

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Bach v. Florida State Bd. of Dentistry

378 So. 2d 34 (Fla. 1st DCA 1979) · No. No. PP-199 · Decided November 30, 1979

SUMMARY

The Florida First District Court of Appeal affirmed the suspension of Carol Ann Bach's dental hygiene license but reversed the suspension of Richard S. Bach's dentistry license. The court held that Florida Statutes section 466.38 required proof that Dr. Bach knowingly permitted his hygienist to perform an unauthorized operation, and that constructive knowledge or negligence was insufficient to establish implied permission or ratification. The dissent would have affirmed the Board's order against Dr. Bach.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Ervin, Judge; Shivers, Judge; Robert P. Smith, Jr., Acting Chief Judge
JURISDICTION	Florida
DECIDED	November 30, 1979
DOCKET	No. PP-199
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from orders of the Florida State Board of Dentistry suspending Richard Bach's dental license for six months and Carol Ann Bach's dental-hygiene license for one year.
STANDARD OF REVIEW	Review of the competency and substantiality of the evidence supporting an agency's findings of fact and conclusions of law; statutory grounds for license suspension are strictly construed.
PRECEDENTIAL VALUE	Published Florida First District Court of Appeal opinion; precedential within the court's jurisdiction unless subsequently limited or overruled.
PARTIES	Richard S. Bach, D.D.S., Carol Ann Bach, R.D.H. v. Florida State Board of Dentistry

TOPICS

- medical licensing
- administrative law
- judicial review of agency action
- statutory interpretation
- plain meaning rule

PRACTICE AREAS

health law

administrative law

professional licensing

agency law

QUESTIONS PRESENTED

1. Whether competent and substantial evidence supported the Board's suspension of Carol Ann Bach's dental-hygiene license for administering an unauthorized anesthetic.
2. Whether section 466.38, Florida Statutes (1977), authorized suspension of Richard Bach's dental license based on an inference that he permitted or ratified his hygienist's unauthorized acts when he was not present and lacked full knowledge of them.
3. Whether the statutory term "permit" requires an express order or may include implied or tacit permission.

HOLDINGS

1. The evidence clearly supported the Board's findings concerning Carol Ann Bach, so her one-year suspension was affirmed.
2. A dentist's license may not be suspended under section 466.38 merely because the dentist should have known of an employee's unauthorized act or negligently failed to supervise the employee. The Board had to establish that the dentist permitted the act, including through implied permission or ratification supported by full knowledge or equivalent culpable conduct.
3. The word "permit" does not require an express order; it may encompass implied or tacit permission. However, the evidence in this case did not establish that Dr. Bach impliedly permitted or ratified the unauthorized acts.

KEY QUOTATIONS

"The standard of simple negligence does not apply to the revocation or suspension of a dentist's license."
(378 So. 2d at 36)

"Where statutes provide grounds for revocations of licenses, those provisions must be strictly construed and strictly followed because the statute is penal in nature." (378 So. 2d at 36)

"The evidence does not show that Dr. Bach had full knowledge of his agent's unauthorized activities. Nor may such knowledge be imputed to him." (378 So. 2d at 37)

FACTUAL BACKGROUND

Carol Ann Bach, a dental hygienist and the wife of dentist Richard S. Bach, administered anesthetic injections to a patient on two occasions while Dr. Bach was not physically present. The Board found that Mrs. Bach performed an operation prohibited to dental hygienists and that Dr. Bach knew or should have known of, and therefore permitted, her conduct. The appellate court found the evidence sufficient to support the findings concerning Mrs. Bach but insufficient to establish that Dr. Bach had full knowledge of the unauthorized acts or otherwise ratified them.

PROCEDURAL HISTORY

The Board suspended Dr. Bach after finding that he permitted his dental hygienist, Carol Ann Bach, to administer an anesthetic, an operation outside a hygienist's statutory authority. The Board also suspended Mrs. Bach for performing the unauthorized operation. Both appealed, challenging the competency and substantiality of the evidence supporting the Board's findings and conclusions. The appellate court affirmed Mrs. Bach's suspension but reversed Dr. Bach's suspension.

DISPOSITION

other

CASES CITED

- G. & B. of Jacksonville, Inc. v. State, 371 So. 2d 137 (Fla. 1st DCA 1979)
- Pauline v. Lee, 147 So. 2d 359, 364 (Fla. 2d DCA 1962)
- Cohen v. Schott, 48 So. 2d 154 (Fla. 1950)
- Trader Jon, Inc. v. State Beverage Department, 119 So. 2d 735 (Fla. 1st DCA 1960)
- Taylor v. State Beverage Department, 194 So. 2d 321 (Fla. 2d DCA 1967)
- State v. Pattishall, 99 Fla. 296, 126 So. 147, 148 (1930)
- State ex rel. Williams v. Whitman, 116 Fla. 196, 156 So. 705 (1934)
- In re Weathers, 159 Fla. 390, 31 So. 2d 543 (1947)
- Ball v. Yates, 158 Fla. 521, 29 So. 2d 729, 732 (1946)
- Oxford Lakeline v. First Nat. Bank, 40 Fla. 349, 24 So. 480, 483 (1898)
- In re Flynn, 52 Wash. 2d 589, 328 P.2d 150, 154 (1958)