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IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

JOSEPH GAETA, D.D.S.,

Respondent-Petitioner,

v.

DEPARTMENT OF HEALTH,
BOARD OF DENTISTRY,

Petitioner-Respondent.

Case No. 2D 07-5442

Lower Tribunal
Case No. 07-1164PL

FILED
2008 FEB 25 A 11:38
DIVISION OF
ADMINISTRATIVE
HEARINGS

PETITIONER'S AGREED MOTION FOR LEAVE TO FILE AT THIS TIME
HIS REPLY IN SUPPORT OF AMENDED PETITION FOR REVIEW AND MANDAMUS
(WHICH ACCOMPANIES THIS MOTION)

With the consent of respondent's counsel, petitioner
DR. JOSEPH GAETA hereby moves for leave to file at this time his
reply in support of his amended petition for review and mandamus.
Petitioner's reply accompanies this motion.

Petitioner previously sought an extension to Feb. 11,
2008 to file his reply, but unexpectedly petitioner's undersigned
counsel was called to South Carolina in connection with a
criminal hearing in federal court. But for counsel's attendance
at the criminal hearing in South Carolina and the preparation
therefor, counsel would have been able to prepare and file the
reply by the requested Feb. 11, 2008 extension date.

There is no prejudice to respondent nor to this Court's
schedule. Indeed, petitioner's undersigned counsel previously
consented to respondent-agency's request for a 3-week extension
to Feb. 25, 2008 for the agency to file its reply in the related
review proceeding in the First District Court. Since respondent-
agency will not be filing its reply in the First District Court

until Feb. 25, 2008, there clearly is no prejudice in petitioner's filing his reply at this time, a few days after his requested Feb. 11 extension date because of counsel's appearance in the South Carolina criminal matter.

* * *

This is a disciplinary proceeding in the Division of Administrative Hearings in which respondent DEPT. OF HEALTH filed an administrative complaint against DR. GAETA, a Florida licensed dentist, for alleged malpractice involving a single patient.

Petitioner DR. GAETA filed a petition for review and amended petition for review in this Court seeking review of nonfinal orders of an Administrative Law Judge ("ALJ"). Appellate venue is proper in this Court because petitioner resides in this appellate district. Fla.Stat. 120.68(2)(a) ("where a party resides").

Several weeks after petitioner DR. GAETA filed his petition for review in this Court, respondent agency filed a petition for review in the First District Court of appeal raising the same issue which petitioner DR. GAETA already was litigating in this Court (Dept. of Health v. Gaeta, case no. 1D 07-6287). The agency's later petition for review in the First District Court is an obvious attempt to forum-shop, to avoid the prior jurisdiction of this Court on the exact issue being litigated in this Court. Petitioner DR. GAETA has opposed the agency's petition for review in the First District Court both procedurally (improper forum shopping) and substantively and also has

requested that the First District Court transfer the agency's later petition for review to this Court pursuant to Fla.Stat. 120.68(2)(b) (inter-district transfer of APA review proceedings), so that all review proceedings in this case shall be heard by the single appellate court which acquired jurisdiction first.

In both this Court and in the First District Court, undersigned counsel for petitioner DR. GAETA has consented to every request by agency's counsel for extensions of time, both to file the agency's opposition in this Court and to file the agency's reply in the First District Court. As mentioned above, petitioner's undersigned counsel recently consented to the agency's request for a 3-week extension to Feb. 25, 2008 to file its reply in the First District Court.

Now agency's counsel has reciprocated and has consented to undersigned counsel's request for the present extension. As mentioned above, petitioner's reply accompanies this motion and is being filed only a few days after the earlier-requested Feb. 11, 2008 extension date.

This agreed motion is not made for purpose of delay or other improper purpose, but is made only on the grounds set forth.

This Court should grant this agreed motion and should permit petitioner DR. GAETA to file at this time his reply in

support of his amended petition for review and mandamus which
accompanies this motion.

Dated: Feb. 14, 2008

MAX R. PRICE, P.A.
Attorneys for Petitioner

by: /s/ Dennis Grossman
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CERTIFICATE OF SERVICE

I certify that copies of this motion were served by
U.S. mail this Thurs. Feb. 14, 2008 on:

Judge R.E. Meale
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399
(new ALJ)

Judge William F. Quattlebaum
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399
(recused ALJ)

Maura Bolivar, Esq.
Assistant General Counsel
Dept. of Health
4052 Bald Cypress Way (Bin C-65)
Tallahassee, Florida 32399
(respondent's counsel)

Dated: Feb. 14, 2008

/s/ Dennis Grossman

Dennis Grossman, Fl.Bar No. 0841811

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