

STATE OF FLORIDA BOARD OF DENTISTRY

**DEPARTMENT OF HEALTH,
 Petitioner,**

vs.

**RAYMOND DELLA PORTA, DDS
 Respondent.**

Case No.: 2009-05195
 License No.: DN 4552
 Final Order No.: DOH-12-0928-S-MQA

**FINAL ORDER
 VACATING PREVIOUS FINAL ORDER AND DISMISSING CAUSE**

This matter appeared before the Board of Dentistry at a duly-noticed public meeting on August 17, 2012, in Orlando, Florida for consideration of Respondent's Motion to Vacate the Previous Final Order (DOH-12-0928-S-MQA) and Dismiss the Cause. Petitioner was represented by Adrienne Rodgers, Assistant General Counsel. Respondent was present and was represented by Edwin Bayó, Esquire. Petitioner remained without objection to the motion and deferred to the pleasure of the Board. Upon consideration of the motion, the agreement that both parties waive any rights to attorney fees, the documents submitted in support thereof, the oral arguments of the Respondent and otherwise being advised, the Board found just cause for the relief requested.

WHEREFORE, it is hereby **ORDERED AND ADJUDGED** that the motion be **GRANTED** and that Final Order Number DOH-12-0928-S-MQA, entered on the 4th day of June, 2012 is hereby **VACATED** and this cause, DOH case number 2009-05195, is hereby **DISMISSED**.

DONE AND ORDERED this 19 day of September, 2012.

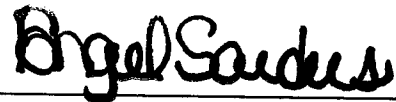
BOARD OF DENTISTRY

Sue Foster

Sue Foster
 Executive Director *on behalf of*
 Wade Winker, DDS, CHAIR

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail to **Raymond Della Porta, DDS c/o Edwin Bayó, Esquire, e.bayo@gfblawfirm.com**; **David D. Flynn, Assistant Attorney General, david.flynn@myfloridalegal.com**; and **Adrienne Rodgers, Assistant General Counsel, Department of Health, Adrienne.Rodgers@doh.state.fl.us** this 19 day of September, 2012.



Deputy Agency Clerk

STATE OF FLORIDA
BOARD OF DENTISTRY

DEPARTMENT OF HEALTH,

Petitioner,

v.

CASE NO. 2009-05195

RAYMOND DELLA PORTA SR., D.M.D.,

Respondent.

MOTION FOR RECONSIDERATION OF FINAL ORDER

COMES NOW, Respondent, Raymond Della Porta, Sr., DMD, (hereinafter "Respondent" or "Dr. Della Porta") by and through undersigned legal counsel, and respectfully petitions the Board of Dentistry to reconsider and set aside the previous Final Order filed in this matter. In support whereof, Respondent states as follows:

1. Respondent appeared before the Board on May 18, 2012 for consideration of a Settlement Agreement he had signed.

2. Dr. Della Porta has held a license to practice dentistry in Florida since 1968 with no record of disciplinary action. From 1968 to 1970, Dr. Della Porta served as a Commissioned Lieutenant in the U.S. Navy Dental Corps.

3. During the course of the proceedings before the Board, various significant mitigating factors were voiced. These factors included, but were not limited to, Respondent's nearly 44 years of practice with no disciplinary action; the fact that the original complaint against Respondent was not filed by any patient but instead by an out-of-state anti-Sargenti advocate; and that the Board's expert found no evidence of any patient harm or unfavorable outcome.

4. Undersigned Counsel did not represent Respondent at the May 18, 2012 meeting but was present in the audience and heard the extended discussion. There were a number of significant legal issues discussed, including whether Respondent's use of very small amounts of diluted Sargenti material as a sealer instead of as endodontic filling material was covered under Rule 64B5-17.012, F.A.C. as well as the date the rule was promulgated and Respondent's actual notice of same.

5. As reflected in the minutes, a Motion to dismiss the case was made. It appeared to the undersigned that the discussion of legal issues may have left the impression that Respondent was justifying the use of Sargenti material, or that he had not ceased to use same. As reflected in an April 10, 2012 letter from Counsel to Dr. Della Porta, he had voluntarily ceased from using Sargenti material in any manner during the pendency of the case and had fully complied with the requirement in the Settlement Agreement to refund the two patients in advance of the consideration of the Settlement.

6. Undersigned respectfully submits that every single mitigating circumstance listed in the Board's disciplinary guidelines was present. Undersigned is further mindful that a Motion for Reconsideration such as this one is not a matter of right, but solely within the discretion of the Board. Nevertheless, and under these fairly unique facts, it is respectfully submitted that an accomplished dentist in the twilight of a long and unblemished career (which included service in the Armed Forces) deserves an opportunity to be heard on Reconsideration.

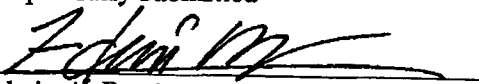
7. In the event the Board grants Reconsideration, Respondent hereby waives any possible claim for attorneys' fees; agrees to voluntarily pay the Costs imposed at the May 18, 2012 hearing; and further agrees to permanently refrain from using sargenti material in any endodontic procedures.

WHEREFORE, and for the foregoing reasons, Respondent hereby respectfully requests that he be granted the opportunity to appear before the Board of Dentistry to have this matter reconsidered and that upon reconsideration, the Final Order dated June 4, 2012 be rescinded and that the Board dismiss this case.

CERTIFICATE OF SERVICE

I hereby state that a true and correct copy of the foregoing Motion for Reconsideration has been provided by e-mail to Sue Foster, Executive Director, Board of Pharmacy; David Flynn, Assistant Attorney General, Counsel to the Board of Pharmacy, and George Black, Assistant General Counsel, DOH Prosecution Services Unit this 26 day of June, 2012.

Respectfully submitted



Edwin A. Bayó
Florida Bar No. 327727
Grossman, Furlow & Bayó, LLC
2022-2 Raymond Diehl Road
Tallahassee, FL 32308
(850) 385-1314/fax (850) 385-4240

On Behalf of Respondent