the actions of an administrative agency should make a 'single determination whether, considering the whole record, there is sufficient competent and substantial evidence to support the award.'" *Id.* (quoting *Hampton*, 121 S.W.3d at 223). "This holding abolished the 'light most favorable review' standard articulated in previous cases." *Id.*

"The correct standard of review for administrative decisions governed by article V, section 18 of the Missouri Constitution ... is whether, considering the whole record, there is sufficient competent and substantial evidence to support the [agency's decision]." *Id.*

"This standard would not be met in the rare case when the [agency's decision] is contrary to the overwhelming weight of the evidence." *Id.* "When the agency's decision involves a question of law, the court reviews the question *de novo.*" *Id.*

### **Point I**

In his first point on appeal, Casebolt says the Board erred by making findings and conclusions that he consumed alcohol and marijuana in violation of the November 2003 order. He also says the Board erred in determining that it is entitled to impose additional discipline on his license. Casebolt argues that the order is unsupported by competent and substantial evidence upon the whole record; was made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and involved an abuse of discretion. He claims that the evidence in the record seriously calls into question the validity of the Board's test results; that the Board presented no witnesses with any direct or first-hand knowledge to testify to the details of the tests; and that he offered test results that were negative for the presence of alcohol and marijuana, which were made part of the record without objection.

The November 2003 order required Casebolt to submit to random drug and alcohol testing. Two of these tests were positive for the use of alcohol and marijuana. Casebolt has a history of dependency on these two drugs. Section 324.041 states:

For the purpose of determining whether cause for discipline ... exists ..., any licensee ... that tests positive for a controlled substance ... is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state, or the federal government unless he or she has a valid prescription for the controlled substance. The burden of proof that the controlled substance

was not unlawfully possessed in violation of the drug laws or rules and regulations of this state, any other state, or the federal government is upon the licensee....

The Board presented two test reports from U.S. Drug Testing Laboratories (U.S. D.T.L.) indicating that Casebolt tested positive for cannabinoids, EtG, and EtS. Casebolt claims his evidence undermined any conclusions to be drawn from the U.S. D.T.L. tests. Casebolt offered documents published by federal agencies calling into question the efficacy of the type of testing performed. He says the Health and Human Services (HHS) Guidelines he introduced into evidence and the Proposed Revisions to Guidelines for Workplace Testing contain "numerous details pertaining to drug testing." He points out that Brian Barnett, the Board's executive director, had no familiarity with the HHS materials and guidelines. Casebolt also notes that an advisory issued by HHS in 2006 recommended not relying on the EtG test for evidence of whether an individual has consumed alcohol, saying it is inappropriate and scientifically unsupportable at this time. Casebolt further argues that no witness testified who had direct or firsthand knowledge of the tests that yielded the positive results.

Casebolt did not offer dispositive evidence that the testing performed on him was flawed. Significantly, his arguments about inadequate testing applied only to the detection of alcohol. They did not apply to the detection of marijuana. Casebolt's counsel asserted that the type of testing used could show a false positive if he used certain mouthwashes or hand sanitizers. Yet, Casebolt never testified that he used these mouthwashes or hand sanitizers.

Casebolt relies heavily on his evidence, including the fact that he submitted to a hair follicle test on October 8, 2007 (a month and more after the drug screens showed positives). The hair follicle test was negative for cannabinoids and alcohol. The evidence indicated that hair follicle tests can show substance abuse occurring in the three months prior to the test. No testimony, however, was presented to clarify that this necessarily negated the accuracy of the August and September tests.

Casebolt cites the testimony of Dr. Young, a psychologist whose report indicates that there was little in the testing data to suggest that Casebolt is impaired. Dr. Young's report also states that Casebolt "does not appear to have a problem with alcohol that would impair his ability to care for patients in his dentistry practice."

Casebolt asserts that his testimony was that he had *not* consumed the forbidden substances. He argues that the Board's discipline is unsupported because he testified that he had not consumed alcohol or marijuana within twenty-four hours of practicing, that he has not practiced dentistry while under the influence of alcohol or marijuana, and that he has never had a malpractice claim filed against him. This argument is without merit, however, because Casebolt's probation required him to completely abstain from the use of alcohol and controlled substances for which he had no prescription. The terms and conditions of his probation did not permit him to use alcohol or marijuana at all. Further, the terms and conditions of probation did not make provision for malpractice suits being a standard by which compliance with probation would be measured.

Casebolt gave the following testimony:

Q. Since that time, Doctor, have you consumed marijuana?

A. No.

Q. Have you possessed marijuana?

A. No.

Q. After that time period again, while you've been practicing dentistry, have you been under the influence of alcohol or marijuana?

A. No, not during the practice of dentistry.

Q. Have -- have you consumed either while practicing?

A. No.

Q. Have you consumed alcohol within 24 hours of practicing?

A. No.

Q. *Now, you've met with this Board before and -- you admitted to this Board that you had consumed alcohol since this order was entered, correct?*

A. *The order of 2003?*

Q. *Of 2003, correct?*

A. *Yes.*

Q. But it had not been within 24 hours of any time that you had practiced; is that correct?

A. That's correct.

(Emphasis added.) Casebolt says that this was a reference to the fact that he earlier admitted to the Board that he had consumed alcohol while on probation. The Board says

this testimony (the admission of the consumption of alcohol) should be enough in itself to warrant the discipline.

After receiving "evidence relevant to said issue," the Board "may order any disciplinary measure it deems appropriate and which is authorized by law." Section 621.110. This court "may not substitute our judgment on the evidence for that of the agency, and we must defer to the agency's determinations on the weight of the evidence and the credibility of witnesses." *Moses v. Carnahan*, 186 S.W.3d 889, 907 (Mo. App. 2006). We defer to the Board's "specialized knowledge" of the pertinent industry, because the Board "is better equipped to determine the gravity of the infractions and the appropriate sanction." *KV Pharm. Co. v. Mo. State Bd. of Pharmacy*, 43 S.W.3d 306, 310 (Mo. banc 2001).

It appears Casebolt wishes to have this court reweigh the evidence. An agency decision is unsupported by competent and substantial evidence on the whole record only in the rare case when the decision is contrary to the overwhelming weight of the evidence. *Hampton*, 121 S.W.3d at 223. The Board has discretion to weigh the evidence and determine the credibility of witnesses. The Board found:

Although Dr. Casebolt offered some evidence that it is possible to generate detectable concentrations of EtG and EtS by using mouthwash that contains ethanol, Dr. Casebolt offered no testimony or evidence that he actually uses mouthwash that contains ethanol.

In Respondent's Exhibit 1 and direct testimony under oath, Dr. Casebolt admits he consumed alcohol in violation of the November 25, 2003 order.

While at [a mandatory evaluation triggered by the positive drug screens], Dr. Casebolt reported he'd consumed alcohol.

These findings are supported by sufficient evidence and allow the Board to impose additional discipline as Casebolt violated the terms and conditions of his probation.

The point is denied.

### **Point II**

In his second point on appeal, Casebolt says the Board erred in admitting into evidence and relying upon Petitioner's exhibit 1 (the affidavit of Brian Barnett and attached documents, including the two test results indicating Casebolt had consumed illegal substances). He claims the Board violated due process; exceeded its statutory authority or jurisdiction; made a decision unauthorized by law; made a decision upon unlawful procedure and without a fair trial; acted arbitrarily, capriciously and unreasonably; and abused its discretion. Casebolt claims the exhibit constitutes the rendering of an expert opinion without an expert being available for examination, lays an insufficient foundation as to how the alleged business records were prepared in the ordinary course of business and does not comply with section 490.462, constitutes and contains hearsay, and is not the best evidence. He says the affiant of the exhibit was present at the hearing, was able to testify in the event he was determined to be a competent witness to do so, and was not a competent witness to testify. Casebolt argues he was deprived of the opportunity to cross-examine the person who prepared the reports contained in the exhibit.

"Due process contemplates the opportunity to be heard at a meaningful time and in a meaningful manner." *Moore v. Bd. of Educ. of Fulton Pub. Sch. No. 58*, 836 S.W.2d 943, 947 (Mo. banc 1992). Section 536.070 provides that in any contested case, evidence may be submitted by business records affidavit:

(10) Any writing or record ... made as a memorandum of an act ... or event, shall be admissible as evidence [thereof] if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum.... All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect the weight of the evidence, but such showing shall not affect its admissibility.

....

(12) Any party or agency desiring to introduce an affidavit ... may serve on all other parties ... copies of such affidavit.... *Not later than seven days after such service ... any other party [or the agency] may serve ... objection to the use of the affidavit or some designated portion thereof on the ground that it is in the form of an affidavit.... If such objection is so served, the affidavit or the part thereof to which objection was made may not be used except in ways that would have been permissible in the absence of this subdivision.... Failure to serve an objection ... shall constitute a waiver of all objections to the introduction of such affidavit, or of the parts thereof with respect to which no such objection was so served, on the ground that it is in the form of an affidavit, or that it constitutes hearsay evidence, or that it is not, or contains matter which are not, the best evidence, but any and all other objections may be made at the hearing. ....*

(Emphasis added.) A business records affidavit allows admission into evidence of the records the Board maintained in the ordinary course of business. "The fundamental purpose of the business record exception to the hearsay rule is that it allows the introduction into evidence of records qualified as business records without the personal appearance of those who prepared the records." *State ex rel. Fischer v. Sanders*, 80

S.W.3d 1, 4 (Mo. App. 2002). "As such, personal knowledge on the part of the custodian as to when or how the record came into existence is simply not a prerequisite to the admission of the custodian's testimony regarding the business record." *Id.* "To require more would, as a practical matter, seem to enforce the attendance and testimony of the various persons who co-operated in making the record, which is the very thing the [Uniform Business Records as Evidence] Act seeks to obviate." *Id.* By requiring the giving of advance notice to the opposing side, the statute provides due process.

Brian Barnett is the custodian of records for the Board. His affidavit provides, in pertinent part, as follows:

12. On August 28, 2007 and September 5, 2007, Dr. Casebolt submitted to random drug screens pursuant to the November 23, 2003 Disciplinary Order.

13. Attached to this Affidavit are true and accurate copies of the following records:

A. Amended Findings of Fact, Conclusions of Law and Disciplinary Order [setting forth the terms of the probation, including the Well-Being Program and the drug testing component].

B. United States Drug Testing Laboratories Final Report bearing a test date of August 30, 2007 wherein Dr. Casebolt tested positive for ... the active ingredient in marijuana.

C. United States Drug Testing Laboratories Final Report bearing a test date of September 11, 2007 wherein Dr. Casebolt tested positive for ... the active ingredient in marijuana.

Barnett's affidavit was executed on January 3, 2008. The affidavit was mailed to Casebolt on January 7, 2008.<sup>3</sup> Casebolt filed his objections to the affidavit on January 17, 2008, the tenth day after the mailing to Casebolt. Essentially, the objections were that "it is in the form of an affidavit," that it contains "hearsay evidence," and that it contains matters that are not the "best evidence." Those objections were taken directly from the language of 536.070 and would ordinarily be enough, if the objections were *timely filed*, to keep the Board from using the affidavit. Subsection (12) provides:

The manner of service of such affidavit and of such objection shall be by delivering or mailing copies thereof to the attorneys of record of the parties being served, if any, otherwise, to such parties, *and service shall be deemed complete upon mailing....*

Section 536.070(12) (emphasis added). Casebolt's objection came more than seven days after service (by mailing) and, incidentally, only two days before the hearing. It was not timely. Casebolt thereby waived his objections.

Casebolt points out that Barnett had no personal knowledge of the facts underlying the drug tests attached to the affidavits. That point, of course, is immaterial. Lack of personal knowledge of the data is immaterial to the ability of records custodians to testify as to the maintenance of the records that were produced by someone else in the regular course of business; when the statute is complied with, there is no right of cross-examination. *See Thebeau v. Dir. of Revenue*, 945 S.W.2d 674, 675-76 (Mo. App. 1997). Barnett cannot personally verify the accuracy of the tests any more than a

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<sup>3</sup> The Board maintained the mailing occurred on January 7, 2008. Casebolt did not dispute that the mailing occurred then.

secretary or file clerk at the U.S. Drug Testing Laboratory could do so. We would defeat the whole concept of business records as evidence if we were to require otherwise.

Barnett was the custodian of the records that are part of the "Well-Being Program." The records attached to Barnett's affidavit were records made in the regular course of business by analysts at the testing lab and were forwarded to the Board as part of the Board's regular business and relationship with the testing lab and pursuant to the "Well-Being Program," as a part of which Dr. Casebolt contracted with the lab to conduct the tests and to send copies to the lab and to him.

Casebolt complains that he did not have the opportunity to cross-examine the persons who actually conducted the tests. To do that, he would have to depose them or subpoena them like any other witness. No one deprived him of that right. He is simply deprived of the right to *have the Board* secure the attendance of the chemical analysts so that he could cross-examine them.

Casebolt himself had been required by the "Well-Being Program" to enter into a contract with the testing lab to provide biological sample testing to fulfill the requirements of his probation. The program required that the test results be furnished to the Board. Barnett did nothing other than receive the test results and maintain them in the regular course of business. And his affidavit asserted nothing other than the fact that he maintained the copies of the test results in the regular course of business. Casebolt was himself the customer of the laboratory, but the program required that Casebolt cause copies of the test results to be routinely provided to the Board. The reason the tests were

performed and the results were generated is because of the November 2003 order. The purpose of the testing is to ensure enforcement and compliance with the Board's order.

Interestingly, the Board offered Barnett's affidavit pursuant to section 536.070. Casebolt objected (in an untimely fashion) to Barnett's affidavit pursuant to section 536.070. Yet, Casebolt's point on appeal argues exclusively about different statutes: sections 490.680 and 490.692. Section 536.070 pertains to records in administrative cases (which this is), while sections 490.680 and 490.692 constitute the general statutes as to business records as evidence. Unlike section 490.692, section 536.070 specifically gives a party the right to object to the use of the affidavit. It is more favorable than 490.692 to the party against whom the records will be offered, because section 490.692.2 requires only that the party against whom the records are to be admitted have seven days' notice that the records are to be used. It does not allow that party a chance to veto the ability of the proponent of the records to admit the records by affidavit. In any event, because Casebolt's objection under the general statute was not made to the trial court, he has not preserved this argument.

We understand the additional concern that Barnett was not the *laboratory* custodian, but was instead the *Board's* custodian. We think that distinction is irrelevant because Barnett had the same duty, pursuant to the Well-being Program, to maintain custody pursuant to the regular course of business as a records custodian at the lab. In this regard, we will consider the case of *C&W Asset Acquisition, LLC v. Somogyi*, 136 S.W.3d 134 (Mo. App. 2004), in which the court expressed a concern as to a party's records custodian serving as custodian of another entity's records.

In *C&W Asset*, the defendant-respondent Somogyi entered into a credit card agreement with MBNA Bank of America ("MBNA"). *Id.* at 136. Appellant C&W became the owner and holder of the credit agreement through a purported assignment from MBNA. *Id.* The Cadle Company ("Cadle"), purporting to act as "servicer" for C&W, made written demand on Somogyi for the principal balance in addition to accrued interest. *Id.* When Somogyi failed to pay the amount requested, C&W filed suit on the credit agreement. *Id.*

At trial, the only evidence offered by C&W was an exhibit which it sought to introduce under the general business records exception to the hearsay rule (section 490.692). *Id.* The exhibit contained twenty-one pages of documents with an affidavit prepared by an employee of Cadle purporting to identify the other documents as maintained in the course of business. *Id.* Those included a copy of the letter Somogyi received from Cadle on October 22, 2001; a copy of Somogyi's signed credit agreement with MBNA; a page containing Somogyi's loan and contact information; the terms and conditions of the credit card agreement; two pages of a "Loan Sale Agreement," effective July 18, 2000, between MBNA and C&W; a redacted page containing information about Somogyi's account; and a statement of Somogyi's account. *Id.* at n.2. The trial court excluded the exhibit, finding that it was not adequate to provide a basis for the admission of the business records contained in it "since the source of information is not such as to justify the admission of the record pursuant to RSMo [Section] 490.680." *Id.* at 137.

The reviewing court discussed section 490.680, "which sets forth the foundational requirements for a document to be admitted under the business record exception to the

hearsay rule[.]" *Id.* at 138. It noted that "[t]he trial court has broad discretion in determining whether a party properly complied with this provision." *Id.* It stated that "'the bottom line' regarding the admissibility of the business records is the discretionary determination by the trial court of their trustworthiness." *Id.*

The court agreed that the affidavit "substantially complies with the form and content requirements of Section 490.692." *Id.* However, it disagreed with C&W's argument "that statutory compliance with Section 490.692 is all that is required to have the documents included as business records." *Id.* It stated that the "ultimate determination is whether in the opinion of the trial court the sources of the documents justify [their] admission." *Id.* at 139.

The court concluded that it was not an abuse of discretion to reject the admission of these records pursuant to Section 490.680. *Id.* at 141. In distinguishing other cases, the court noted that the affiant in *C&W* could not credibly attest to the identity and the mode of preparation of the documents at issue "given that they were created by MBNA, a company that [the affiant] neither works for, nor mentions in her affidavit." *Id.*

Noting "that personal knowledge as to the mode of preparation of the documents is not necessarily required for their admission," the court found that there was "simply no evidence as to where these records came from or any indication as to who authored them." *Id.* at 139-40. The court was concerned that "[a]llowing a litigant to be the custodian of another entity's records seems to run contrary to the spirit of Section 490.692." *Id.* at 140. The court also found that the documents at issue "do not contain

the language or the information necessary to prove that [Somogyi's] account was validly assigned to [C&W]." *Id.* at 140-41.

In that case, the trial court excluded the documents where it was not even clear that C&W had the right to sue under an assignment. In contrast, here there was no reason for there to be any concern as to the records in question. Casebolt knew that the test reports had been generated by the very laboratory with whom he had contracted for testing and that the records of the test were properly maintained by Barnett, the custodian of the Board's records, as a routine part of the Board's Well-Being Program. In Casebolt's case, Casebolt entirely failed to exercise his right to object to the use of the affidavit. The use of the affidavit did not matter anyway, because the Board's executive officer was present and could be called to testify (which he was, by Casebolt). The court in *C&W* expressed concern about allowing one party to be custodian of another entity's records. We understand the concern as applied to the *C&W* case; however, nothing precludes the admissibility of such records when the statute is otherwise complied with. For example, the Director of Revenue is allowed to maintain copies of arrest records, and the Department of Revenue's records custodian has often offered records prepared by police (not prepared by the Department). *See, e.g., Thebeau*, 945 S.W.2d at 675-76.

In this case, the drug test results were in the Board's custody pursuant to the Well-Being Program process created by the November 2003 order. There was no error in this case in the admission of the records.

The point is denied.

### **Point III**

In his third point on appeal, Casebolt says the Board erred in its decision to impose discipline on Casebolt's license. He claims the order violates his rights to equal protection and, because the discipline imposed in the order is not supported by competent and substantial evidence upon the record, is arbitrary, capricious, and unreasonable. Casebolt says the order involves an abuse of discretion because the discipline imposed is disproportionate to that imposed on others similarly situated. He claims the discipline is not rationally related to the Board's objective of protecting the public, especially since he received discipline far more severe than other dentists engaging in similar or more serious conduct, and there were no allegations or evidence that he posed a threat to the public.

"It is well settled that the government's imposition of punishment of one person more harshly than another does not, of itself, give rise to an equal protection violation." *Mo. State Bd. of Registration for Healing Arts v. Brown*, 121 S.W.3d 234, 236 (Mo. banc 2003). "Indeed, when a court is accorded discretion in imposing discipline, the Constitution permits qualitative differences." *Id.* "[W]hen the treatment at issue does not involve a fundamental right or a suspect classification, it survives an equal protection challenge so long as it bears a rational relationship to a legitimate government interest." *Artman v. State Bd. of Registration for Healing Arts*, 918 S.W.2d 247, 251 (Mo. banc 1996). "The state has a legitimate interest in protecting its citizens from incompetent physicians." *Id.*

Casebolt does not argue that he is a member of a "suspect classification." Instead, he seems to argue that the discipline bears no rational relationship to the Board's interest

in protecting the public. Casebolt states multiple times that no evidence suggests he was impaired within twenty-four hours of practicing.

Casebolt provides a litany of other cases where dental licenses were not revoked. This does not mean that dental licenses have never been revoked for violating the terms and conditions of probation, however. The evidence showed that Casebolt used drugs and alcohol on at least two occasions since the November 2003 order. Unless Casebolt is tested prior to every patient encounter, we cannot say he is not a danger to the public -- especially since he knew the use of drugs or alcohol could threaten his license, and he was still unable to abstain.

The Board is authorized to protect the public from dentists who engage in conduct set forth in section 332.321.2:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

- (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;  
....
- (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;  
....
- (15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

The Board is not required to show any additional basis for revocation. A rational relationship exists between dentists being able to maintain their sobriety and the Board allowing dentists to practice. The Board is not required to wait until an actual injury or act of malpractice occurs before disciplining a dentist's license.

The November 25, 2003 order states, in pertinent part:

If Respondent fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate.

This Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Respondent not specifically mentioned in this document.

As discussed, *supra*, the Board has discretion to determine the appropriate level of discipline to impose in each situation. *KV Pharm. Co.*, 43 S.W.3d at 310. To prevail, Casebolt must demonstrate that the Board abused its discretion in determining the penalty. *Tadrus v. Mo. Bd. of Pharmacy*, 849 S.W.2d 222, 228 (Mo. App. 1993). Casebolt has had problems maintaining his sobriety since 1998. Given Casebolt's long history with the Board pertaining to substance abuse, we do not find an abuse of discretion or that the discipline is contrary to the overwhelming weight of the evidence. *See Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003).

The point is denied.

#### **Point IV**

In his fourth point on appeal, Casebolt says the Board erred in issuing its order because the order does not comply with section 536.090. He claims the order is not

sufficiently specific to show how the controlling issue of discipline to be imposed on his license was decided or to allow the court to determine whether there is a reasonable basis in fact for the disciplinary decision reached.

Section 536.090 states:

Every decision and order in a contested case shall be in writing, and, except in default cases or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the agency bases its order. Immediately upon deciding any contested case the agency shall give written notice of its decision by delivering or mailing such notice to each party, or his attorney of record, and shall upon request furnish him with a copy of the decision, order, and findings of fact and conclusions of law.

The Board's order sets forth sufficient facts and law to show the basis for the Board's action. The order sets forth facts as to the terms and conditions of Casebolt's probation. It states how he violated those terms and conditions, giving cause for the Board to impose the discipline of revocation. The basis for discipline of Casebolt's license is not that he treated patients under the influence or that actual patient harm occurred. Instead, the basis for discipline is that Casebolt did not abstain from the use of drugs and alcohol. The Board clearly did find and believe that Casebolt was unable to refrain from enjoying marijuana and alcohol, especially given his long history with substance abuse. The Board found specifically that Casebolt "consumed marijuana and alcohol in violation of the November 25, 2003 order" on at least two occasions.

Casebolt relies on *Rednam v. State Board of Registration for Healing Arts*, 316 S.W.3d 357 (Mo. App. 2010), for his argument that this case should be remanded for the Board to make more factual findings to explain in detail the justification for the revocation of his license with a restriction that he cannot reapply for a license in less than one year. In *Rednam*, a doctor's medical license was automatically revoked by virtue of his pleading guilty to a felony. *Id.* at 358-59. The felony consisted of one count of felony obstruction of a criminal investigation of a health care offense. *Id.* at 358. The basis of the charge was the destruction of files and records necessary to an investigation. *Id.* The Board and Dr. Rednam stipulated that he "made a critical mistake in judgment" in the matter. *Id.* at 359. The Board also stipulated that on "his own initiative and at his own expense," Dr. Rednam reconstructed the records, providing substantial assistance to the government. *Id.* The Board further stipulated that "charity and good works" were a lifelong practice of Dr. Rednam, in that he frequently had provided free care to those who could not afford his treatment. *Id.* Moreover, the Board stipulated that because of the rarity of his medical specialty (retinal surgery), it would be in the public interest to allow Rednam to "resume his good works" by relicensure. *Id.* The Board also stipulated that Dr. Rednam had demonstrated rehabilitation and had paid full restitution. *Id.* Dr. Rednam did not contest the automatic revocation. *Id.* at 360-61. He asked only that the Board not impose a specific time period before being allowed to apply for reinstatement of his license. *Id.* at 360.

The Board revoked the doctor's license and, citing dishonesty and moral turpitude, ordered that Dr. Rednam could not apply for reinstatement for a period of seven years.

*Id.* On judicial review in the circuit court, the court reversed the determination that he could not apply for reinstatement for seven years, finding insufficient discussion by the Board of the interests it considered in exercising discretion under section 334.100. *Id.* On appeal, this court held that the circuit court lacked authority to substitute its own discretion as to any specific period of revocation before application for reinstatement. *Id.* at 361-62. This court said the circuit court erred in failing to remand for a more specific discussion of the reasons for the Board decision. *Id.* at 362. The Board conceded that its order "contains no specific findings of fact related to the bar on [the doctor's] applying for reinstatement." *Id.* at 361.

Casebolt's case is distinguishable. The Board here noted Casebolt's long history with substance abuse and Dr. Casebolt's inability to conform his conduct to the Board's requirements. In *Rednam*, the circuit court was obviously surprised and confused that the Board would stipulate to many facts favorable to Dr. Rednam's repentance, rehabilitation, charitable service, and the need for his ability to serve the public, and would then fail to cite any findings that would justify a seven-year wait before reapplication. Here, there is no surprise, shock, or confusion evident. While revocation is a heavy discipline, the Board in this case obviously was running out of options for dealing with Dr. Casebolt. Moreover, the one-year period before he can reapply is certainly not shocking in a way that should create the impression that there is a need for remand to ask the Board for more specific findings. The Board's order was specific enough to allow meaningful appellate review.

The point is denied.

## **Conclusion**

The judgment is affirmed.



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IN THE 19th JUDICIAL CIRCUIT COURT, COLE COUNTY, MISSOURI

MISSOURI DENTAL BOARD

Judge or Division: Patricia S. Joyce	Case Number: 08AC-CC00288
Plaintiff/Petitioner: Buford K. Casebolt, D.D.S.	Appellate Number: <input type="checkbox"/> Filing as an Indigent
	Court Reporter: None <input type="checkbox"/> Sound Recording Equipment
vs.	Reporter's Telephone: Number of Days of Trial: FEB 09 2010 Less than one
Defendant/Respondent: Missouri Dental Board	Date of Judgment/Sentence: October 14, 2009 (Attach a copy)
	Date Ruled Upon: N/A
	Date Post Trial Motion: November 12, 2009 Date Notice Filed: 02/9 /2010

FILED

BRENDA A. UMSTATT  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI

(Date File Stamp)

Notice of Appeal

Supreme Court of Missouri Court of Appeals:  Western  Eastern  Southern

Notice is given that Buford K. Casebolt, D.D.S. appeals from the judgment/decree entered in this action on October 14, 2009 (date).

Complete if Appeal is to Supreme Court of Missouri

Jurisdiction of the Supreme Court is based on the fact that this appeal involves:

(Check appropriate box)

- The validity of a treaty or statute of the United States
- The punishment imposed is death
- The validity of a statute or provision of the Constitution of Missouri
- The title to any state office in Missouri
- The construction of the revenue laws of Missouri

If the basis of jurisdiction is validity of a United States treaty or statute, the validity of a Missouri statute or Constitutional provision or construction of Missouri revenue laws, a concise explanation, together with suggestions, if desired, is required. This may be filed as part of or with this notice of appeal or, in the alternative, may be filed within ten days after the notice of appeal is filed by filing it directly with the Clerk of the Supreme Court. See Rule 81.08(b) and (c) and Rule 30.01(f) and (g).

Appellant's Attorney/Bar Number Brydon, Swearingen & England P.C. Jamie J. Cox #52777	Respondent's Attorney(s)/Bar Number(s) (If multiple, list all or attach additional sheets) Loretta Schouten #52290
Address P.O. Box 456 Jefferson City, MO 65102	Address 7970 S. Tomlin Hill Road Columbia, MO 65201
Telephone 573-635-7166 Fax 573-635-3847	Telephone 573-875-7169 Fax 573-875-5603
Appellant's Name Buford K. Casebolt, D.D.S.	Respondent's Name Missouri Dental Board
Address 212 W. Chestnut, Osceola, MO 64776	Address P.O. Box 1367, Jefferson City, MO 65102
Telephone	Telephone 573-751-0040
Brief Description of Case Appeal from the October 14, 2009 Order and Judgment issued by the Circuit Court of Cole County affirming the March 20, 2008 Decision of the Missouri Dental Board which revoked Appellant's license to practice as a dentist.	
Date of Appeal Bond N/A	Amount of Bond N/A
<input type="checkbox"/> Bond Attached	
Signature of Attorney or Appellant 	Date February 9, 2010

**Notice to Appellant's Attorney**

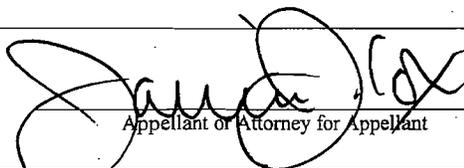
Local rules may require supplemental documents to be filed. Please refer to the applicable rule for the district in which the appeal is being filed and forward supplements as required.

**Certificate of Service**

I certify that on Feb. 9, 2010 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

Via United States Mail to Loretta Schouten, 7970 S. Tomlin Hill Rd., Columbia, MO 65201

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Appellant or Attorney for Appellant

**Directions to Clerk**

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent to the Attorney General when the appeal involves a felony.) Transmit a copy of the notice of appeal to the clerk of the Supreme Court/Court of Appeals. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01 (h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

**Memorandum of the Clerk**

I have this day served a copy of this notice by  regular mail  registered mail  certified mail  facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have also transmitted a copy of the notice of appeal to the clerk of the

Supreme Court  Court of Appeals, \_\_\_\_\_ District

Docket fee in the amount of \$ \_\_\_\_\_ has been received by this clerk which will be disbursed as required by statute.

A copy of an order granting leave to appeal as indigent.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk

**Notice to Appellant's Attorney**

Local rules may require supplemental documents to be filed. Please refer to the applicable rule for the district in which the appeal is being filed and forward supplements as required.

**Certificate of Service**

I certify that on \_\_\_\_\_ (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

\_\_\_\_\_  
Appellant or Attorney for Appellant

**Directions to Clerk**

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent to the Attorney General when the appeal involves a felony.) Transmit a copy of the notice of appeal to the clerk of the Supreme Court/Court of Appeals. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01 (h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

**Memorandum of the Clerk**

I have this day served a copy of this notice by  regular mail  registered mail  certified mail  facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

- Loretta Schouten, 7970 S. Tomlin Hill Road, Columbia, MO 65201
- MO Dental Board, 3605 MO Boulevard, Jefferson City, MO 65109
- Jamie Cox, Brydon Swearthen & England, 312 E. Capitol Ave., Jefferson City, MO 65101
- Buford Casebolt, 212 W. Chestnut, Osceola, MO 64775

I have also transmitted a copy of the notice of appeal to the clerk of the

- Supreme Court
- Court of Appeals, Western District

Docket fee in the amount of \$ 70.00 has been received by this clerk which will be disbursed as required by statute.

A copy of an order granting leave to appeal as indigent.

March 8, 2010

Date

  
Clerk

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI  
STATE OF MISSOURI  
DIVISION 4

BUFORD K. CASEBOLDT, D.D.S )

Petitioner, )

Vs. )

Case No. 08AC-CC00288

MISSOURI DENTAL BOARD, )

Respondent. )

ORDER AND JUDGMENT

Now on this 14<sup>th</sup> day of October, 2008, the Court again takes up this matter for the purpose of entering its Final Order and Judgment.

The parties appeared by counsel on September 9, 2009, on this date for argument and the opportunity to supplement the record, if necessary. The Court, having heard the argument of counsel, having reviewed the administrative record, and being fully advised in the premises, finds that the Final Decision of the Missouri Dental Board, in Case number DB-08-03 issued on March 20, 2008, is lawful, reasonable, and supported by substantial and competent evidence on the record as a whole, and is not arbitrary, capricious, or an abuse of discretion.

WHEREFORE, this Court finds said Decision should be and is hereby  
AFFIRMED.



Patricia S. Joyce  
Circuit Court Judge  
Division IV

**FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT**

MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

No. WD \_\_\_\_\_

Buford K. Casebolt, D.D.S.,  
Plaintiff

Jamie J. Cox  
Brydon, Swearengen, & England, P.C.  
P.O. Box 456  
Jefferson City, MO 65102  
Attorneys for Plaintiff

vs.

Missouri Dental Board,  
Defendant

Loretta Schouten  
7970 S. Tomlin Hill Rd.  
Columbia, MO 65201  
Attorney for Defendant

Date Notice filed in Circuit Court February 9, 2010

---

The Record on Appeal will consist of a:

Legal File Only or \_\_\_\_\_ Transcript and Legal File. (This will include records filed pursuant to Rules 81.13 and 81.16.)

FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action)

See attached pages.

ISSUE(S):

(Anticipated to be Presented by the Appeal; Appellant is Not Bound by this Designation)

See attached pages.

[Two (2) typewritten pages maximum.]

### **Factual Background**

Buford K. Casebolt, D.D.S. (“Dr. Casebolt”) held a license to practice as a dentist, number 013834, which was issued by the Missouri Dental Board (“Board”).

On or about November 25, 2003, the Board issued Findings of Fact, Conclusions of Law and Disciplinary Order regarding Dr. Casebolt’s license to practice as a dentist in Missouri (“November 2003 Order”). Pursuant to the November 2003 Order entered by the Board, Dr. Casebolt’s license was suspended for thirty days to be followed by five years probation. The Board alleges that, while Dr. Casebolt’s license was on probation, he violated certain terms of the November 2003 Order. Specifically, the Board alleges that Dr. Casebolt consumed marijuana and alcohol in violation of the above referenced terms of the November 2003 Order.

On or about November 26, 2007, the Board filed a “Probation Violation Complaint” before the Missouri Dental Board. The Board held a hearing on January 19, 2008 for the purpose of determining whether Dr. Casebolt violated the terms of his probation with the Board, and if so, what, if any, additional discipline should be imposed on Dr. Casebolt’s license to practice as a dentist. On or about March 20, 2008, the Board executed its Findings of Fact, Conclusions of Law, and Disciplinary Order (“Order”), which states that “the dental license of Buford Casebolt, D.D.S. is REVOKED and Dr. Casebolt shall not apply for licensure for a period of not less than one year following the effective date of this Order of revocation.”

Dr. Casebolt filed a Petition for Judicial Review pursuant to § 536.100, RSMo, seeking review of the Board’s Order revoking his license. In an Order and Judgment dated October 14, 2009, the Circuit Court of Cole County affirmed the Board’s Order.

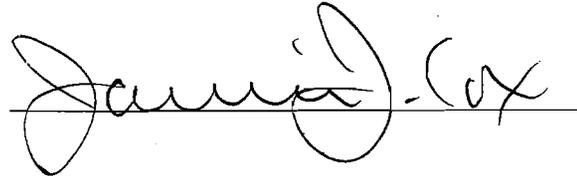
### **Issues Anticipated to be Presented by the Appeal**

The Circuit Court of Cole County erred in affirming the Board's Order in that:

1. The findings and conclusions in the Order that Dr. Casebolt consumed marijuana and alcohol in violation of the Board's November 25, 2003 Order and that the Board is entitled to impose additional discipline on Dr. Casebolt's license are unsupported by competent and substantial evidence upon the whole record; is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;
2. The admission into evidence of and the Board's reliance upon Petitioner's Exhibit 1 is in violation of Constitutional provisions; is in excess of the statutory authority or jurisdiction of the Board; is unauthorized by law; is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;
3. The revocation of Dr. Casebolt's license and the order prohibiting him from reapplying for licensure for a period of not less than one year following the effective date of the Order is in excess of the statutory authority or jurisdiction of the Board; is unsupported by competent and substantial evidence upon the whole record; is unauthorized by law; is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;
4. The Order is unlawful and violates Dr. Casebolt's rights to due process of law and to equal protection of the laws as guaranteed by the United States Constitution and the Constitution of Missouri of 1945, in that he is being discriminated against and denied equal protection because the sanction imposed on Dr. Casebolt is disproportionate to that imposed on others similarly situated; and
5. The Order does not comply with Section 536.090, RSMo.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was mailed, by U.S. mail, postage prepaid on this 9 day of February, 2010, to Loretta Schouten, Attorney for Defendant, 7970 S. Tomlin Hill Rd., Columbia, MO 65201.

A handwritten signature in cursive script, reading "Jamie D. Cox", is written over a horizontal line. The signature is fluid and stylized, with the first name "Jamie" and the last name "Cox" clearly legible.

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI  
STATE OF MISSOURI  
DIVISION 4

BUFORD K. CASEBOLDT, D.D.S )  
 )  
 Petitioner, )  
 )  
 Vs. ) Case No. 08AC-CC00288  
 )  
 MISSOURI DENTAL BOARD, )  
 )  
 Respondent. )

ORDER AND JUDGMENT

Now on this 14 day of October, 2008, the Court again takes up this matter for the purpose of entering its Final Order and Judgment.

The parties appeared by counsel on September 9, 2009, on this date for argument and the opportunity to supplement the record, if necessary. The Court, having heard the argument of counsel, having reviewed the administrative record, and being fully advised in the premises, finds that the Final Decision of the Missouri Dental Board, in Case number DB-08-03 issued on March 20, 2008, is lawful, reasonable, and supported by substantial and competent evidence on the record as a whole, and is not arbitrary, capricious, or an abuse of discretion.

WHEREFORE, this Court finds said Decision should be and is hereby

**AFFIRMED.**

STATE OF MISSOURI }  
COUNTY OF COLE } SS  
BRENDA A. LINSTATT, Clerk of the Circuit Court of Cole County, Missouri,  
do hereby certify that the above and foregoing is a full true and correct copy of  
Order & Judgment  
as fully as the same remains of record in my said office.  
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the  
seal of my said office this 15 day of Oct 2009  
BRENDA A. LINSTATT, Clerk

Clerk, Clerk  
Circuit Court of Cole County, Missouri

  
\_\_\_\_\_  
Patricia S. Joyce  
Circuit Court Judge  
Division IV

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

BUFORD K. CASEBOLT, D.D.S., )  
)  
Petitioner, )  
)  
v. ) Case No.  
)  
MISSOURI DENTAL BOARD, )  
)  
Respondent. )

**ORDER STAYING ENFORCEMENT OF  
ORDER PURSUANT TO SECTION 536.120, RSMo**

THIS MATTER coming before the Court on the Petition of Petitioner herein, and, the Court having reviewed the pleadings, reviewed Petitioner's request that the Order be stayed, and upon Respondent's indication that it has no objection, and being fully advised in the premises, and it appearing that the enforcement of the Order issued by the Missouri Dental Board executed on or about March 20, 2008, with a purported effective date of April 4, 2008, will cause Petitioner irreparable harm, and all the prerequisites of Section 536.120, RSMo, appearing to have been satisfied and present in this matter,

IT IS HEREBY ORDERED that enforcement of the Order issued by the Missouri Dental Board against the Petitioner executed on or about March 20, 2008, with a purported effective date of April 4, 2008, is hereby stayed until further order of this Court. During the duration of this Stay Order, Petitioner shall continue to comply with the terms of the Missouri Dental Board's Disciplinary Order, which became effective on December 4, 2003.

Dated this 1st day of April, 2008.

Richard J. Callahan  
CIRCUIT JUDGE

STATE OF MISSOURI }  
COUNTY OF COLE } SS

I, BRENDA A. UMSTATTD, Clerk of the Circuit Court of Cole County, Missouri, hereby certify that the above and foregoing is a full true and correct copy of

Order

as fully as the same remains of record in my said office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said office this 1st day of April 2008

BRENDA A. UMSTATTD, Clerk

Brenda A. Umstattd  
Deputy Clerk  
Circuit Court of Cole County, Missouri

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

BUFORD K. CASEBOLT, D.D.S.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.
	)	
MISSOURI DENTAL BOARD,	)	
	)	
Respondent.	)	

**MOTION FOR STAY ORDER**  
**PURSUANT TO SECTION 536.120, RSMo**

COMES NOW Petitioner, Buford K. Casebolt, D.D.S., and, pursuant to § 536.120, RSMo, respectfully moves the Court to make and enter its order which stays the Order of the Missouri Dental Board (“Board”), Exhibit 1 to Petitioner’s Petition for Judicial Review, which includes without limitation that provision of the decision and order which revokes Petitioner’s dental license.

As grounds therefore, Petitioner states:

1. That on April 1, 2008, Petitioner duly filed with this court his Petition for Judicial Review of the decision and order issued by the Board, as more particularly provided by Article V, § 18 of the Missouri Constitution and §§ 536.100-536.140, RSMo. A copy of the decision and order of the Board is attached as Exhibit 1 to Petitioner’s Petition for Judicial Review.

2. Petitioner realleges and incorporates herein by reference, as if more particularly set forth herein, each and every allegation of fact and law as more particularly set forth in his Petition for Judicial Review.

3. Petitioner is entitled to a stay and this Court has jurisdiction pursuant to §

536.120, RSMo, to issue a stay as more particularly requested herein.

4. Petitioner did not receive the Board's order until March 27, 2008. The order purports to become effective on April 4, 2008.

5. There are no allegations, findings or conclusions of harm or threat of harm to the public.

6. There are no allegations, findings or conclusions that Petitioner consumed alcohol or any illegal substance before Petitioner saw patients or while he saw patients.

7. Unless a stay is granted, Petitioner will suffer and has suffered irreparable harm.

8. Petitioner verily believes and states that there is a substantial likelihood that he will prevail upon final adjudication of this cause.

9. Petitioner verily believes and further states that unless the Board's order of March 20, 2008 is stayed, pending the final adjudication of this cause, he will suffer irreparable harm and injury, including loss of income and the loss of ability to support his family due to his inability to work as a dentist.

10. Furthermore, Petitioner has around 9,000 casual patients and 2,000 current patients who will be adversely affected should his license be revoked effective April 4, 2008. Petitioner employs 3 staff members who will also be adversely affected should Petitioner's license be revoked.

11. The granting of the relief as requested herein is not and will not pose a threat to the public.

12. Respondent has no objection to the issuance of a stay order, as long as Petitioner continues to comply with the terms of the Board's Disciplinary Order, which

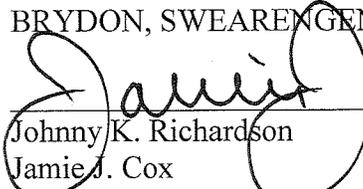
became effective on December 4, 2003. Petitioner agrees to continue complying with the terms of that order.

WHEREFORE, Petitioner hereby prays that the Court stay the effective date and further stay all rights of enforcement of the Board's Order executed on or about March 20, 2008. Petitioner further prays for such other and further interim relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

 \_\_\_\_\_  
Johnny K. Richardson #28744

Jamie J. Cox #52777

312 East Capitol Avenue

P.O. Box 456

Jefferson City, MO 65102-0456

Phone: (573) 635-7166

Fax: (573) 635-3847

Attorneys for Petitioner

STATE OF MISSOURI )  
COUNTY OF St. Clair )

Buford K. Casebolt, D.D.S., first being duly sworn, upon his oath, states that he is the Petitioner in the above-referenced proceeding; that he has read the foregoing Motion for Stay Order and that the matters and facts set forth therein are true and correct to the best of his knowledge, information, and belief.

Buford K. Casebolt, D.D.S.  
Buford K. Casebolt, D.D.S., Petitioner

Subscribed and sworn to before me this 1<sup>st</sup> day of April  
2008.

Connie Roeder  
Notary Public

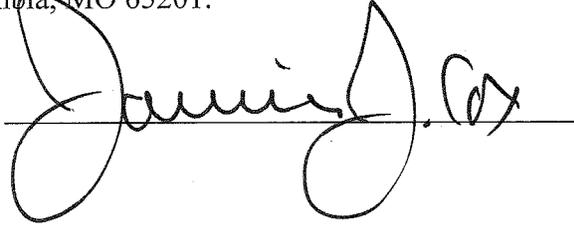
My Commission Expires: Sept. 15, 2011



CONNIE ROEDER  
My Commission Expires  
September 15, 2011  
St. Clair County  
Commission #07505342

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail to llschouten@yahoo.com, and mailed, by U.S. certified mail, postage prepaid on this 4 day of April, 2008, to Loretta Schouten, Attorney for Respondent, 7970 S. Tomlin Hill Rd., Columbia, MO 65201.

A handwritten signature in black ink, appearing to read "James J. Cox", is written over a horizontal line. The signature is fluid and cursive, with the first name "James" being the most prominent part.

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

BUFORD K. CASEBOLT, D.D.S.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.
	)	
MISSOURI DENTAL BOARD,	)	
	)	
Respondent.	)	

**PETITION FOR JUDICIAL REVIEW**  
**PURSUANT TO SECTION 536.100, RSMo**

COMES NOW Petitioner, Buford K. Casebolt, D.D.S., and for his Petition for Judicial Review, pursuant to Section 536.100, RSMo, states the following:

1. Petitioner Buford K. Casebolt, D.D.S. ("Dr. Casebolt") is a resident of St. Clair County, Missouri.
2. Respondent Missouri Dental Board ("Board") is an agency of the State of Missouri, with its principal offices located in Jefferson City, Cole County, Missouri.
3. Dr. Casebolt holds a license to practice as a dentist, number 013834, which was issued by the Board.
4. On or about November 25, 2003, the Board issued Findings of Fact, Conclusions of Law and Disciplinary Order regarding Dr. Casebolt's license to practice as a dentist in Missouri ("November 2003 Order"). The November 2003 Order was effective on or about December 4, 2003.
5. Pursuant to the November 2003 Order entered by the Board, Dr. Casebolt's license was suspended for thirty days to be followed by five years probation.

6. The Board alleges that, while Dr. Casebolt's license was on probation, he violated the following terms of the November 2003 Order:

C-iv. Respondent shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

C-xi. During the disciplinary period, Respondent shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of this Order.

C-xii. During the disciplinary period, Respondent shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless that use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Respondent has a bona fide relationship as a patient. Respondent shall forward to the Board written documentation of any such prescription within ten days of issuance...The presence of any controlled substance whatsoever in a biological fluid sample for which Respondent does not hold a valid prescription or for a prescription that Respondent has not forwarded documentation to the Board as required herein shall constitute a violation of this Order.

7. The Board alleges that Dr. Casebolt consumed marijuana and alcohol in violation of the above referenced terms of the November 2003 Order.

8. On or about November 26, 2007, the Board filed a "Probation Violation Complaint" before the Missouri Dental Board.

9. The Board held a hearing on January 19, 2008 for the purpose of determining whether Dr. Casebolt violated the terms of his probation with the Board, and if so, what if any additional discipline should be imposed on Dr. Casebolt's license to practice as a dentist.

10. On or about March 20, 2008, the Board executed its Findings of Fact, Conclusions of Law, and Disciplinary Order ("Order"), which states that "the dental license of Buford Casebolt, D.D.S. is REVOKED and Dr. Casebolt shall not apply for licensure for a

period of not less than one year following the effective date of this Order of revocation.” A true and accurate copy of the Order is attached hereto as Exhibit 1.

11. The Order purports to become effective on April 4, 2008.

12. The Board mailed the Order to Dr. Casebolt on or after March 20, 2008. Dr. Casebolt did not receive the Order until March 27, 2008.

13. Dr. Casebolt seeks judicial review of the Order of the Board as more particularly provided by Article V, § 18 of the Missouri Constitution and the provisions of §§ 536.100-536.140, RSMo.

14. The Order of the Board is a final decision.

15. The Order operates prejudicially and directly upon Dr. Casebolt’s personal and property rights or interests and is of such an immediate consequence so that Dr. Casebolt is, with respect to the Order, an “aggrieved party” as that term is used in Section 536.100, RSMo.

16. The Order was rendered in a “contested case,” as that term is used in Section 536.100, RSMo.

17. Dr. Casebolt has exhausted all prerequisite administrative remedies provided by law.

18. This Court has jurisdiction and venue with respect to this Petition pursuant to Section 536.110, RSMo.

19. The Order should be reversed because it is:

- (1) in violation of Constitutional provisions;
- (2) in excess of the statutory authority or jurisdiction of the Board;
- (3) unsupported by competent and substantial evidence upon the whole record;

- (4) unauthorized by law;
- (5) made upon unlawful procedure and without a fair trial;
- (6) arbitrary, capricious and unreasonable; and,
- (7) involves an abuse of discretion.

20. More specifically, the Order should be reversed for, but not limited to, the following reasons:

(a) the finding in the Order that “prior to August 28, 2007, at a date certain known only to Dr. Casebolt, Dr. Casebolt consumed marijuana and alcohol in violation of the Board’s November 25, 2003 Order” is unsupported by competent and substantial evidence upon the whole record; is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;

(b) the finding in the Order that “prior to September 5, 2007, at a date certain known only to Dr. Casebolt, Dr. Casebolt consumed marijuana and alcohol in violation of the Board’s November 25, 2003 Order” is unsupported by competent and substantial evidence upon the whole record; is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;

(c) the admission into evidence of and the Board’s reliance upon Petitioner’s Exhibit 1 is in violation of Constitutional provisions; is in excess of the statutory authority or jurisdiction of the Board; is unauthorized by law; is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;

(d) the finding and conclusion in the Order that Dr. Casebolt violated the terms of the November 2003 Order and that the Board is entitled to impose additional discipline on Dr. Casebolt’s license is unsupported by competent and substantial evidence upon the whole record;

is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;

(e) the revocation of Dr. Casebolt's license and the order prohibiting him from reapplying for licensure for a period of not less than one year following the effective date of the Order is in excess of the statutory authority or jurisdiction of the Board; is unsupported by competent and substantial evidence upon the whole record; is unauthorized by law; is made upon unlawful procedure and without a fair trial; is arbitrary, capricious and unreasonable; and, involves an abuse of discretion;

(f) the Order is unlawful and violates Dr. Casebolt's rights to due process of law and to equal protection of the laws as guaranteed by Amendment XIV to the United States Constitution, and Sections 2 and 10 of Article I of the Constitution of Missouri of 1945, in that he is being discriminated against and denied equal protection because the sanction imposed on Dr. Casebolt is disproportionate to that imposed on others similarly situated; and

(g) the Order does not comply with Section 536.090, RSMo, which requires that the Board include specific findings of fact and conclusions of law justifying the action taken in the Order, in that the Board made no findings or conclusions justifying its revocation of Dr. Casebolt's license, justifying why Dr. Casebolt may not apply for licensure for a period of not less than one year following the effective date of the Order, or justifying why revocation was determined to be appropriate in Dr. Casebolt's case, especially in comparison to other similarly situated licensees of the Board.

21. The Order has and will cause Dr. Casebolt irreparable harm, and is not required or necessary to protect the public interest.

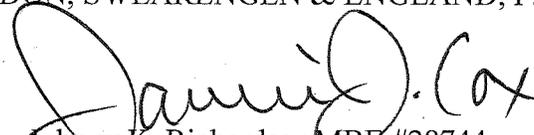
WHEREFORE, Dr. Casebolt respectfully prays that this Court: (a) issue its order

reversing the Board's Order; (b) award Dr. Casebolt his reasonable attorneys fees and expenses pursuant to Section 536.087, RSMo; (c) assess all costs of these proceedings against the Board; and, (d) grant such other relief as this Court deems just and proper.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:



Johnny K. Richardson MBE #28744

Jamie J. Cox MBE #52777

312 E. Capitol Avenue

P. O. Box 456

Jefferson City, MO 65102-0456

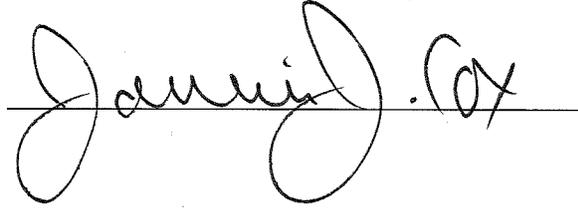
Phone: (573) 635-7166

Fax: (573) 635-0427

ATTORNEYS FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was sent via electronic mail to llschouten@yahoo.com, and mailed, by U.S. certified mail, postage prepaid on this 1 day of April, 2008, to Loretta Schouten, Attorney for Respondent, 7970 S. Tomlin Hill Rd., Columbia, MO 65201.

A handwritten signature in black ink, reading "Jamin D. Cox", is written over a horizontal line. The signature is cursive and stylized.

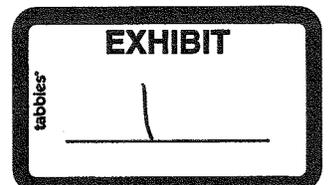
**BEFORE THE  
MISSOURI DENTAL BOARD  
STATE OF MISSOURI**

<b>MISSOURI DENTAL BOARD</b>	)		
	)	Petitioner,	
	)		
v.	)		<b>Case No. DB-08-03</b>
	)		
<b>BUFORD CASEBOLT, D.D.S.</b>	)		
	)	Respondent.	

**FINDINGS OF FACT, CONCLUSIONS OF LAW**  
**and**  
**DISCIPLINARY ORDER**

On January 19, 2008, the Missouri Dental Board held a hearing on the Notice of Probation Violation Hearing in the above-styled cause. The hearing was held at the Courtyard Marriott, 3301 LeMone Industrial Boulevard, Columbia, Missouri, for the purpose of determining if Buford Casebolt, D.D.S. is in violation of the terms and conditions of his probation, and if so, what, if any, additional discipline should be imposed to address the conduct. The Missouri Dental Board was represented by Loretta Schouten. Nanci R. Wisdom, outside counsel for the Missouri Dental Board, advised the Board on legal matters. Dr. Casebolt was present and was represented by Johnny K. Richardson of the law firm Brydon, Swearingen & England, 312 East Capitol Avenue, Jefferson City, Missouri. The Board received into evidence Petitioner's Exhibit 1 and Respondent's Exhibits A, B, C, D, E, F, H and I.<sup>1</sup> The Board heard testimony from Ira Davis, Brian Barnett, and Buford K. Casebolt, D.D.S. The Board went into closed session to deliberate and make its determination on whether Casebolt was in violation of the terms and conditions of his probation.

<sup>1</sup> Respondent's marked Exhibit G, but the exhibit was not offered nor received into evidence.



## FINDINGS OF FACT

1. Respondent, Buford K. Casebolt ("Dr. Casebolt"), is licensed by the Board to practice dentistry, license No. 013834. Dr. Casebolt's license is current and active and was so at all times relevant herein.

2. Dr. Casebolt has a prior disciplinary history.

3. On May 22, 1998, the Administrative Hearing Commission issued its Decision finding cause to discipline Dr. Casebolt's dental license for violations of § 332.321.2(15), RSMo. Case No. 97-0338DB.

4. Following a disciplinary hearing, the Board issued its Order dated December 7, 1998, suspending Dr. Casebolt's license for 14 days followed by 5 years probation with certain terms and conditions, including abstention from the possession and consumption of controlled substances unless pursuant to a valid prescription.

5. On July 18, 2002, Dr. Casebolt tested positive for marijuana. On November 25, 2002, after a probation violation hearing, Dr. Casebolt's license was suspended for 30 days immediately followed by 5 years probation, Case No. DB-03-1.

6. Dr. Casebolt appealed the Board's November 25, 2002 Order to the Circuit Court of Cole County, Missouri, Case No. 02CV326389. On October 2, 2003, the Circuit Court issued its decision upholding the Board's November 25, 2002 Order.

7. On July 22, 2003, Dr. Casebolt tested positive for marijuana. On November 25, 2003, following a probation violation hearing, Dr. Casebolt's license was suspended for 30 days immediately followed by 5 years probation, ("November 25, 2003 Order") Case No. DB-04-03.

8. At all times relevant herein, Dr. Casebolt was subject to the November 25, 2003 Order and was a participant in the Board's Well-Being Program.

9. Sections C-iv, C-xi, and C-xii of the November 25, 2003 Order states:

C-iv. Respondent shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

C-xi. During the disciplinary period, Respondent shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of this Order.

C-xii. During the disciplinary period, Respondent shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless that use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Respondent has a bona fide relationship as a patient. Respondent shall forward to the Board written documentation of any such prescription within ten days of issuance . . . The presence of any controlled substance whatsoever in a biological fluid sample for which Respondent does not hold a valid prescription or for a prescription that Respondent has not forwarded documentation to the Board as required herein shall constitute a violation of this Order.

10. On August 28, 2007, Dr. Casebolt submitted to a drug screen which tested positive for marijuana and alcohol.

11. On September 5, 2007, Dr. Casebolt submitted to a drug screen which tested positive for marijuana and alcohol.

12. Under section 195.017.2(4).u, RSMo, marijuana is a controlled substance.

13. Although Dr. Casebolt offered some evidence that it is possible to generate detectable concentrations of EtG and EtS by using mouthwash that contains ethanol,<sup>2</sup> Dr. Casebolt offered no testimony or evidence that he actually uses mouthwash that contains ethanol.

14. In Respondent's Exhibit I and direct testimony under oath, Dr. Casebolt admits he consumed alcohol in violation of the November 25, 2003 Order.<sup>3</sup>

15. Ira Davis notified Dr. Casebolt by telephone that his August 28, 2007 and September 5, 2007 drug screens tested positive for marijuana and alcohol.<sup>4</sup>

16. Ira Davis directed Dr. Casebolt to report to Palmetto Addiction Recovery Center ("Palmetto") for an evaluation.<sup>5</sup>

17. While at Palmetto, Dr. Casebolt reported he'd consumed alcohol<sup>6</sup>

18. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance. *Section 195.202.1, RSMo.*

19. For the purpose of determining whether cause for discipline exists under the statutes of any board within the division of professional registration, any licensee that tests positive for a controlled substance, as defined in chapter 195, RSMo, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state or the federal government unless he has a valid prescription for the controlled substance. The burden of proof that the controlled substance was not unlawfully possessed in violation of the drug laws or

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2 Respondent's Exhibits E and F, pg. 4.

3 Transcript, pgs. 46-47; Respondent's Exhibit.

4 Transcript, pgs. 23-24.

5 Transcript, pgs. 19 and 31; Respondent's Exhibit I.

6 Respondent's Exhibit I; Transcript, pgs. 46-47.

rules and regulations of this state, any other state or the federal government is upon the licensee.

*Section 620.151, RSMo.*

20. Prior to August 28, 2007, at a date certain known only to Dr. Casebolt, Dr. Casebolt consumed marijuana and alcohol in violation of the Board's November 25, 2003 Order.

21. Prior to September 5, 2007, at a date certain known only to Dr. Casebolt, Dr. Casebolt consumed marijuana and alcohol in violation of the Board's November 25, 2003 Order.

22. Dr. Casebolt's conduct is in violation of the terms and conditions of the November 25, 2003 Order, thus entitling the Board to impose additional discipline.

23. Cause exists to impose additional discipline on Dr. Casebolt's dental license pursuant to paragraph 29 of the November 25, 2003 Order and § 620.153, RSMo 2000, which states "Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee [ . . . ] has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing"

#### **CONCLUSIONS OF LAW**

24. The Missouri Dental Board has jurisdiction to take additional disciplinary action against the dental license of Dr. Buford Casebolt, D.D.S. pursuant to the provisions of sections 620.153 and 332.321, RSMo, and page 6, paragraph nos. 8 and 9 of the November 25, 2003 Order, which state in pertinent part:

\* \* \* \*

8. If Respondent fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate.

9. This Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Respondent not specifically mentioned in this document.

\* \* \* \*

25. Respondent's conduct is such that he has violated the terms of discipline as contained in the November 25, 2003 Order.

26. Dr. Casebolt violated section 195.202.1, RSMo 2000, which is a drug law of the state of Missouri, and which states: "Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance."

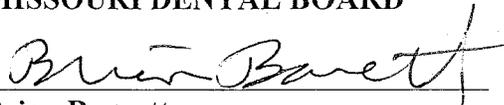
27. Under the terms of the November 25, 2003 Order, cause exists for the Board to impose additional discipline on Dr. Casebolt's dental license.

**ORDER**

28. It is the Order of the Missouri Dental Board that the dental license of Buford Casebolt, D.D.S. is **REVOKED** and **Dr. Casebolt shall not apply for licensure for a period of not less than one year following the effective date of this Order of revocation.** Dr. Casebolt shall immediately return all indicia of licensure to the Missouri Dental Board.

This ORDER becomes effective on the 4<sup>th</sup> day of April, 2008.

MISSOURI DENTAL BOARD

  
Brian Barnett  
Executive Director