



### **JURISDICTION AND VENUE**

This Court has original jurisdiction pursuant to 28 U.S.C. §1331 over Plaintiffs' causes of action arising under the Constitution of the United States, 42 U.S.C. §1983, and 15 U.S.C. §1 and §2. This Court has supplemental jurisdiction over plaintiff's causes of action arising under Louisiana state law pursuant to 28 U.S.C. §1367.

This Court has original jurisdiction pursuant to 28 U.S.C. §1332 over all of Plaintiffs' causes of action.

Venue lies in the United States District Court for the Western District of Louisiana because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Bossier and Caddo Parishes, Louisiana, and a number of the named defendants reside in Bossier and Caddo Parishes, Louisiana. 28 U.S.C. § 1391(b)(1) and (2).

### **PLAINTIFFS**

1.

Plaintiff Ryan Haygood is a resident of the State of North Carolina.

2.

Plaintiff Haygood Dental Care, LLC, is a Louisiana Limited Liability Company and a citizen of North Carolina.

### **DEFENDANTS**

Made Defendants herein are:

3.

Defendant Brian Begue is an individual of the full age of majority and a resident of Orleans Parish, Louisiana. Mr. Begue acted as general counsel to the Louisiana State Board of Dentistry

(“the Board”) at all times pertinent herein.

4.

Defendant Dr. Ross H. Dies is an individual of the full age of majority and a domiciliary of Caddo Parish, Louisiana. Dr. Dies is a competitor of Plaintiffs who served as an expert for the Board at all times pertinent herein.

5.

Defendant Ross H. Dies, DDS, J Cody Cowen, DDS and Benjamin A. Beach, DDS, A Professional Dental Limited Liability Company is a Louisiana Limited Liability Company with its principal place of business in Caddo Parish, Louisiana. Ross H. Dies, DDS, J Cody Cowen, DDS and Benjamin A. Beach, DDS, A Professional Dental Limited Liability Company is a competitor of Plaintiffs. All acts alleged herein of Dr. Dies were committed on behalf of Ross H. Dies, DDS, J Cody Cowen, DDS and Benjamin A. Beach, DDS, A Professional Dental Limited Liability Company.

6.

Defendant Dr. Robert K. Hill is an individual of the full age of majority and a domiciliary of Bossier Parish, Louisiana. Dr. Hill is a competitor of Plaintiffs who assisted and encouraged the initiation of complaints against Plaintiffs.

7.

Defendant Hill D.D.S., Inc. is a Louisiana Corporation with its principal place of business in Caddo Parish, Louisiana. Hill D.D.S. is a competitor of Plaintiffs who assisted and encouraged the initiation of complaints against Plaintiffs and the prosecution of Dr. Haygood. All acts alleged herein of Dr. Hill were committed on behalf of Hill D.D.S., Inc.

8.

Defendant Camp Morrison is an individual of the full age of majority and a domiciliary of Orleans Parish, Louisiana. Mr. Morrison is a private investigator employed by the Board.

9.

Defendant Camp Morrison Investigations, LLC is a Louisiana Limited Liability Company with its principal place of business in Orleans Parish, Louisiana. Camp Morrison Investigations, LLC is employed by the Board. All acts alleged herein of Camp Morrison were committed on behalf of Camp Morrison Investigations, LLC.

10.

Defendant C. Barry Ogden is an individual of the full age of majority and a domiciliary of Orleans Parish, Louisiana. He served as executive director of the Board at all times pertinent herein. He is named in his individual and official capacities.

11.

Defendant Karen Moorhead is an individual of the full age of majority and a domiciliary of Union Parish, Louisiana.

12.

Defendant Dana Glorioso, an individual of the full age of majority and a domiciliary of Rapides Parish, Louisiana.

13.

Plaintiffs are informed and believe and therefore allege that Defendants were aided and abetted in their activities by Dr. Conrad P. McVea, III, Dr. H.O. Blackwood, Dr. Johnny Black, Dr. Tom Colquitt, Jon Stewart, and perhaps others. Plaintiffs reserve the right to supplement and

amend these pleadings as discovery dictates.

### **BACKGROUND**

14.

Dr. Haygood graduated from Louisiana Tech University in 1997, Magna Cum Laude, with a degree in molecular biology, and from Louisiana State University of Dentistry with a Doctors of Dental Surgery degree in 2000. After graduation from dental school, Dr. Haygood moved to North Carolina, worked at Baptist Hospital in Winston-Salem for a year, and then was in private practice in Wake Forest from August 2001 - October 2005. Dr. Haygood also taught at UNC School of Dentistry in Chapel Hill.

15.

Shortly after graduation from dental school, Dr. Haygood was also licensed to practice of dentistry in the State of Louisiana. In 2005 he opened offices in Shreveport and Bossier City, Louisiana, commencing his practice through a limited liability company named "Haygood Dental Care, LLC." He actively advertised his professional services in the Shreveport/Bossier City community.

16.

In order to establish his new dental practice, Dr. Haygood did not buy an existing dental practice but, rather built a new practice "from the ground up." All of his patients were "new patients".

17.

In 2006, in an effort to obtain new patients, Dr. Haygood began an active publicity campaign for his new dental practices in Shreveport-Bossier, which resulted in a significant

increase in patients seeking Dr. Haygood's professional services in those communities. Although such advertising among dentists is perfectly lawful, many dentists, particularly older dentists in Louisiana, frown on such publicity.

18.

Dr. Haygood's efforts to obtain new patients were enormously successful, to the apparent consternation of some other area dentists. Because the population of the Shreveport-Bossier market did not grow during the time period that Haygood established his practice, the "new patients" obtained by Dr. Haygood were necessarily patients who were lost by other, competing dentists in the Shreveport-Bossier area.

19.

Shortly after Dr. Haygood's advertising campaign began in earnest, and his practice began to experience rapid growth, the Board apparently began to receive complaints about alleged improper professional practices of various sorts attributable to Dr. Haygood. Dr. Haygood is informed and believes, and therefore alleges, that these complaints were encouraged, if not directly solicited, by his competitors.

20.

Beginning in late 2006 and the early months of 2007, the Board zealously embarked upon an investigation, prosecution, and adjudication of a wide variety of claims against Dr. Haygood, during the course of which the Board and its agents and contractors, (i) exceeded their lawful authority; (ii) violated Dr. Haygood's rights to due process; (iii) acted without neutrality; (iv) simultaneously acted in adjudicatory and prosecutorial roles; (v) conducted themselves in a manner which was unlawful and at least in one case violative of the criminal laws of the State of

Louisiana; (vi) violated the Board's duty of trust; and (vii) violated the Board's duty to maintain such investigations in confidence.

21.

In late 2006, the Board received complaints regarding Dr. Haygood from three patients of Dr. Robert Hill and one patient of Dr. Kevin Martello. Dr. Hill has admitted to assisting his patients in drafting their complaints, to the extent of reviewing letters and even taking a complaint letter from one patient's chart and showing it to at least one other patient for use as an example.

22.

Beginning no later than March 22, 2007, Dr. H.O. Blackwood, a director of the Board and competitor of Dr. Haygood from northwest Louisiana, communicated directly and indirectly with C. Barry Ogden and Camp Morrison, and developed a scheme to contact "very motivated" dentists in the Shreveport-Bossier area seeking additional complaints against Dr. Haygood. Discussions with these dentists led to Morrison's "concerns" and "questions" regarding a number of other people who had not filed any complaints with the Board.

23.

One such person, Jacqueline Foster, was contacted by Dr. Tom Colquitt and encouraged to file a complaint against Dr. Haygood. After speaking with her via telephone, he thanked her "for her help," encouraged her to write a letter to the Board, and enclosed an envelope in which she could forward him a copy of her complaint, a copy of which he stated he "would love to have."

24.

Without any investigation, both Ogden and Morrison developed a theory or opinion that Haygood had a "predilection for diagnosing unnecessary periodontal work." The Defendants

actively sought evidence in support of that theory. In late March 2007, Ogden authorized the issuance of subpoenas for patients of various dentists in northwest Louisiana for the purpose of gathering additional complaints against Dr. Haygood. Later, in June 2007, the Board had the complainants examined by Dr. Dies, a direct competitor of Dr. Haygood.

25.

An informal hearing of these complaints was held in August 2007, during which Dr. Haygood denied all allegations. Afterward, the Board, apparently unable to formally charge Dr. Haygood on the basis of the complaints in their possession and the biased findings of Dr. Dies, decided to gather additional damning evidence by directing Morrison to retain unlicensed investigators to pose as patients seeking treatment from Dr. Haygood.

26.

Though the investigation and proceedings of the Board are to be conducted in strict secrecy, in accordance with Louisiana law, in 2009 anonymous internet posting containing false and derogatory information that could have only been obtained during the course of the Board's investigation and proceedings began to appear. Haygood's investigation and prosecution was also discussed among dentists in Shreveport and Bossier City, Louisiana during the 2007-2010 time frame.

27.

The Board conducted informal hearings involving Dr. Haygood on March 13, 2009, and November 13, 2009. A final complaint was issued against Dr. Haygood on March 10, 2010.

28.

In an effort to bring additional pressure to bear on Dr. Haygood, the Board determined to

bring charges against his two hygienists, Wendy Green and Julie Snyder, who were accused of aiding and abetting alleged fraudulent conduct by Haygood.

29.

The Board set a formal hearing before the Disciplinary Committee (“Committee”) consisting of Dr. Samuel Trinca, Dr. Dean Manning, and Dr. James Moreau on September 24-25, 2010 and October 22-23, 2010 relative to the formal administrative complaint lodged against Dr. Haygood.

30.

During the hearing, Brian Begue, appointed to act as “independent counsel” for the Board, repeatedly disregarded this role and interjected himself into the hearing as an additional “prosecutor” by cross examining witnesses, providing supportive information to complaint counsel, providing and suggesting objections to complaint counsel and openly questioning the testimony of Dr. Haygood.

31.

Dr. Haygood introduced as a witness world renowned periodontist, lecturer and author Dr. Raymond Yukna, who agreed with Dr. Haygood’s professional opinions with respect to the professional treatment at issue in the case.

32.

The Committee also heard the tainted expert testimony of Dr. Dies and the two unlicensed private investigators, whose testimony should never have been permitted.

33.

After hearing the testimony of Dr. Yukna, M. Thomas Arcenau, prosecutor for the Board

approached the Board Director, Barry Ogden, suggesting that the evidence might be insufficient for any conviction. Ogden responded that the Board was “in too far financially and boxed in politically” and the case had to be pursued.

34.

On November 8, 2010, the Louisiana State Board of Dentistry, whose members included but not limited to a disciplinary committee consisting of Dr. Samuel Trinca, Dr. Dean Manning and Dr. James Moreau issued an Opinion, finding by “clear and convincing evidence” under the Louisiana Dental Practice Act multiple counts of engaging in conduct intending to defraud the public, and, remarkably, findings by Dr. Haygood guilty by “clear and convincing evidence” of *charges which had been dismissed* by the Board of Dentistry. Maximum fines were levied as to all counts. This proceeding was a sham and the product of the actions of the defendants and those Board members who aided and abetted them.

35.

Dr. Haygood appealed the findings of the Board by seeking judicial review in the Orleans Parish Civil District Court, in accordance with the procedure set forth in La. R.S. 37:786. The district court affirmed some of the findings of the Board, reversed the findings of fact as to which both parties agreed were either withdrawn during the administrative trial, or for which no evidence was adduced, and remanded the case for reconsideration of the Board’s imposition of sanctions. The Board issued a new judgment eliminating the dismissed findings but retaining the sanctions. After the Board’s complaint counsel filed a motion to amend, the Board issued an Amended Decision After Remand, deleted the \$5,000 fine, imposed for the Specification that had been removed by the trial court, but maintained the permanent license revocation, the \$35,000 fine, and

costs. Dr. Haygood filed a Petition for Review with the trial court, contesting the Board's Amended Decision after Remand. The trial court issued a Judgment affirming the Amended Decision after Remand.

36.

Dr. Haygood timely appealed both Judgments issued by the trial court to the Fourth Circuit Court of Appeals. The Fourth Circuit held that the manner in which the Board conducted its proceedings against Dr. Haygood (specifically, by permitting Brian Begue to commingle his roles of general counsel, prosecutor, and adjudicator) was arbitrary and capricious, violated the Louisiana Administrative Procedure Act, and denied Dr. Haygood his constitutional due process rights to a neutral adjudicator and a fair hearing. A copy of this opinion, and the denial of writs by the Louisiana Supreme Court is attached hereto as Exhibit "A."

**THE LOUISIANA STATE BOARD OF DENTISTRY**

37.

The Louisiana State Board of Dentistry (the "Board") is a state board of the State of Louisiana. The Board was created under the provisions of La. R.S. 37:751, et seq. The Board, as provided by La. R.S. 36:259(E), is under the supervision and control of the Louisiana Department of Health and Hospitals. The Board is composed of 14 members, including 13 licensed and practicing dentists and one dental hygienist. The Board also has 5 employees. All members are appointed by the Governor and serve 5-year terms. The Board is charged with the responsibility of screening applicants, preparing and administering examinations, issuing licenses for dentists and dental hygienists, and investigating bona fide complaints in the field of dentistry. Operations of the Board are funded by examination fees, license fees and fines imposed on miscreant

professionals.

38.

The Board and its Disciplinary Committee stand in a relation of trust to the public, the profession and those who appear before that body. Its deliberations are to be conducted in utmost confidence.

39.

By statute, the Board's power to investigate is limited as follows:

“The Board shall investigate complaints of illegal evidence or a violation of this chapter, *when evidence is presented to the Board...*” (emphasis added)

Moreover, the Board has authority to investigate “charges brought, which must be made under oath, noticed and docketed.” (emphasis added)

40.

When the Board performs an investigation in good faith and determines to adjudicate a formal administrative complaint against a dentist or other dental professional, the Board is obligated to conduct such hearing in a manner which, although not necessarily perfect, must meet minimum levels of fairness, independence and neutrality, free from malicious or competitive biases or financial influences.

41.

In addition to the foregoing, Louisiana law requires that such hearing be conducted in a manner which maintains the *appearance* of fairness, neutrality, and freedom from the taint of improper influences, such as competitive considerations, financial strains on the Board, and maliciousness on the part of its participants.

42.

The financial statements for the Board for the year end June 30, 2009 as set forth in the independent auditor's report on financial statements submitted by Leroy Chustz and Beverly A. Ryall, CPAs, stated as follows under "Financial Highlights":

"The Louisiana State Board of Dentistry's liabilities exceeded its assets at the close of fiscal year 2009 by \$62,962.00, which represents a 267.4 per cent increase from last fiscal year. The net assets decreased by \$100,569.00 (or 267.4 per cent). The Louisiana State Board of Dentistry's revenue decreased \$61,740.00 (or 6.4 per cent) and the net results from activities decreased by \$49,702.00 (or 88.7 per cent)."

43.

The same financial statements for year end June 30, 2009 stated as follows under "Variations Between Original and Final Budgets":

"Revenues were \$210,000.00 under budget, due mainly to lower than expected revenue from license renewals and enforcement actions. Expenditures were approximately \$148,000.00 under budget due mainly to lower than expected salaries and benefit expenses, operating expenses and fixed asset acquisitions."

44.

The Board's basic financial statements and independent auditor's report for the year ending June 30, 2010 stated as follows:

"Net assets of the Louisiana State Board of Dentistry decreased by \$41,276.00 (or 65.6 per cent) from June 30, 2009 to June 30, 2010. Causes of this decrease include an increase in legal and investigation cost due to an increase in disciplinary actions and an increase in computer support services due to the implementation of a new data base and the computer hardware that supports it."

45.

On Friday, May 7, 2010, the Board conducted a special meeting in New Orleans, Louisiana. According to the Minutes of that meeting, Mr. Barry Ogden, Executive Director of the Board "brought the Board's attention to the financial statements for the nine month period ending

March 31, 2010. He explained that the Board currently had an unprecedented eight formal proceedings against licensees and that those proceedings had driven up the Board's legal and investigative fees."

**BRIAN BEGUE**

46.

Defendant Ogden appointed Brian Begue, an attorney who serves on the staff of the Board to act as "independent counsel" for the Committee during the hearings for Dr. Haygood.

47.

The duties of independent counsel are carefully defined by statute so as to allow the Board the benefit of legal counsel on evidentiary and procedural issues but to remain entirely neutral so as to avoid conflict of interest in acting as counsel both in an adjudicatory role and a prosecutorial role. Specifically, La. C. 46-923(D) states as follows:

"During and before adjudication hearing, the chairman shall rule upon evidentiary objections and other procedural questions, but in his discretion may consult with the entire hearing panel in executive session. At any time, the hearing panel may be assisted by legal counsel retained by the Board for such purpose, who is independent of complaint counsel and who has not participated in the investigation or prosecution of the case. If the Board or hearing panel is attended by such counsel, the chairman may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing."

48.

As defendant Ogden was well aware at the time he appointed Mr. Begue as "independent counsel", Mr. Begue had already "participated in the investigation or prosecution of the case" against Haygood.

49.

Moreover, despite the limitation placed on Mr. Begue by statute, during the hearings

pertaining to Dr. Haygood, Begue repeatedly disregarded this role and interjected himself into the hearing as an additional “prosecutor” by cross examining witnesses, providing supportive information to complaint counsel, providing and suggesting objections to complaint counsel and openly questioning the testimony of Dr. Haygood.

50.

Neither the Board members present at the hearing nor the prosecuting attorney acting on behalf of the Board did anything to discourage Begue’s conduct.

51.

This impermissible confusion of the roles of the Committee as both adjudicators and prosecutor undermined whatever remaining integrity there were to these proceedings and led to the Fourth Circuit’s ruling holding that “...the Board improperly combined the prosecutorial and judicial functions by allowing its general counsel, Mr. Brian Begue, to serve as the prosecutor, general counsel, panel member, and adjudicator for the proceedings against Dr. Haygood. We hold this conduct is violative of the Louisiana Administrative Procedure Act and Dr. Haygood’s due process right to a neutral adjudicator and a fair hearing. We find the Louisiana State Board of Dentistry’s decision to revoke Dr. C. Ryan Haygood’s dental license is arbitrary and capricious..”

**DR. ROBERT HILL**

52.

Robert Hill has been a Louisiana dentist for the past 19 years, and is a principal in Hill D.D.S., Inc. The activities of Dr. Hill complained of were performed on behalf of Hill D.D.S., Inc.

53.

Beginning with the opening of Dr. Haygood's dental practices in Shreveport and Bossier in December, 2005, Dr. Haygood and Dr. Hill became direct, primary competitors in the professional practice of dentistry in the greater Shreveport/Bossier community. Their professional limited liability companies are also direct, primary competitors.

54.

Three of the four initial complaints filed with the Board against Dr. Haygood all stem from patients of Dr. Hill, and Plaintiffs believe that Dr. Hill encouraged the filing of these complaints. Dr. Hill knew at least one of these patients personally. Additionally, he has admitted to assisting these patients in drafting their complaints, to the extent of reviewing letters and violating HIPAA by taking a complaint letter from one patient's chart and showing it to at least one other patient for use as an example.

55.

When deposed during the Board proceedings, he could provide no explanation for his actions.

56.

When asked to provide patient records to the Board, Dr. Hill voluntarily forwarded correspondence to Camp Morrison listing his own opinions regarding the treatment these patients received from Dr. Haygood.

**DR. ROSS H. DIES**

57.

Ross Dies has been a Louisiana dentist for the past 25 years, and is a principal in

Shreveport-Bossier Family Dental Care, LLC. The activities Dr. Dies complained of were performed on behalf of Shreveport-Bossier Family Dental Care, LLC.

58.

Beginning with the opening of Dr. Haygood's dental practices in Shreveport and Bossier in December, 2005, Dr. Haygood and Dr. Dies became direct, primary competitors in the professional practice of dentistry in the greater Shreveport/Bossier community. Their professional limited liability companies are also direct, primary competitors.

59.

At all times pertinent hereto, Dr. Dies had developed a strong personal dislike and profound animosity toward Dr. Haygood, expressing that opinion to others both in and out of the dental profession.

60.

Plaintiffs allege that C. Barry Ogden and H.O Blackwood communicated with Camp Morrison and Dr. Ross Dies throughout the investigation and adjudication proceeding in an effort to assist in removing Dr. Haygood as a competitor in the practice of dentistry in the State of Louisiana.

61.

No later than June 7, 2007, Ogden and Morrison designated defendant Dr. Ross Dies as their "expert", and forwarded medical records to him, ostensibly for a neutral and independent evaluation of "complaints", the vast majority of which were apparently unsupported by written, sworn complaint from patients.

62.

The Board was well aware that Dr. Dies was a direct competitor with Dr. Haygood and in fact, Camp Morrison later described Dies' relationship with Dr. Haygood as that of an "antagonistic" competitor. However, Morrison has characterized Dies as the "obvious choice" for use as the Board's expert.

63.

When Barry Ogden and Camp Morrison communicated with Dr. Dies and sought his assistance as an "expert" they admonished him that "all this must be held in strictest confidence". Further, Morrison assured him that there was no risk to his participation in the scheme, guaranteeing that he would "receive the benefit of immunity as you will be acting on behalf of the LSBD and hence be an agent of the State."

64.

Though Dr. Dies understood that his evaluations would be used as evidence against Dr. Haygood, his evaluations are studded with inaccuracies, falsehoods, exaggerations and improper assumptions. These evaluations were introduced as evidence in the proceedings by the conspirators against Dr. Haygood conducted on September 24-25, 2010 and October 22-23, 2010, and Dr. Haygood knowingly provided those evaluations for that very purpose.

65.

In July 2007, Dr. Dies, purporting to act as an "independent expert," submitted written evaluations of the records of patients which were the subject of the investigation all of which found the treatment and professional actions of Dr. Haygood to be improper. Dr. Dies was neither an expert in periodontal dentistry nor was he independent, as both the Board and his co-conspirators were well aware.

66.

In March, 2010, Dr. Dies hired one of these two hygienists, Wendy Green, despite the pending charges against her and his role as Board “expert” in the charges against Dr. Haygood.

67.

Dr. Dies was fully aware of the pending charges against Ms. Green and began talking to her about the pending investigations prior to her interview with his dental office. Green was ultimately hired, but before she worked her first day at the office, Dr. Dies approached Green and offered her immunity on behalf of the Board for changing her testimony and testifying against Dr. Haygood. During the same conversation, Dr. Dies freely spoke of his “hate” for Haygood.

68.

Despite their impropriety, Dies’ actions on behalf of the Board were apparently authorized or at least were subsequently ratified by a phone call made within 24 hours by a Board representative to Green’s attorney relating that a “deal” could be arranged with Green for immunity in exchange for “cooperation”, in the form of testimony against Dr. Haygood.

69.

While employed with Dr. Dies, Green also interacted with Dr. Dies’ partner, Dr. Cody Cowen, who professed knowledge of the supposedly confidential proceedings against Haygood and Haygood’s patients. Dr. Cowen and Dr. Dies made frequent reference to “our friends at the Board” when talking with Green.

70.

Subsequently, Green left Dies’ practice for employment with Dr. Paul Heilman, whereupon Dr. Dies contacted Heilman and asked him to “probe around about Haygood”.

Ultimately, Green was unwilling to testify to the Board's satisfaction and the Board continued to pursue claims against her to completion.

71.

Also in late 2008 Dr. Ross Dies, who was simultaneously participating in the "investigation," began surreptitiously seeking to purchase Dr. Haygood's dental practice. Dr. Haygood determined to enlist the services of a business broker for a possible sale of his dental practice, a step which was fostered by the burden of the investigation and the cost incurred in connection therewith. Dr. Dies surreptitiously communicated with the business broker hired by Dr. Haygood for this purpose and, making representations that he was interested in purchasing that practice, obtained highly confidential financial information pertaining to Dr. Haygood's medical practice.

72.

Whatever the value of Dr. Dies' opinions might have been, the Board belatedly recognized his antagonistic relationship with Dr. Haygood and his obvious bias. Accordingly, the Board submitted the patient records, many of which were still apparently unsupported by sworn complaints, to Dr. Donald Harris, a dentist in New Iberia.

73.

Although the Board is to be credited for its belated recognition of Dies' obvious bias, remarkably it continued to allow the proceedings to be tainted with that antagonism and bias as a result of : (i) sending Dies' findings to Harris in an effort to influence Harris' opinion; (ii) actually utilizing the testimony of Dr. Dies at the final trial of this matter as an "expert" (in addition to Dr. Harris); and (iii) as set forth hereinbelow, permitting Dr. Dies to continue to participate in the

“investigation” in various roles that far surpass any proper authority with which he might otherwise have been vested.

74.

At some point following November 2010, Linda Anderson, a purported former patient of Dr. Dies, informed him that she had filed complaints against Dr. Haygood. Though Dr. Dies’ participation in the investigation of Dr. Haygood had supposedly concluded long before this date, he asked for copies of the complaints, and Ms. Anderson’s husband delivered three letters addressed to C. Barry Ogden (dated August 23, 2010, October 1, 2010, and November 27, 2010) to Dr. Dies the next day. Dr. Dies has retained copies of these letters.

75.

Dr. Dies’ telephone records indicate that he continued to communicate with Camp Morrison through at least October 2011, which communications, in information and belief, were in furtherance of the conspiracy.

76.

Dr. Dies’ telephone records indicate that he continued to communicate with Dr. H.O. Blackwood through at least October 2010.

### **CAMP MORRISON**

77.

In or about September 2007, apparently not satisfied with the evidence compiled to date, Camp Morrison and Board Member Dr. Conrad McVea developed a scheme which involved Morrison’s employment of Karen Moorhead and Dana Glorioso to act as unlicensed investigators, retained to pose as patients and to present Dr. Haygood’s office with false medical histories and

symptoms.

78.

Mr. Morrison, who is a licensed private investigator under the laws of the State of Louisiana, was well aware that this scheme is expressly prohibited under Louisiana law (La. R.S. 37:3520)

79.

Notably, both Moorhead and Glorioso were dental assistants who worked with former and current Board members. With the knowledge and consent of Dr. McVea and Board prosecutor Thomas Arceneaux, Morrison contacted their employers, Dr. White Graves and Dr. Louis Joseph, regarding the presentation of these dental assistants under fraudulent pretenses. Both Graves and Joseph provided dental care to their assistants, and had misdiagnosed these patients. This placed the hygienists in the position of either testifying adversely against Haygood or admitting misdiagnosis by their own employers. These witnesses, like others involved in the investigation, were not only acting in contravention to Louisiana law but also hopelessly compromised by their role on behalf of the prosecution of the case.

80.

Dana Glorioso and Karen Morehead are both experienced dental assistants. Likewise, Camp Morrison is a licensed private investigator with extensive experience who has provided investigative services to the Louisiana State Board of Dentistry for several years. As such, Glorioso, Morehead, and Morrison all knew or should have known of the nature and the significance of investigations conducted by the Louisiana State Board of Dentistry ("Board") and of the proceedings of the Board against its licensees. Specifically, they all knew or should have known of the devastating effects adverse investigatory findings and/or procedural decisions could

have on the subject of such investigations and proceedings.

81.

Morrison, who had been asked by the Board to find two appropriate candidates “for an undercover operation into the dental offices of Dr. Haygood in Shreveport,” chose Glorioso and Moorhead, and instructed them to deceive Dr. Haygood’s office by using fake names as part of their “undercover operation.” Morrison has testified that, though he knew that neither was a licensed private investigator, he retained Glorioso and Moorhead as contract employees of Camp Morrison Investigations. Glorioso and Moorhead readily agreed to act as private investigators for Morrison, who retained them to falsely present themselves as patients to Dr. Haygood, and both received payment from Morrison for their illegal service as his employees.

82.

Glorioso, Moorhead, and Morrison knowingly and intentionally agreed to act in concert with the other defendants named in Plaintiffs’ original Petition for Damages to illegally ensure that the investigation produced false evidence of misconduct on Dr. Haygood’s part so that the proceedings of the Board would result in adverse findings against Dr. Haygood.

83.

Their illegal acts include the intentional violation of La. R.S. 37:3520. That provision states in pertinent part: A. It shall be unlawful for any person knowingly to commit any of the following acts: (1) Provide contract or private investigator service without possessing a valid license. (2) Employ an individual to perform the duties of a private investigator who is not the holder of a valid registration card. (3) Designate an individual as other than than a private investigator to circumvent the requirements of this Chapter. Morrison’s actions are a violation of

La. R.S. 37:3520(A)(2) and (3), and Glorioso and Morehead's acts constitute a violation of La. R.S. 37:3520(A)(1). The acts are felonies.

84.

La. R.S. 37:3721 states that no person shall engage in the business of providing private investigation they do in accord with the rules and regulations of the Board under the Revised Statutes. Whoever violates the provisions of the chapter licensing private investigators within the Revised Statutes, "shall be fined not less than \$1,000.00, no more than \$500.00 or imprisoned for not less than three (3) months, no more than one year or both." Hence, Morrison, Glorioso, and Moorehead engaged in criminal activity on behalf of the Board when investigating Dr. Haygood.

85.

By using the "evidence" obtained by Morrison, Glorioso, and Moorehead, the Board encouraged their violation of La. R.S. 37:3520.

86.

In addition to the foregoing, due to their experience, Morrison, Glorioso, and Moorehead knew or should have known of the strictly confidential manner in which investigations and proceedings of the Board should be conducted, and yet all knowingly participated in and contributed to conversations with their co-conspirators that breached the confidentiality of the investigations and proceedings.

87.

Finally, Plaintiffs show that Glorioso and Morehead went beyond violating La. R.S. 37:3520 in their participation in the investigation of Dr. Haygood, and actually took the initiative to fabricate false symptoms and dental histories to present to Dr. Haygood. Both have confirmed

that, upon reporting to Dr. Haygood for the examinations coordinated by Camp Morrison, they intentionally presented false symptoms and histories, despite the fact that they had not been instructed to do so, and the fact that, as dental assistants, both knew or should have known the significance of an accurate presentation of symptoms in a dentist's rendering of an correct diagnosis. Plainly, both intended to skew Dr. Haygood's examination in order to obtain "evidence" that the Board could use against him.

88.

Glorioso, specifically, reported to Dr. Haygood that she had not seen a dentist in five years, and that she suffered from bleeding from her gums with brushing and flossing her teeth. Morehead went even further in her efforts to obtain damning evidence to be used against Dr. Haygood, presenting false symptoms including bleeding of the gums, pain, and sensitivity, and lying about the frequency with which she brushed and flossed her teeth. In fact, Morehead has since admitted that virtually every aspect of her dental history and symptoms, as presented to Dr. Haygood, was false.

89.

Significantly, neither Glorioso nor Morehead presented false symptoms to any of the other dentists who examined them during the course of the investigation of Dr. Haygood. Clearly, both acted with the intention of obtaining false "evidence" to be used against Dr. Haygood.

90.

In addition to the foregoing, Morehead gave contradictory testimony regarding the treatment she received by Dr. Haygood and the statements made to her at his office throughout the course of the proceedings against Dr. Haygood. For instance, in a written account provided to the

Board after her examination with Dr. Haygood, she indicated that she received a negative response when she asked whether she would lose her teeth. When questioned later, however, Morehead testified to the effect that she was told by Dr. Haygood's staff that she would need dentures.

91.

As a result of the foregoing criminal acts, breaches of confidentiality, and false and defamatory statements made by Morrison, Morehead, and Glorioso, acting in concert with the other named co-defendants, Dr. Hayood and Haygood Dental Care, LLC have been damaged, incurring financial loss, reputational loss and substantial general damages of embarrassment, humiliation, and worry. Dr. Haygood has been deprived of the opportunity to practice dentistry in his home town in the State of Louisiana, perhaps permanently as a result of these intentional and malicious acts.

### **CONSPIRACY**

92.

In late 2006 or early 2007, the named Defendants, along with Dr. Conrad P. McVea, III, Dr. H.O. Blackwood, Dr. Johnny Black, Dr. Tom Colquitt, Dr. Jon Stewart, and perhaps others, conspired with the object to damage Dr. Haygood and his practice and to exclude Plaintiffs from the Louisiana dental services market through, inter alia, the initiation and conduction of sham peer review proceedings that did not conform to statutory or constitutional requirements and resulted in the unlawful revocation of his dental license. None of these parties has withdrawn from or dissociated from the conspiracy, which, based on information and belief, continues to the present date.

**CAUSES OF ACTION**

**Count 1: Antitrust Violations**

93.

Defendants, acting individually and in concert, aiding and abetting one another, and in conspiracy with one another, combined to exclude Plaintiffs from the practice of dentistry in the Shreveport-Bossier metropolitan area (the relevant geographical market) by means of the improper conduct described above. Plaintiffs were proximately injured as a result of defendants' conduct, which damage constitutes antitrust injury, through the elimination of a competitor by means other than the economic freedom of participants in a relevant market.

94.

The unreasonable exclusion of Plaintiffs from the relevant through adverse and unfair peer review proceedings and other misconduct described above, affects patient choice and concomitantly interferes with competition in the marketplace. The foregoing conduct constitutes both per se violations of the Unitrust laws and violates the "rule of reason analysis" as well.

95.

Plaintiffs allege that the defendants and their co-conspirators on the Louisiana Board of Dentistry knowingly engaged in conduct which violated 15 U.S.C. §1 and §2 by conspiring with the intent to exclude Plaintiffs from the Louisiana dental services market through the initiation and conduction of sham peer review proceedings that did not conform to statutory requirements and resulted in the revocation of his dental license. The results of the peer review processes are a matter of public record, and serve to affect dentists' employment opportunities not only in Louisiana but also throughout the United States. In addition, the reduction of the provision of

dental services in the Shreveport-Bossier area substantially affects interstate commerce because dentists practicing in that market routinely serve nonresident patients (particularly residents of Texas and Arkansas) and receive reimbursement from Medicare and Medicaid. Finally, elimination of dentists from the market undoubtedly results in higher costs and reduced treatment options for consumers in a market that suffers from some of the highest rates of natural tooth loss in the United States.

**Count 2: 28 U.S.C. 1983 Claims for Deprivation of Rights, Privileges, and Immunities Guaranteed under Federal Law and the United States Constitution**

96.

The defendants, acting individually and in conspiracy with one another, acting under color of state law, deprived and denied Plaintiffs of their constitutional and/or statutory rights.

97.

Dr. Haygood and Haygood Dental Care, LLC allege that by virtue of Defendants' participation in highly irregular and unlawful actions in connection with the investigation, prosecution and adjudication of decisions by the Louisiana State Board of Dentistry in "Re: Ryan Haygood, DDS, License No. 5334", defendants knowingly and intentionally, or with reckless disregard for the truth, deprived Dr. Haygood of his right to a fair and impartial hearing; presented knowingly false or exaggerated claims; provided evidence obtained through unlawful means; and took other actions which deprived Dr. Haygood of the right and privilege to conduct his livelihood as a licensed dentist in the State of Louisiana.

98.

Plaintiffs further allege that Defendants' institution of prosecution of Plaintiffs was motivated by (i) actual and implied malice; (ii) improper competitive considerations and; (iii) of financial considerations to permit the Board to make recoveries of fines.

99.

Plaintiffs allege that Defendants, acting with and obtaining significant aid from their co-conspirators on the Louisiana Board of Dentistry, knowingly engaged in conduct which deprived Dr. Haygood of due process under Amendment XIV of the United States Constitution. Plaintiffs seek damages under 42 U.S.C. 1983 for these constitutional violations.

100.

Plaintiffs allege that defendants, acting with and obtaining significant aid from their co-conspirators on the Louisiana Board of Dentistry, knowingly and in bad faith, instituted sham proceedings against Plaintiffs, without probable cause, with the intent to deprive Dr. Haygood of his dental license. Plaintiffs seek damages under 42 U.S.C. 1983 and Louisiana law for these constitutional violations.

101.

As a result of the foregoing, Dr. Haygood and Haygood Dental Care, LLC have been damaged, incurring financial loss, reputational loss and substantial general damages of embarrassment, humiliation, and worry. Dr. Haygood has been deprived of the opportunity to practice dentistry in his home town in the State of Louisiana, perhaps permanently, as a result of these intentional and malicious acts.

**Count 3: Defamation**

102.

Plaintiffs re-allege and incorporate by this reference all allegations set forth above in paragraphs 14-90.

103.

Dr. Haygood and Haygood Dental Care, LLC allege that the Defendants violated Louisiana state law by acting in concert to proliferate malicious and non-privileged communications, both for initial publication and foreseeable republication, which communications were designed to cause harm to Haygood in the dental profession and among his friends, colleagues and patients, actual and potential.

**Count 4: Louisiana Unfair Trade Practices Act Violations**

104.

Plaintiffs re-allege and incorporate by this reference all allegations set forth above in paragraphs 14-91.

105.

Plaintiffs allege that Defendants' conduct constitutes a violation of the Louisiana Unfair Trade Practices Act, La. R.S. 51:1409, et seq.

106.

Plaintiffs seek a trial by jury on all issues herein.

WHEREFORE PLAINTIFFS Ryan Haygood, DDS and Haygood Dental Care, LLC pray that after due proceedings are had herein that plaintiffs be awarded such damages as they shall show themselves justly entitled, both general and special, and an award of attorney's fees, interest

and such other relief as the court shall deem appropriate under the circumstances.

Respectfully submitted,

BY: s/Jerald R. Harper

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**ATTORNEYS FOR PLAINTIFFS RYAN  
HAYGOOD, DDS AND HAYGOOD DENTAL  
CARE, LLC**

**PLEASE SERVE:**

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2127 Dauphine St.  
New Orleans, LA 70116

**\*SERVICE INFORMATION CONTINUED ON FOLLOWING PAGE**

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910 Bert Kouns Industrial Loop  
Shreveport, LA

Ross H. Dies, DDS, J Cody Cowen, DDS and  
Benjamin A. Beach, DDS, A Professional  
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through its registered agent  
Ross Dies, DDS  
910 Bert Kouns Industrial Loop  
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Robert K. Hill  
343 Crosscreek Dr.  
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Hill D.D.S., Inc.  
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343 Crosscreek Dr.  
Bossier City, LA 71111

Camp Morrison  
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New Orleans, LA

Camp Morrison Investigations, LLC  
through its registered agent  
4843 Canal St.  
New Orleans, LA

C. Barry Ogden  
Louisiana Board of Dentistry  
365 Canal St., #2680  
New Orleans, LA

Karen Moorhead  
990 Arthur McDaniel Rd.  
Downsville, LA

Dana Glorioso  
380 Highway 1199  
Elmer, LA

JS 44 (Rev. 12/12)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
 Ryan Haygood, DDS and Haygood Dental Care, LLC

**(b) County of Residence of First Listed Plaintiff** Craven  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c) Attorneys (Firm Name, Address, and Telephone Number)**  
 Jerald R. Harper and Amber H. Watt  
 Harper Law Firm, APLC  
 213 Texas Street, Shreveport, LA 71101; (318) 213-8800

**DEFENDANTS**  
 Brian Begue, Ross H. Dies, DDS, Ross H. Dies, DDS, J. Cody Cowen, DDS and Benjamin A. Beach, DDS, A Professional Dental Limited Liability Company, Robert K. Hill, DDS, Hill DDS, Inc., et al

County of Residence of First Listed Defendant Orleans  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C 1983; 15 U.S.C. 1 & 2

Brief description of cause:  
Claims for damages for antitrust and civil rights violations.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE Leon Emanuel    DOCKET NUMBER 554,003 (1st JDC, Caddo)

DATE 02/13/2013    SIGNATURE OF ATTORNEY OF RECORD 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

C. RYAN HAYGOOD, DDS \* NO. 2011-CA-1327  
 VERSUS \*  
 LOUISIANA STATE BOARD \* COURT OF APPEAL  
 OF DENTISTRY \* FOURTH CIRCUIT  
 \* STATE OF LOUISIANA  
 \* \* \* \* \*

CONSOLIDATED WITH: CONSOLIDATED WITH:  
 C. RYAN HAYGOOD, D.D.S. NO. 2012-CA-0214  
 VERSUS  
 LOUISIANA STATE BOARD OF  
 DENTISTRY

CONSOLIDATED WITH: CONSOLIDATED WITH:  
 C. RYAN HAYGOOD, D.D.S. NO. 2012-CA-0215  
 VERSUS  
 LOUISIANA STATE BOARD OF  
 DENTISTRY

APPEAL FROM  
 CIVIL DISTRICT COURT, ORLEANS PARISH  
 NO. 2010-12060, C/W 10-12060, C/W 11-10167, DIVISION "K-5"  
 Honorable Herbert A. Cade, Judge

\* \* \* \* \*  
**Judge Terri F. Love**  
 \* \* \* \* \*

(Court composed of Judge James F. McKay III, Judge Terri F. Love, Judge Roland L. Belsome)

**BELSOME, J., CONCURS WITH REASONS**

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COUNSEL FOR DEFENDANT/APPELLEE

**VACATED AND REMANDED**  
**September 26, 2012**

Dr. C. Ryan Haygood appeals the decision of the Louisiana State Board of Dentistry to permanently revoke his dentistry license. Dr. Haygood maintains that the Board's decision cannot be upheld because the Board's independent counsel, who is also its general counsel, participated in the administrative hearing in dual roles as prosecutor and adjudicator.

After conducting a *de novo* review, we find the combination of the Board's general counsel's roles of prosecutor and adjudicator violated Dr. Haygood's due process rights. We find the Board improperly combined the prosecutorial and judicial functions by allowing its general counsel, Mr. Brian Begue, to serve as the prosecutor, general counsel, panel member, and adjudicator for the proceedings against Dr. Haygood. We hold this conduct is violative of the Louisiana Administrative Procedure Act and Dr. Haygood's due process right to a neutral adjudicator and a fair hearing.

We find the Louisiana State Board of Dentistry's decision to revoke Dr. C. Ryan Haygood's dental license is arbitrary and capricious; therefore, we reverse the trial court's judgment which affirmed the revocation of Dr. Haygood's license and remand this matter to the Board for a new hearing.

### **FACTS AND PROCEDURAL HISTORY**

The Louisiana State Board of Dentistry (“Board”) opened an investigation of Dr. C. Ryan Haygood, D.D.S. in 2007 after receiving complaints from some of his patients regarding the treatment plans he recommended and the dental care that he provided. Prior to filing formal charges against Dr. Haygood, an informal resolution conference was held, with Dr. Haygood denying all allegations of wrongdoing. Subsequent to Dr. Haygood’s denial of the charges against him, Board member, Dr. Conrad McVea, directed the Board’s investigator, Camp Morrison, “to send people in” to Dr. Haygood’s office. According to Mr. Morrison, this was the first time that the Board had “sent people in to act as patients.”

Mr. Morrison engaged multiple individuals at an hourly rate to pose as patients who purported to have various periodontal symptoms and complications and sought treatment from Dr. Haygood based upon their alleged conditions, including Dana Glorioso and Karen Moorehead. Ms. Glorioso worked for Dr. Louis Joseph, who was an active Board member at the time he recommended her to Mr. Morrison. Ms. Glorioso used the alias “Dana Brister” when she was examined Dr. Haygood. Karen Moorehead was recommended by Dr. White Graves, a former Board member and Ms. Moorehead’s employer. Ms. Moorehead used the alias “Karen Hill” when she was treated by Dr. Haygood. Seven other patients were involved in the investigation against Dr. Haygood.

Formal charges were filed against Dr. Haygood at the conclusion of the investigation. The Board formally charged him with violating La. R.S. 37:776 (A)(16) (Charge 1) on nine occasions (Specifications 1 through 9), La. R.S. 37:776(a)(19) and La. R.S. 37:776(A)(15) (Charge 2) on three occasions

(Specifications 1 through 3) and La. R.S. 37:776(A)(7) and (8) (Charge 3) on three occasions (Specification 1 through 3). The nine specifications in Charge 1 alleged that Dr. Haygood engaged in conduct intended to deceive or defraud the public by fraudulently diagnosing periodontal disease and other dental conditions and intending to deceive the individuals regarding the necessity of treatment. Charge 2 alleged that Dr. Haygood improperly offered discounts in exchange for patient referrals. Charge 3 alleged Dr. Haygood failed to satisfy the prevailing acceptable standard of dental practice. Charge 3 and all specifications within it were dismissed by the Board's complaint counsel prior to deliberation.

Four different hygienists were involved with the care of the patients included in the charges against Dr. Haygood; however, only two of Dr. Haygood's hygienists, Julie Snyder and Wendy Greene, were formally charged and faced disciplinary action by the Board.

The Board's complaint counsel prosecuted the charges against Dr. Haygood. The Board's general counsel, Mr. Begue, was engaged by the Board to serve as independent counsel to rule on evidentiary matters. The three Board members who comprised the disciplinary panel for Dr. Haygood's hearing were Doctors Samuel Trinca, Dean Manning, and James Moreau, Jr.

At the conclusion of four days of testimony, the Board found Dr. Haygood guilty of eight specifications under two separate charges, ordered permanent revocation of his dentistry license, and assessed the maximum monetary fine allowed by law \$40,000, awarding all costs at \$133,074.02, for a total of \$173,074.02.

Dr. Haygood appealed the Board's decision to the trial court, and posted the proper security. The trial court enjoined the Board from enforcing its decision for

the maximum amount of time allowed under the Dental Practice Act. The court also assessed costs against Dr. Haygood in the amount of \$133,074.02.

After a two-day hearing, the trial court rendered judgment, which reversed the Board's decision to delete findings of fact as to which both parties agreed were either withdrawn during the administrative trial, or for which no evidence was adduced. The trial court affirmed the remainder of the findings, but remanded to consider whether the sanctions previously imposed remained appropriate.

The panel members subsequently issued an Amended Decision which, pursuant to the trial court's Judgment, eliminated the findings. However, the discipline remained. After the Board's complaint counsel filed a motion to amend, the Board issued an Amended Decision After Remand, deleted the \$5,000 fine imposed for the Specification that had been removed by the trial court, but maintained the permanent license revocation, the \$35,000 fine, and costs.

Dr. Haygood filed a Petition for Review with the trial court, contesting the Board's Amended Decision After Remand. The trial court issued a Judgment affirming the Amended Decision After Remand.

Dr. Haygood timely appealed both Judgments issued by the trial court.

## LAW AND DISCUSSION

### *Standard of Review*

The trial court applies the manifest error standard of review in reviewing the facts as determined by the administrative tribunal; the trial court applies the arbitrary and capricious test in reviewing the administrative tribunal's conclusions and its exercise of discretion. *Save Ourselves, Inc. v. Louisiana Env'tl. Control Comm'n*, 452 So. 2d 1152, 1159 (La. 1984); *Rochon v. Whitley*, 96-0835, p. 5 (La. App. 1 Cir. 2/14/97), 691 So. 2d 189, 192. An aggrieved party may obtain review

of any final judgment of the district court by appeal to the appropriate court of appeal. “On review of the district court’s judgment, no deference is owed by the court of appeal to factual findings or legal conclusions of the district court, just as no deference is owed by the Louisiana Supreme Court to factual findings or legal conclusions of the court of appeal.” *Eicher v. Louisiana State Police, Riverboat Gaming Enforcement Div.*, 97-0121, p. 5 n. 5. See LA. CONST. art. V, § 5(C); *Donnell v. Gray*, 215 La. 497, 41 So. 2d 66, 67 (1949).

Moreover, “[a]ppellate review of a question of law involves a determination of whether the lower court’s interpretive decision is legally correct.” *Johnson v. Louisiana Tax Comm’n*, 01-0964, p. 2 (La. App. 4 Cir. 1/16/02), 807 So. 2d 329, 331. The trial court is required to conduct its review upon the record that was before the Board. *Crawford v. Am. Nat’l Petroleum Co.*, 00-1063, p. 6 (La. App. 1 Cir. 12/28/01), 805 So. 2d 371, 377. It considers only facts on the Board’s record and questions of law. *Id.* According to the Louisiana Supreme Court in *St. Pierre’s Fabrication and Welding, Inc. v. McNamara*, 495 So. 2d 1295, 1298 (La. 1986), the Board’s findings of fact are to be accepted by the reviewing trial court where there is substantial evidence in the record to support them. These findings of fact are not to “be set aside unless they are manifestly erroneous in view of the evidence on the entire record.” *Id.* at 1298. The Board’s decision must be affirmed absent legal error or a failure to follow the correct procedural standards. *Collector of Revenue v. Murphy Oil Co.*, 351 So. 2d 1234, 1236 (La. App. 4th Cir. 1977); *Crawford, supra*.

The standard of judicial review of a decision of an agency is set forth in La. R.S. 37:786 and La. R.S. 49:964(G). La. R.S. 49:964(G) provides that:

the court may reverse or modify the decision if substantial rights of the appellant have been prejudiced

because the administrative findings, inferences, conclusions, or decisions are (1) in violation of constitutional or statutory provisions; (2) in excess of the agency's statutory authority; (3) made upon unlawful procedure; (4) affected by error of law; (5) arbitrary, capricious, or an abuse of discretion; or (6) manifestly erroneous.

The manifest error test is used in reviewing the facts as found by the administrative tribunal; the arbitrary and capricious test is used in reviewing the administrative tribunal's conclusions and its exercise of discretion. *Save Ourselves*, 452 So. 2d at 1159. On legal issues, the reviewing court gives no special weight to the findings of the administrative tribunal, but conducts a *de novo* review of questions of law and renders judgment on the record. *See State, Through Louisiana Riverboat Gaming Comm'n v. Louisiana State Police Riverboat Gaming Enforcement Div.*, 95-2355, p. 5 (La. App. 1 Cir. 8/21/96), 694 So. 2d 316, 319.

#### ***Commingling of Roles***

Dr. Haygood argues that he was not afforded due process at the hearing before the Board. He also contends that during four days of testimony, Mr. Begue "repeatedly interfered and zealously advocated on behalf of the Board by cross-examining witnesses, supplying objections to complaint counsel, and questioning the credibility of Dr. Haygood." The Board argues that Dr. Haygood's allegations of bias are unsubstantiated and do not warrant reversal of the revocation of his license under the *Allen* case. The Board contends that Mr. Begue's actions were to "expedite the process." We have comprehensively reviewed the transcripts of the four-day hearing, and we agree with Dr. Haygood's representation of Mr. Begue's actions.

#### ***Mr. Begue's Appointment as Independent Counsel***

As the Board's general counsel, Mr. Begue is expected to serve in an

advocacy role on behalf of the Board. The Board's selection of its general counsel taints the role of independent counsel, which is a role that requires neutrality and independence and the appearance of neutrality and independence. "In light of the substantial powers given to administrative bodies, the courts must be vigilant [sic] in assuring that parties in administrative adjudications receive the procedural protections our law affords." *Allen v. Louisiana State Bd. of Dentistry*, 543 So. 2d 908, 915 (La. 1989). Mr. Begue's twofold role as prosecutor and adjudicator violated Dr. Haygood's right to a hearing that is fair and impartial and has the appearance of being fair and impartial.

There is a risk of commingling the prosecutorial and adjudicative functions of the Board when an independent counsel acts as prosecutor.

Title 46, Part XXXIII, § 923(D) of the Louisiana Administrative Code limits Mr. Begue's role to ruling on evidentiary matters. Section 923(D) provides:

During and before an adjudication hearing, the chairman shall rule upon all evidentiary objections and other procedural questions, but in his discretion may consult with the entire hearing panel in executive session. At any such time, the hearing panel may be assisted by legal counsel, retained by the board for such purpose, who is independent of complaint counsel and who has not participated in the investigation or prosecution of the case. If the board or hearing panel is attended by such counsel, the chairman may delegate to such counsel ruling on evidentiary objections and other procedural issues raised during the hearing.

The type of commingling found in this case is strictly prohibited by the Louisiana Administrative Procedure Act. *See* La. R.S. 49:960.<sup>1</sup>

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<sup>1</sup> La. R.S. 49:960 provides:

A. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by

*Procedural Management by the Board*

The chairman of the disciplinary committee, Dr. Trinca, delegated to the Board's general counsel and appointed independent counsel for the hearing panel "the obligation of ruling on all procedural and evidentiary issues raised during the hearing of this matter reserving the panel's right to overrule any decision made by the counsel." Mr. Begue's sole role during Dr. Haygood's hearing was to serve as independent counsel – as an unbiased hearing officer whose purpose was limited to ruling on evidentiary matters. However, he participated in the hearing before the Board's panel both as prosecutor and adjudicator. The Board condoned Mr. Begue's behavior and failed to acknowledge Dr. Haygood's objection that Mr. Begue was overstepping his role in the proceedings.

The record is replete with instances in which Mr. Begue acted as prosecutor throughout the proceedings, and at times, simultaneously acted as prosecutor, panel member and independent counsel – even ruling on his own objection. The Louisiana Supreme Court held,

[w]e find the commingling of prosecutorial and adjudicative functions violates both the letter of the Louisiana Administrative Procedure Act and the due process goals it is designed to further ... The idea of the same person serving as judge and prosecutor is anathema under our notions of due process. Such a scenario is devoid of the appearance of fairness.

*In Re Georgia Gulf Corp. v. Bd. of Ethics*, 96–1907, p.7 (La. 1997), 694 So. 2d 173, 177. Without objection from the Board, Mr. Begue expanded his limited

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filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of R.S. 49:957 shall apply.

statutory duty. By allowing Mr. Begue to act as adjudicator and prosecutor, the Board violated Dr. Haygood's due process rights.

***Denial of Dr. Haygood's Due Process Rights***

It is unquestionable that Dr. Haygood has a protected property right in his license to practice dentistry and that he is entitled to due process of law under both the federal and state constitutions. *See Banjavich v. Louisiana Licensing Bd. For Marine Divers*, 237 La. 467, 111 So. 2d 505, 511 (La. 1959). A person cannot be deprived of life, liberty, or property without due process of law. U.S. Const. Amend. XIV, § 1; LA. CONST. Art. 1, § 2. Due process requires a fair trial before a fair tribunal. A due process violation may exist even if an adjudicatory body's actual impartiality is not proven. The appearance of fairness and the absence of a probability of outside influence on the adjudication are required by due process. *Utica Packing Co. v. Block*, 781 F.2d 71, 77-78 (6th Cir. 1986); *Allen*, 543 So. 2d at 915.

Moreover, due process requires that the accused be provided with a neutral and impartial referee to impart fairness. The essential guarantee of the Due Process Clause is fundamentally fair procedure for the individual in the resolution of the factual and legal basis for government actions which deprive him of life, liberty or property. Therefore, there must be some type of neutral and detached decision maker, be it judge, hearing officer or agency. This requirement applies to agencies and government hearing officers as well as judges. An impartial decision maker is essential to due process. Even if an individual cannot show special prejudice in his particular case, the situation in which an official occupies two inconsistent positions, one partisan and the other judicial, necessarily involves a lack of due process.

*City of Alexandria v. Alexandria Civil Service Comm'n*, 09-484, p. 7 (La. App. 3 Cir. 11/4/09), 23 So. 3d 407, 413 (citations omitted).

The Louisiana State Board of Dentistry is a statutory agency created and governed by La. R.S. 37:753, *et seq.* La. R.S. 37:760A(4)(a) empowers the Board with the sole authority to revoke, limit or suspend licenses of dentists practicing in this state. The relevant provisions provide as follows:

The board shall exercise, subject to the provisions of this Chapter, the following powers and duties:

Conduct hearings on proceedings to revoke, limit, or suspend, and to revoke, limit, or suspend a license granted under this Chapter, as well as conduct hearings to sanction unlicensed persons illegally practicing dentistry or dental hygiene, when evidence has been presented showing violation of any of the provisions of this Chapter.

According to Title 46, Part XXXIII, § 923(B) of the Louisiana Administrative Code, the conduct of an adjudication hearing is explained as follows:

At an adjudication hearing, opportunity shall be afforded to complaint counsel and respondent to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for a full and true disclosure of the facts and disposition of the complaint.

“An impartial decision maker is essential to an administrative adjudication that comports with due process, even if *de novo* review is available.” *Butler v. Dep’t of Public Safety and Corr.*, 609 So. 2d 790, 793 (La. 1992). In this case, the Board’s failure to comply with Section 923(D) of the Louisiana Administrative Code and the expressed due process requirements of the Fourteenth Amendment of the United States Constitution and Article 1, Section 2 of the Louisiana Constitution, renders the decision to revoke Dr. Haygood’s license unenforceable.

Based upon our review of the record, we find that Mr. Begue's functions of general counsel, independent counsel, prosecutor and fact-finder were so interwoven that they became indistinguishable, which created the appearance of impropriety and deprived the proceedings of the imperative and fundamental appearance of fairness. Therefore, the Board's decision to revoke Dr. Haygood's license must be reversed.

***Dr. Haygood's Remaining Issues***

Because we find that Dr. Haygood was denied due process and that this matter is to be remanded to the Board for a new hearing, we pretermitted addressing the remaining issues raised by Dr. Haygood alleging other erroneous findings.

**DECREE**

We conclude that the combination of Mr. Begue's roles of general counsel, prosecutor, and adjudicator violated Dr. Haygood's due process rights. We find the Board improperly combined the prosecutorial and judicial functions by allowing its general counsel, Mr. Begue, to serve as the prosecutor, general counsel, panel member and adjudicator for the proceedings against Dr. Haygood. We hold this conduct is violative of the Louisiana Administrative Procedure Act and Dr. Haygood's due process right to a neutral adjudicator and a fair hearing.

We find the Louisiana State Board of Dentistry's decision to revoke Dr. Haygood's dental license is arbitrary and capricious; therefore, we reverse the trial court's judgment, which affirmed the revocation of Dr. Haygood's license, and remand this matter to the Board for a new hearing.

**VACATED AND REMANDED**



independent counsel. For these reasons I concur with the conclusions reached by the majority opinion.

# The Supreme Court of the State of Louisiana

C. RYAN HAYGOOD, DDS

NO. 2012-C-2333

VS.

LOUISIANA STATE BOARD OF DENTISTRY

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IN RE: Louisiana State Board of Dentistry; - Defendant; Applying  
For Writ of Certiorari and/or Review, Parish of Orleans, Civil  
District Court Div. K, No. 2010-12060 C/W 11-10167; to the Court of  
Appeal, Fourth Circuit, No. 2011-CA-1327 C/W 2012-0214 C/W 2012-0215;  
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December 14, 2012

Denied.

GGG

BJJ

JPV

JTK

MRC

WEIMER, J., would grant.

Supreme Court of Louisiana  
December 14, 2012



**Deputy** Clerk of Court  
For the Court