

NO. 97-CA-2796-MR

COMMONWEALTH OF KENTUCKY,
KENTUCKY BOARD OF DENTISTRY

APPELLANT

V. APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE EDDIE LOVELACE, JUDGE
ACTION NO. 97-CI-0285

RALEIGH D. ANDREWS, D.D.S.

APPELLEE

* * * * *

ORDER

It is hereby ORDERED that the opinion and order in the above-styled case be ENTERED and RELEASED this 6th day of January 1998.

ENTERED: January 6, 1998

/s/ Paul D. Gudgel
CHIEF JUDGE, COURT OF APPEALS

RENDERED: JANUARY 6, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 97-CA-2796-MR

COMMONWEALTH OF KENTUCKY,
KENTUCKY BOARD OF DENTISTRY

APPELLANT

V.

APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE EDDIE LOVELACE, JUDGE
ACTION NO. 97-CI-0285

RALEIGH D. ANDREWS, D.D.S.

APPELLEE

OPINION AND ORDER

REVERSING AND REMANDING

* * * * *

BEFORE: ABRAMSON, KNOPF and MILLER, Judges.

ABRAMSON, JUDGE. On October 15, 1997, the Commonwealth of Kentucky, Kentucky Board of Dentistry filed a verified complaint against Raleigh D. Andrews, D.D.S. in the Wayne Circuit Court. The complaint sought to enjoin Andrews from practicing dentistry. The Court entered a restraining order which had been agreed to by the parties. This order restrained Andrews from practicing dentistry until October 28, 1997, when the circuit court heard the Board's motion for a temporary injunction and Andrew's motion to dissolve and motion to dismiss. At the conclusion of the hearing, the Wayne Circuit Court dissolved the restraining order and dismissed the action.

The Board filed the instant appeal and in connection with the appeal filed a motion for emergency relief and a motion for interlocutory relief. This Court granted emergency relief which expired on December 11, 1997, when this Court denied the motion for interlocutory relief and expedited this appeal.

The Wayne Circuit Court dismissed the action below finding that there was no "statutory or regulatory authority for granting the relief requested by the plaintiff." This Court has reviewed the briefs filed by the parties and concludes that the trial court was in error. Accordingly, this Court reverses the decision below.

KRS Chapter 313 provides for the creation of the Kentucky Board of Dentistry. It provides for licensure of dentists and sets out the procedures for revoking a license as well as the various grounds for revocation. Finally, it outlines all of the powers and duties of the Board.

It is clear from reading KRS Chapter 313 that the Board is charged with regulating the practice of dentistry. Under KRS 313.150 et seq., the Board clearly has authority to revoke licenses after a timely notice and hearing. There is no provision in KRS Chapter 313 that authorizes the Board to enter an emergency order suspending a licensee from practicing dentistry prior to a full blown hearing. However, in Commonwealth of Kentucky v. Nunn, Ky., 452 S.W.2d 381 (1970), and in Dodge v. Jefferson County Board of Education, Ky., 181 S.W.2d 406 (1944), our Court recognized that where the legislature

delegated authority to a board, that board may take any action which may be fairly implied as necessary to carry out the duties set out in the statute. In our opinion the Board has the duty to regulate the practice of dentistry in Kentucky and thus the implied power to file a complaint seeking injunctive relief against a dentist who is allegedly endangering the health, safety and welfare of its citizens. Certainly, the Board cannot issue its own emergency order. However, it is inconceivable that the legislature expected the Board to stand idly by and permit the health and safety of the public to be placed in jeopardy until a full fledged hearing transpires before the Board.

The appellee points out that KRS 313.022 specifically authorizes the Board to seek an injunction to stop an unlicensed dentist from practicing. The appellee argues that the legislature by implication did not intend for the Board to seek injunctive relief except as set forth in Chapter KRS 313. This argument is not convincing. KRS 313.022 authorizes the Board to stop an unregulated person from practicing dentistry. On the other hand, in the instant case the Board is dealing with a regulated person. The Board has implied authority under KRS Chapter 313 to file the complaint below.

The judgment of the Wayne Circuit Court is reversed and the Court is directed to hold a hearing to determine whether the evidence presented merits the injunctive relief sought by the Board.

ALL CONCUR.

ENTERED: January 6, 1998

/s/ Lisabeth Hughes Abramson
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

A. B. Chandler III
Attorney General

Robert S. Jones
Mark Brengelman
Asst. Attorneys General
Frankfort, Kentucky

BRIEF FOR APPELLEE:

G. George Bertram
Monticello, Kentucky

Frank R. Recker
Cincinnati, Ohio