DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO	DATE
Singleton	10-31-07

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 000233	[ ] Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR _____ cc: Myers	[ ] Prepare reply for appropriate signature DATE DUE _____ [ ] FOIA DATE DUE _____ [X] Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

South Carolina Department of Labor, Licensing and Regulation

Mark Sanford
Governor

Adrienne Riggins Youmans
Director

South Carolina Board of Dentistry
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
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TO: INTERESTED PARTIES

FROM: SOUTH CAROLINA STATE BOARD OF DENTISTRY

RE: MCCOY, MARK JOSEPH, DMD

DATE: October 30, 2007

Enclosed please find a copy of the public orders of the South Carolina State Board of Dentistry in the above referenced matter.

KPB/kp

Enclosures

Log: Singleton
C: Myers
N/A

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
BEFORE THE SOUTH CAROLINA STATE BOARD OF DENTISTRY

In the Matter of:

MARK JOSEPH McCOY, D.M.D.,
License No. 3610

OGC Case #07-0004
OIE Case #2006-60

Respondent.

FINAL ORDER
(Public)

This matter came before the South Carolina State Board of Dentistry (the Board) for hearing on July 20, 2007, as a result of the Notice and Formal Accusation which was served upon the Respondent and filed with the Board. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §40-15-185 (1976), as amended, and the provisions of the SC Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, *et seq.*, (1976). The State was represented by Patrick D. Hanks, Esquire, Assistant General Counsel, South Carolina Department of Labor, Licensing and Regulation. The Respondent appeared and was not represented by counsel.

The Respondent was charged with violation of S.C. Code Ann. §§40-15-190(A)(5), (9) and (15); 40-15-130; 40-15-220 through 260 (Supp. 2004); and S.C Code of Regs. No. 39-11(4-A), (4-C) and (4-D) (Supp. 2004).

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is duly licensed to practice dentistry in South Carolina, and was so licensed at all times relevant to the issues raised in the Formal Accusation. Respondent practices general dentistry in Myrtle Beach, South Carolina.

2. The State alleges that during the approximate period of August 2006 to September 2006, Respondent implied or inferred superior skills, or a specialty, in a misleading manner by advertising in a written print media that he "is a clinical expert in the field of Advanced Functional Aesthetics." It was further alleged that the Respondent implied or inferred superior skills in communications that express or imply that Respondent provides "the most advanced dental care on the Grand Strand", and that Respondent condoned the use of his name and dental credentials on a

website with a link to a site entitled "Ask The Expert". According to the allegation, the Respondent permitted, condoned or allowed continuous use of his photograph and referenced title "Dental Expert", and within the website, Respondent is listed as being certified in advanced functional aesthetics.

3. To substantiate the allegations, the State presented testimony from Investigator Elliott Willis, of the South Carolina Department of Labor, Licensing and Regulation, and provided copies of the alleged offensive advertisements for the Board's review. Copies of the advertisement were placed into evidence without objection from Respondent.

4. In his defense, the Respondent testified that it was not his intent to advertise in a way that violates the laws governing dentists practicing in South Carolina. The Respondent's opinion is that clinical experts and clinical specialists are not the same, and his intent was to portray himself as a clinical expert in advanced functional aesthetics because of training he received in this area. Respondent placed into evidence copies of documentation showing that he completed course work in the area of aesthetics. With respect to the newspaper advertisement stating Respondent provides "the most advanced dental care on the Grand Strand", Respondent stated that he has no recollection of reviewing the advertisement prior to publication. When it was brought to his attention, he immediately recognized the problem with the wording and took steps to stop the ad from being published.

5. Based upon the evidence presented, the Board finds that the State has shown by a preponderance of the evidence that Respondent's advertisement violates S.C. Code §40-15-130 (1976), as amended, in that the advertisement was misleading and could create an impression of superior skills or qualification.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this matter, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, upon finding that a licensee has violated any of the provisions of S.C. Code Ann. §40-15-190 (1976), as amended, has the authority to order the revocation or suspension of a license to practice dentistry, publicly or privately reprimand the holder of a license, or take other reasonable action short of revocation or suspension including, but not limited to, probation or requiring the person to undertake additional professional training subject to the direction and approval of the Board or imposing restraint upon the dental practice of the licensee as circumstances warrant until the licensee demonstrates to the Board adequate professional competence. Additionally, the Board may require the licensee to pay a civil penalty of up to ten thousand dollars and the costs of the disciplinary action.

2. The Respondent has violated S.C. Code Ann. §40-15-190(A)(5) (1976), as amended, in that the Respondent published, circulated, or made public, a misleading statement as to the skill

or methods of practice, as evidenced by published statements that Respondent "is a clinical expert in the field of Advanced Functional Aesthetics", and that he provides "the most advanced dental care on the Grand Strand."

3. The Respondent has violated S.C. Code Ann. §40-15-190(9) (1976), as amended, in that he violated Ethics Principles 20-11(4-A) and 20-11(4-D) which prohibit dentists from communicating in a manner that is misleading in any material respect, and from communicating in a manner that express or imply specialization.

4. The sanction imposed is consistent with the purpose of these proceedings and has been made after weighing the public interest and the need for the continuing services of qualified dentists against the countervailing concern that society be protected from professional ineptitude and misconduct.

5. The sanction imposed is designed not to punish the Respondent, but to protect the life, health and welfare of the people at large.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Respondent's license to practice dentistry in this State shall be, and hereby is, suspended for a period of two (2) years. This suspension shall be immediately stayed and the Respondent's license is placed in a probationary status for a period of two (2) years, and shall be subject to the following terms and conditions of probation:

A. Respondent shall pay a fine of Three Thousand and No/100 ($3,000.00) Dollars. Said fine must be paid within sixty (60) days of the effective date of this order, and shall not be deemed paid until received by the Board.

B. Respondent shall comply with all state and federal laws governing the practice of dentistry.

C. The Respondent shall appear and report to the Board as requested by the Board.

D. The Respondent shall promptly advise this Board in writing of any changes in address, practice, professional status, or compliance with this final order. Correspondence and copies of reports and notices mentioned herein shall be directed to:

SC Department of Labor, Licensing & Regulation
Board of Dentistry
Post Office Box 11329
Columbia, South Carolina 29211-1329

2. The Respondent's failure to abide by any provision contained in this order within the time frames specified herein, or if it should be indicated from reliable reports submitted to the Board that the Respondent is otherwise unable to practice with reasonable skill and safety to patients, may warrant the immediate revocation of probation and the immediate temporary suspension of Respondent's license pending hearing into the matter and until further order of the Board or until such time as Respondent can demonstrate full compliance.

3. The Respondent shall cooperate with the Board, its attorneys, investigators, and other representatives in the investigation of Respondent's practice and compliance with the provisions of this final order. It is the Respondent's responsibility to demonstrate compliance with each and every provision of this final order. The Respondent may be required to furnish the Board with additional information as may be deemed necessary by the Board or its representatives. In addition to such requests, the Board, in its discretion, may require the Respondent to submit further documentation regarding the Respondent's practice, and it is the Respondent's responsibility to fully comply with all such requests in a timely fashion. Failure to satisfactorily comply with such requests may be deemed a violation of this final order.

4. This final order shall take effect immediately upon service of the order upon the Respondent or Respondent's counsel.

AND IT IS SO ORDERED.

SC BOARD OF DENTISTRY

BY: John D. Snowden, DMD
JOHN D. SNOWDEN, DMD
Chairman

~~August~~ Sept. 12, 2007.