


DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR

ACTION REFERRAL

TO <i>Singleton</i>	DATE <i>8-28-06</i>
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DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>CC0181</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Bowling, Wells</i> 	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____ <input type="checkbox"/> FOIA DATE DUE _____ <input checked="" type="checkbox"/> Necessary Action

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	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
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Columbia, SC 29211-1329
Phone: (803) 896-4599
FAX: (803) 896-4596
www.llr.state.sc.us

Doc. Deindus
"The Action"
cc: Bowling
Wells

RECEIVED

AUG 28 2006

Department of Health & Human Services
OFFICE OF THE DIRECTOR

TO: INTERESTED PARTIES

FROM: SOUTH CAROLINA STATE BOARD OF DENTISTRY

RE: WAGNER, Spencer B., D.M.D.

DATE: AUGUST 25, 2006

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

HRA/saj

Enclosures

BEFORE THE SOUTH CAROLINA STATE BOARD OF DENTISTRY

In the Matter of:

Spencer B. Wagner, D.M.D.,

License No. 3192,

FINAL ORDER

Respondent.

This matter came before the Board of Dentistry (the Board) for hearing on July 21, 2006, as a result of the Formal Accusation dated June 18, 2004 and Notice of Hearing dated October 2005, which was served upon the Respondent and filed with the Board, and the report and recommendation of a hearing panel appointed by the Board to hear this matter. The hearing was held pursuant to S.C. Code Ann. §§40-15-180 and 200, as amended, S.C. Code Ann. §40-1-70(6), and the provisions of the Administrative Procedures Act (the APA), S.C. Code Ann. §1-23-10, et seq. (1976), as amended. The State was represented by Marvin G. Frierson, Esquire. The Respondent was not present but appeared through counsel, Aaron J. Kozloski, Esquire.

The Respondent was charged with violation of S.C. Code Ann. §40-15-190(A) (15), and Regulation 39-11, Principle 4.

FINDINGS OF FACT

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

1. The Respondent is currently licensed as a dentist in South Carolina, and was so licensed at all times relevant to the issues raised in this matter.
2. The Respondent, a general dentist, practices in Fairfax, South Carolina, and in Beaufort, South Carolina. In the Beaufort office the Respondent leases space from a general dentist, and limits his practice in Beaufort to orthodontics. He named his Beaufort practice "Coastal Orthodontics." The Respondent is not a licensed orthodontist.

3. The Respondent advertised his practice in a number of print media, including telephone books and newspapers, as "Coastal Orthodontics." "Coastal Orthodontics" is the name of

the practice and appears prominently in large type in the advertisements. The advertisements also include a statement that the Respondent is a general dentist, but this appears in smaller type at the bottom of the ads. The name of the practice and its prominence in the ads clearly imply to persons reading the ads that the Respondent is an orthodontist. The Respondent is not a licensed orthodontist, and therefore, the ads are misleading. Regulation 39-11, 4-D provides that announcements by general dentists should "avoid any communications that express or imply specialization." The use of the word "Orthodontics" in the Respondent's practice name and in his advertisements is likely to be read as implying, falsely and misleadingly, that the Respondent is a licensed orthodontist.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, 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, has the authority, pursuant to S.C. Code Ann. §40-15-200, to revoke or suspend a license or registration certificate, publicly or privately reprimand a licensee, or take any other reasonable action short of revocation or suspension, such as probation or the imposition of a civil penalty of up to ten thousand dollars, or requiring the person to undertake additional professional training subject to the direction and approval of the Board, psychiatric evaluations, controlled substances restrictions, institutional practice under supervision, and any other actions considered appropriate by the Board. Upon finding that grounds for discipline exist, S.C. Code Ann. §40-1-120 provides that the Board has the authority to: issue a public reprimand; impose a fine not to exceed five hundred dollars; place a licensee on probation or restrict or suspend the individual's license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs; permanently revoke a license; and impose the reasonable costs of the investigation and prosecution of a case.

2. The Respondent has violated S.C. Code Ann. §40-15-190(A)(15), and Regulation 39-11, Principle 4, in the following particulars:

A. The Respondent has violated S.C. Code Ann. §40-15-190(A)(15), in that he has violated provisions of the practice act or regulations promulgated by the Board, as evidenced by the violations cited herein.

B. The Respondent has violated Regulation 39-11, Principle 4, in that he has announced his services as a general dentist in a manner that implies specialization and is false or misleading in a material respect, as evidenced by his prominent use of "Orthodontics" in his practice name and advertising thus implying that he is a licensed orthodontist.

3. 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 continued services of qualified dentists against the countervailing concern that society be protected from professional ineptitude and misconduct.

4. The sanction imposed is designed not to punish the Respondent, but to protect the welfare of the public at large.

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

1. The Respondent's license to practice dentistry in this State is hereby suspended for a period of one year. This suspension shall be immediately stayed and the Respondent's license reinstated in a probationary status for a period of one year subject to the Respondent's compliance with the following terms and conditions.

2. The Respondent shall pay a fine of Three Thousand (\$3,000.00) dollars within thirty days of the effective date of this order. Failure to pay the fine in the time period allowed shall result in the immediate suspension of the Respondent's license until the fine is paid.

3. The Respondent shall submit in advance all advertising related to the practice of dentistry for Board review prior to publication for the one year period of probation

4. The Respondent's dental records shall be subject to periodic review by Board representatives. The cost of such reviews shall be borne by the Respondent.

5. The Respondent shall appear and report to the Board as

requested by the Board.

6. The Respondent shall comply with the terms of this final order and all state and federal statutes and regulations concerning the practice of dentistry.

7. 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:

South Carolina Department of Labor,
Licensing, and Regulation
Board of Dentistry
P.O. Box 11329
Columbia, SC 29211-1329

8. Failure by the Respondent to abide by any of the aforementioned conditions of probation during the period of probation shall warrant the immediate revocation of probation and the immediate imposition of the aforementioned suspension of his license to practice dentistry in this State pending hearing into the matter and until further order of the Board.

9. 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.

10. This final order shall take effect upon the service of this order upon the Respondent or his counsel.

AND IT IS SO ORDERED.

THE BOARD OF DENTISTRY

Michelle D. Bedell DMJ
Michelle D. Bedell, D.M.D.
President of the Board

7-28, 2006.