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CLERK, SUPREME COURT

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IN THE SUPREME COURT
OF THE STATE OF FLORIDA

CASE NO. 74,016

BELARMINA ALVAREZ, SEGUNDO ARDAVIN,
RICARDO A. EGUSQUIZA, DORA MENENDEZ BERENGUER,
IGNACIO A. RAMIREZ and ROBERTO A. RODRIGUEZ

Petitioners,

v.

DEPARTMENT OF PROFESSIONAL REGULATION,
STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF MANDAMUS
to compel Respondent to license Petitioners
to practice dentistry pursuant to
Section 455.218, Florida Statutes

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I. STATEMENT OF THE COURT'S JURISDICTION.

Petitioners invoke the jurisdiction of this Court pursuant to Rule 9.030(a)(3) of the Florida Rules of Appellate Procedure and Article V, Section 3(8) of the Florida Constitution which authorize this Court to issue writs of mandamus to state officers and state agencies.

Petitioners urge this Court to assume jurisdiction because the question involved in this action is of great public interest as it will determine the procedure to be followed by Respondent in licensing all health care practitioners under Section 455.218, Florida Statutes (1987). See Light v. Meginniss, 22 So.2d 455 (Fla. 1945); Newberry v. Harris, 153 So. 901 (Fla. 1934). The Court's determination of the question presented will avoid unnecessary litigation by other health care practitioners seeking to be licensed under §455.218, Florida Statutes. Humphreys v. State, 145 So. 858 (Fla. 1933).

Petitioners do not have any other adequate remedy at law.^{1/}

II. STATEMENT OF FACTS.

Petitioners are sometimes referred to, herein, as the "Dentists". Respondent is sometimes referred to herein as the "Department".

A. Introduction:

This case is the culmination of the odyssey that 19 Cuban exiled dentists ^{2/} have endured in order to be permitted to

^{1/} Petitioners have been advised that their licenses will be issued when certain regulations are passed by the Board of Dentistry. A determination of whether Respondent has the right to condition the issuance of licenses upon the occurrence of such future events does not appear to be subject to administrative review under §120.57, Fla.Stat. See Hickey v. Wells, 91 So.2d 206 (Fla. 1956) where the Court considered mandamus to be a proper writ to review actions of the Board of Dentistry where a number of remedies appeared to be available but the authority for those remedies was not clear. In Hickey, the Court cited two prior Supreme Court decisions noting that these cases did not hold that mandamus had to be the exclusive remedy.

^{2/} Petitioners are members of the Cuban Dental Association in Exile (the "Association"). The Association is the professional association entrusted, under §455.218, Fla. Stat., with the responsibility of verifying that the Cuban

practice their profession in the State of Florida.

Having successfully satisfied all of the statutory requirements and bureaucratic obstacles for licensure, the Dentists are still unable to practice their profession due to the Department's improper application of the controlling statutory provisions and resulting refusal to license them.

The statute which permits the Dentists to be examined for licensure became effective in June of 1986. The Department did not administer the examination prescribed by the statute until almost 3 years later. The Dentists have passed the examination and are qualified for licensure. A. 1-7. The Department has decided to withhold the issuance of their long awaited licenses until certain supervisory regulations are issued. The statute does not condition the issuance of licenses on the existence of any supervisory regulations.

B. The Foreign-Trained Exiled Professional Act (the "FTEPA"):

In June, 1986, the Florida Legislature enacted Chapter 86-90, Laws of Florida, which was subsequently codified as Section 455.218, Florida Statutes (1987), under the title "Foreign-trained professionals; special examination and licensure provisions" (cited hereinafter as the "FTEPA").

In essence, the FTEPA permits certain foreign-trained exiled professionals to become licensed in the State of Florida upon passing a written practical examination prepared and administered by the Department. To be eligible for examination a candidate must demonstrate, among other things, ^{3/} that (i) he has, prior

Dentists applying for licensure have met the statutory educational requirements. See also 21 Fla. Adm. Code §21-15.001(1)(c) and 21-15.004. Twenty two of the members of the Association were qualified to take the examination prescribed by §455.218, Fla. Stat. Three of the members have died in the process of becoming licensed.

^{3/} The statute also requires an applicant to demonstrate that:

(a) He has immigrated to the United States after leaving his home country for political reasons, such home country being the Republic of Cuba or any other country in the Western Hemisphere which the Secretary of State of the State of Florida certifies lacks diplomatic relations with the

to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida (the "approved course of study" completed by the Dentists under these chapters was offered by the University of Florida under the name the "Cuban/American Dental Program" and is hereinafter referred to by that name); and (ii) he has successfully completed a continuing education program which provides the applicant with a course of study which will prepare him for the examination prescribed by the FTEPA (the Pre-examination course"). §455.218(1)(f) and (g), Fla. Stat.

The FTEPA requires the Department to provide procedures under which exiled professionals may be examined for licensure within each practice act and to develop rules for the approval of Pre-examination programs. §455.218(1) and (1)(g), Fla. Stat.

C. Implementation of the FTEPA:

In February, 1987, the Department issued regulations for the implementation of the FTEPA under Chapter 21-15, Florida Administrative Code (the "Rules"). The Rules, however, did not include the procedure for the examination of dentists. It was not until April, 1988, almost 2 years after the enactment of the FTEPA, that the Department amended the Rules to provide the procedure for the examination to practice dentistry.

With the enactment of the FTEPA, the Dentists, whose ages range from 51 years to 69, became hopeful of having the opportunity to once again practice their chosen profession. They quickly proceeded to satisfy all requirements for licensure. On January 6, 1987 the Association submitted to the State Board of Dentistry the number and ages of the dentists who would qualify for licensure under the FTEPA. A. 11, 8-11. They then proceeded

United States.

(b) He has graduated from a professional or occupational educational program by submission of documentation verified by the appropriate professional association in exile; and

(c) Has lawfully practiced his profession for at least three years.

to procure the preparation of the Pre-examination course for the dental exam.

1. The Pre-Examination Course:

In October, 1987, and in anticipation of the prompt implementation of the FTEPA, the Association commissioned the preparation of the Pre-examination course for Dentistry, as required by the Department. On or about December, 1987, the Pre-examination course was submitted to the Department for approval in accordance with the Rules. A. 12-15.

Notwithstanding verbal and written requests to the Department, the Department did not issue its written approval of the course until it had been practically completed. A. 16-21, 22.

On February 16, 1988, the Dentists, and other members of the Association, attended the first class session of the Pre-examination course, offered at Florida International University, on the basis of the Department's verbal approval of the program.

Approximately one week before the last scheduled class session, and notwithstanding the prior verbal approval of the course, the Department informed Florida International University that several required subjects were not included in the program and that it had to be revised and resubmitted to the Department for its approval. A. 19-20. The Pre-Examination course was promptly revised and the omitted subjects were included. A. 23. On May 1, 1988, the Pre-Examination Course for Dentistry was completed and Certificates of Completion were issued to all participants. A. 24-30.

2. The Cuban/American Dental Program (the approved course of study under Chapters 74-105 and 75-177, Laws of Florida).

On or about February 22, 1988, counsel for the Association was advised that the applications for licensure of the members of the Association (which had not yet been submitted pursuant to mutual agreement) would not be approved because the

Department had no record that the applicants had completed the Cuban/American Dental Program.^{4/}

Certificates of Completion of the Cuban/American Dental Program were unavailable as the provider of that program, the University of Florida, had never issued them.

On February 25, 1988, counsel for the Association requested from the University of Florida a letter certifying completion of the program by the members of the Association. A. 32-35. The Association was advised that the records pertaining to the Cuban/American Dental Program could not be located and that the Comptroller of the University had no records of payment of the registration fees for that program, notwithstanding the fact that the University had been provided with some of the receipt numbers.

On March 28, 1988 the Dentists submitted to the Department other evidence showing successful completion of the Cuban/American Dental Program. Such evidence included receipts for payment of registration fees, proof that the Dentists had been permitted to take the examinations prescribed by Chapters 74-105 and 75-177, Laws of Florida, which required, as a condition to eligibility, the successful completion of the Cuban/American Dental Program, and certain other documentation pertaining to the rental of facilities and equipment for the administration of the program. A. 36-40.

On March 31, 1988 the Department rejected the evidence submitted by the Dentists on the basis that the Rules required "Certificates of Completion or a certification from the course

^{4/} It is important to note that in October, 1986, the Association provided to the Department the name of the course completed by the dental candidates, pursuant to Ch. 74-105 and 75-177, Laws of Fla. A. 31. Also, the Board of Dentistry had ample evidence that all of the applicants had completed the Cuban/American Dental Program as evidenced by the fact that they all had been permitted to take the examination prescribed by Ch. 74-105 and 75-177, Laws of Fla., which conditioned eligibility to take the examination on the successful completion of the Cuban/American Dental Program.

provider" ^{5/} and concluded that "the only way to safely approach the problem is by way of declaratory judgment issued by a circuit court." A. 41.

Fortunately, when the University of Florida was advised of the Dentists' imminent need to seek a declaratory judgment to determine the sufficiency of the evidence submitted to the Department, the records were found. On April 22, 1988, the University of Florida certified that the Dentists had successfully completed the Cuban/American Dental Program, and on April 29, 1988, the certification was submitted to the Department. A. 19-21.

B. The Examination:

By the end of April, 1988, the Dentists had overcome all of the numerous obstacles that had been placed in their path and had satisfied all of the eligibility requirements for examination under the FTEPA. There was, however, still no regulation in existence providing the procedure for the examination to practice Dentistry, as required by the FTEPA. Further, there was no examination available to be administered to the dental candidates.

At this point, the Department advised the Dentists that the preparation of a dental examination would take from 6 to 9 months and that the cost of the examination would be approximately \$1,500 per candidate.

In light of this information, the Association requested the Department to consider administering the second part of the National Board of Dental Examiners' dental examination (the "National Board") as the dental examination required by the

^{5/} It should be noted that this requirement was not imposed by §455.218(1)(f), Fla. Stat., but by the Rules. It should also be noted that the Statute required the Department to issue regulations to provide procedures for examination under each practice act and to develop rules for the approval of the pre-examination course. § 455.218, Fla. Stat., does not authorize the department to limit the specific form of documentation necessary to demonstrate the applicant's completion of the Cuban/American Dental Program.

FTEPA.^{6/} The significance of being permitted to take the National Board was (1) that the cost would be reduced from \$1,500 to approximately \$200 per candidate; (2) the examination would be administered in June, 1988, (i) the Dentists' familiarity with the format of the exam (as they had all taken it previously) and (4) the availability of sources of study.

On or about May 25, 1988 the Association was advised that the second part of the National Board satisfied the requirements of the FTEPA and that it was approved by the Department as the examination to be administered to the Dentists under the FTEPA.
A. 24.

Notwithstanding the Department's approval of the National Board, it was subsequently concluded, after numerous verbal and written communication among the Department, counsel for the Association, the Board of Dentistry and the Joint Commission on National Dental Affairs, A. 42-59, that a new exam would have to be developed by the Department, as the Joint Commission refused to permit the use of the National Board for the intended purpose. Regretably, the Board of Dentistry refused to cooperate with the Association's request for assistance, A. 52-54, and made it very clear that the Board would not assist in the implementation of the FTEPA as "the Board does not know how this (the Foreign Trained Exiled Dental Exam) can be done realistically and in a fair and safe manner" A. 58, A. 55-59.

On January 30-31, 1989, almost three (3) years after the enactment of the FTEPA, the Dentists were examined for licensure under the FTEPA by the use of a Department developed exam.

All of the Dentists have passed the examination. A. 1-7. Petitioners Rodriguez, Alvarez and Ramirez have formed a partnership for the practice of dentistry. The Dentists are

^{6/} The National Board is the examination required to be passed by all applicants for licensure in the State of Florida. §466.006, Fla.Stat.

awaiting only the issuance of their licenses by the Department in order to be permitted, once again, to practice their profession.

D. The Licenses:

The letter by which the Department communicated to the Dentists that they had passed the examination, advised them that licensure information would be forthcoming from the Board of Dentistry. A. 7. In the absence of any communication from the Board of Dentistry, on March 14, 1989, counsel for the Dentists contacted the Department to inquire when the licenses would be issued. The Department advised counsel for the Dentists that the delay was caused by the Department's belief that the practice of Dentistry, under the FTEPA, is subject to special supervision. However, since no regulations are currently in effect, the Department advised counsel for the Dentists that the licenses would be immediately issued. The Department further advised counsel for the Dentists that a meeting had been scheduled with the chairman of the Board of Dentistry, on or about March 15, 1989, to discuss the type of supervision to which the Dentists would be subject.

On or about March 16, 1989, the Department advised counsel for the Dentists that the Board of Dentistry did not want the Department to issue the licenses until the regulations pertaining to the special supervision were issued. Accordingly, the Department decided not to license the Dentists until such time as the Board of Dentistry issues certain regulations designed to impose special supervision on their practice of dentistry (the "Special Regulations"). A. 60-62.

By this time the Department and counsel for the Dentists had discussed, at great length, whether the law that required certain foreign trained professionals to practice under supervision (§455.2182, Fla. Stat.) applied to the Dentists. In this connection, the Department had agreed that, even if the Dentists were subject to special supervision, the Department has no authority to withhold issuance of the licenses pending issuance

of the Special Regulations. In fact, the Department had previously licensed several veterinarians under the FTEPA notwithstanding the lack of regulations concerning supervision of their practice.

In light of the Department's arbitrary refusal to license the Dentists, the Department was advised that the Dentists would not tolerate further arbitrary and discriminatory action and would seek judicial enforcement of the Department's obligations under the FTEPA. A. 60-61. To this, the Department responded that it would welcome a judicial determination, once and for all, as to whether all foreign trained professionals are subject to the special supervision provision contained in Section 455.2182, Florida Statutes.

On March 16, 1989, Petitioners Alvarez, Ardavin and Rodriguez made a written demand to the Department for the issuance of their licenses and accompanied payment of their respective licenses fees. A. 60-62.

On April 3, 1989, Petitioners Egusquiza, Menendez and Ramirez made a similar demand, which was also accompanied by payment of their respective license fees. A. 63-64.

By letter dated April 3, 1989, the Department notified the Dentists that their licenses would not be issued until the Board of Dentistry defines the length and character of the supervision. A. 1-6. The Department has advised counsel for the Petitioners that the "definition" referred to in the Department's letter means "issuance of the Special Regulations."

There is no law or regulation which requires the Board of Dentistry to issue the Special Regulations. Accordingly, it is not known if, or when, such regulations will be issued.

It has taken the Department almost three (3) years to administer the examination required by the FTEPA. It is unknown how long it will take the Department to issue the licenses.

III. RELIEF SOUGHT.

The Dentists seek a writ of mandamus to compel the Department to license them pursuant to Section 455.218, Florida Statutes (Supp. 1988). The Dentists have satisfied all of the conditions for licensure and have the unqualified right, under law, to be licensed. The Department has the unqualified obligation to license the Dentists under Section 455.218(4), Florida Statutes (Supp. 1988), and that obligation is mandatory, specific, clearly defined and is not subject to the Department's discretion. The Department's refusal to license The Dentists until the Board of Dentistry issues "special" regulations for the supervision of their practice is arbitrary, capricious, discriminatory and clearly contrary to the law.

IV. ARGUMENT.

The Department's refusal to license the Dentists until such time as the Board of Dentistry issues the Special Regulations is arbitrary and discriminatory and is contrary to law because (1) absent evidence that the Dentists are under investigation for violation of the FTEPA or Chapter 466, Florida Statutes, the only condition to the issuance of their licenses is passing the examination, and (2) the FTEPA does not require that dentists licensed thereunder be subject to special supervision.

Mandamus is the only remedy available to the Dentists to compel the Department to license them.

A. THE DEPARTMENT MUST LICENSE THE DENTISTS PURSUANT TO SECTION 455.218(4), FLORIDA STATUTES.

Section 455.218(4), Florida Statutes (Supp. 1988), provides that:

The department shall license any applicant who meets the requirements of subsections (1) and (2). All license so issued are subject to the administrative requirements of this chapter and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this chapter and the respective practice act under which his license was issued. (emphasis added)

The Dentists have met the requirements of subsections (1) and (2) of the statute which requires them to: (1) demonstrate

compliance with the eligibility requirements for examination; and (2) pay their examination fees and pass the examination. §455.218(1) and (2), Fla. Stat. A. 1-6. Therefore, pursuant to Section 455.218(4), Florida Statutes, the Department must license them.

The Department does not dispute the right of the Dentists to be licensed. A. 1-6. Instead, it has arbitrarily ^{7/} refused to license the Dentists on the erroneous basis that the law requires that all health care practitioners licensed under the FTEPA practice under supervision. Although, as shown above, Section 455.218, Florida Statutes, does not vest the Department with any discretion and does not impose any condition on the issuance of licenses to applicants who have met the statutory requirements, the Department has ignored the clear mandate of the FTEPA and has decided, without justification or legal basis, not to license the Dentists until the Special Regulations are issued.

B. THE FTEPA DOES NOT REQUIRE THAT THE DENTISTS PRACTICE UNDER SUPERVISION.

The Department has taken the position that all health care practitioners licensed under the FTEPA must practice under supervision pursuant to section 455.2182, Florida Statutes (1987). The Dentists contend that section 455.2182, Florida Statutes, applies only to osteopathic physicians licensed under the FTEPA. The Dentists position is based on the fact that neither Section 455.218, Florida Statutes, nor the enrolled act found at Chapter 86-90, Laws of Florida (1986), require the supervision of professionals licensed thereunder. A. 65-69. The Department's position that the Dentists are subject to supervision is based on the intentionally erroneous application of section 455.2182, Florida Statutes (1987), to all health care practitioners licensed under the FTEPA.

^{7/} The Department claims that all health care practitioners subject to the FTEPA must practice under supervision. The Department, however, has licensed several foreign-trained Veterinarians notwithstanding the absence of regulations providing for supervision of their practice.

Section 455.2182, Florida Statutes, is a codification of Section 25, Chapter 86-290, Laws of Florida (1986). Chapter 86-290, Laws of Florida is, by the Department's own admissions, a "Re-enactment of the Osteopathic Medicine Practice Act." A. 70-71. For purposes of clarity, and in order to explain to the Court in a clear and concise manner why Section 455.2182 only applies to osteopathic practitioners, Chapter 86-290, Laws of Florida is hereinafter referred to as the "Osteopathic Medicine Act." A. 72-100.

When the 1986 Session Laws were codified, the statutory revision commission took section 25 of the Osteopathic Medicine Act and placed it in Chapter 455, Florida Statutes. The rest of the Osteopathic Medicine Act was placed in Chapter 459, which regulates the practice of osteopathy, and which is the only chapter of Florida Statutes affected by the Osteopathic Medicine Act.^{8/}

The Dentists contend that the mere placement of Section 25 of the Osteopathic Medicine Act into Chapter 455, Florida Statutes, does not make the restrictions imposed therein applicable to the Dentists in light of contrary legislative intent.

^{8/} Strangely enough, prior to the publication of the 1986 Supplement to the Florida Statutes, the Department already knew that Section 25 of the Osteopathic Medicine Act would be placed in Chapter 455, Florida Statutes. In a memorandum dated November 18, 1986, from Barry Willis, the then Executive Director of the FTEPA Program, the Department advised the Presidents of Health Care Professional Associations in Exile as follows:

HB 4-B which became Chapter 86-290, Laws of Florida, effective October 1, 1986, re-enacts the Osteopathic Medicine Practice Act. This law also contains a provision in Section 25 which requires that anyone who obtains a license as a health care practitioner as a result of Chapter 86-90, Laws of Florida, practice under supervision.

We have been informed that the tentative placement of the supervision provision will be in Chapter 455, Florida Statutes, which will make the provision apply to all health care licensees. All health care professionals licensed pursuant to HB 123 will be required to work under supervision. There is no time limit to this provision, nor any method in the law for removal of the supervision restriction. (emphasis added). A. 71.

A review of Section 455.2182, Florida Statutes, will show the clear and unmistakable intent of the legislature. The Statute is entitled "Construction of Chapter 86-290, Laws of Florida" and provides that: "Nothing contained^{1/} herein shall be construed to allow the unsupervised practice of any health care practitioner licensed pursuant to Chapter 86-90, Laws of Florida." (emphasis added)

Section 455.2182, Florida Statutes, has a revealing title, footnote and history. Its title limits its scope to "Construction of the Osteopathic Medicine Act". Its footnote explains that the word "herein" appears as enacted in Section 25 of the Osteopathic Medicine Act. Its history is described as Section 25, of the Osteopathic Medicine Act. Additionally, the language of Section 455.2182, Florida Statutes is very revealing in that it is identical with the language of Section 25 of the Osteopathic Medicine Act. It is important to note that although both sections prohibit the unsupervised practice of "any health care practitioner licensed pursuant to Chapter 86-90, Laws of Florida", only the Osteopathic Medicine Act defines that term. The Osteopathic Medicine Act defines "health care practitioners" to mean only osteopathic physicians and their assistants. Ch. 86-290, § 2, Laws of Fla. (1986).

To interpret that Section 455.2182, Florida Statutes, applies to the Dentists is contrary to the express language of the FTEPA and the Osteopathy Medicine Act; is in direct conflict with the rules of statutory construction, and would give the statute a scope beyond the range of the subject stated in its title. See State v. Tindell, 88 So.2d 123 (Fla. 1956).

If the Legislature has intended to make Section 25 of the Osteopathic Medicine Act applicable to all health care professionals licensed under the FTEPA, it would have said so by specifying that section 25 of the Osteopathic Medicine Act also amends Chapter 86-90, Laws of Florida, or by defining "health care practitioners," for purpose of Section 25 of said act, to

include all health care practitioners licensed under the FTEPA. The Legislature chose not to do so. Instead, the Legislature inserted the supervision requirement as part of an act relating only to the practice of osteopathy to require that all osteopathic practitioners licensed under the FTEPA practice under supervision.

The Dentists contend that the mere enactment of Section 25 of the Osteopathic Medicine Act is evidence that the FTEPA was not intended to contain a supervision provision. If all health care practitioners licensed under the FTEPA were intended to be supervised, then there would have been no need to enact Section 25 of the Osteopathic Medicine Act, as osteopaths would therefore already be subject to supervision under the FTEPA. Consequently, the enactment of Section 25 of the Osteopathic Medicine Act would be redundant.

The legislative intent is the primary factor of importance in construing statutes. S.R.G. Corp. v. Department of Revenue, 365 So.2d 687 (Fla. 1978). If the intent of the legislature is clear and unmistakable from the language used, it is the duty of the court to give effect to that intent. Englewood Water District v. Tate, 334 So.2d 626 (Fla. 2d DCA 1976).

The title, footnote, history and language of Section 455.2182, Florida Statutes, make it abundantly clear that the supervision imposed therein is limited to osteopathic practitioners licensed under the FTEPA.

The placement by the statutory revision division of section 25 of the Osteopathic Medicine Act in Chapter 455, Florida Statutes, must not alter the scope of its application and must not impose on the Dentists a restriction to which they are not subject by legislative action.

The statutory revision division has the authority to edit the laws of the State to remove inconsistencies and unnecessary repetitions and to otherwise improve their clarity and facilitate their correct and proper interpretation. §11.242, Fla. Stat. The

statutory revision division, however, does not have the authority to alter the clear intent of the legislature expressed in the enrolled act. Shuman v. State, 358 So.2d 1333 (Fla. 1978); Jones v. Christina, 184 So.2d 181 (Fla. 1966); McCulley Ford, Inc. v. Calvin, 308 So.2d 189 (Fla. 1st DCA 1974). Thus, any restriction imposed by a statute that does not reflect the intent of the legislature is ineffectual.

In McCulley v. Calvin, the court considered whether the applicant's license to act as a Ford franchise dealer was governed by Chapter 70-424, Laws of Florida, enacted by the 1970 session of the Legislature or by Section 340.642 of Florida Statutes, as printed in the 1971 compilation of the Florida Statutes. The statutory revision services, in editing the enrolled act, had made substantial and material changes by substituting the word "department" whenever the the word "director" was used in the enrolled act. As a result, the statutory revision services took the licensing power from the Director of the Division of Motor Vehicles and gave it to the Department of Highway Safety and Motor Vehicles.

The court concluded that the administrative responsibility imposed on the "Department" by the statute was ineffective because the enrolled act was, at the time that jurisdiction vested in the court, the official primary evidence of the law as enacted. The court found that the statute was only prima facie evidence of the law in effect and that the enrolled act, which stood as the official primary evidence of the law as enacted, rebutted the prima facie effect of the statute. 308 So.2d at 195.

The issue at hand is similar to that presented in McCulley. In the instant case, the statutory revision division has placed section 25 of the Osteopathic Medicine Act under Chapter 455, Florida Statutes. By so doing, the statutory revision division may have created a confusion which, if unclarified, may alter the clear intent of the Legislature.

Sections 455.218 and 455.2182, Florida Statutes were enacted in 1986. Pursuant to Section 11.242, Florida Statutes, sections 455.218 and 455.2182, Florida Statutes, constitute, as of the date of this Petition, only prima facie evidence of the law, and are subordinate to the primary evidence of the enrolled acts. Shuman v. State, 358 So.2d 1333 (Fla. 1978). As in McCulley, the enrolled acts, in this case Chapters 86-290 and 86-90, Laws of Florida, still stand as the official, primary evidence of the law, as enacted by the Legislature, and they rebut the prima facie effect of Section 455.2182, Florida Statutes.

Therefore, the Dentists are entitled to be licensed and to practice as any other dentists licensed in the State of Florida because the legislature did not intend, and does not require, that they practice under supervision.

C. MANDAMUS IS THE ONLY APPROPRIATE REMEDY AVAILABLE TO THE DENTISTS.

Mandamus is the appropriate and only remedy available to the Dentists to compel the Department to license them.

The Dentists urge this Court to exercise jurisdiction in this action because a determination of whether the Department has the right to withhold the issuance of licenses pending the issuance of special regulations is of great public interest, as it affects all health care practitioners qualified for licensure under Section 455.218, Florida Statutes. The Court's determination of the Department's powers in licensing foreign trained health care practitioners will, no doubt, avoid unnecessary litigation by other health care practitioners seeking licensure under the FTEPA. See Humphreys v. State, 145 So. 858 (Fla. 1933), where the Court stated that:

But in this connection it should also be said that the power vested in the Supreme Court to assume and exercise original jurisdiction in mandamus cases, . . . , has been habitually exercised by the Supreme Court only in those cases where it appeared that there was involved some grave question of general law, possibly controlling in other cases of like character, and thereby necessitating an early decision in the interest of avoiding unnecessary litigation... Id. at 865.

The Dentists also urge this Court to assume jurisdiction in order to protect them from further delay in the issuance of their licenses. The ability of the Dentists to earn their livelihood depends on the issuance of the licenses to which they are entitled. The Dentists contend that justice would not be served by transferring this action to a lower court. Such action would permit the Department to appeal the lower court's decision and would further delay the ability of the Dentists to earn their livelihoods.

As has been demonstrated, the Dentists have the unqualified right to be licensed. The Department has the undisputed obligation to license them and has no discretion on this matter. The act sought to be enforced by this writ is specific, clearly defined and ministerial.

Mandamus is appropriate where a petitioner demonstrates a clear right on its part, an undisputed ministerial duty on the part of the respondent and the absence of another adequate remedy at law. State v. Board of Business Regulations, 276 So.2d 823 (Fla. 1973), Fraternal Order of Police v. Odio, 491 So.2d 339 (Fla. 3d DCA 1986), Department of Health and Rehabilitative Services v. American Health Corp, 471 So.2d 1312 (Fla. 1st DCA 1985); Hall v. Key, 476 So.2d 787 (Fla. 1st DCA 1985). Mandamus is available to compel a licensing board to issue a license where the requirements for licensing have been met and the legislature has not vested in the licensing body any discretion. See Iley v. Harris, 345 So.2d 336 (Fla. 1977) (compelling issuance of license to carry concealed weapons) Solomon v. Sanitarian Registration Board, 155 So.2d 353 (Fla. 1963), (compelling issuance of a certificate of registration to a sanitarian who met statutory requirements); York v. State, 10 So.2d 813 (Fla. 1943) (compelling issuance of license to dentist); State v. Attwood, 64 So.2d 917 (Fla. 1953), (compelling issuance of a reciprocal certificate of registration as a pharmacist).

Mandamus is a legal remedy of an equitable nature. Shevin v. Public Service Commission, 333 So.2d 9 (Fla. 1976); Turckin v. Hiring, 99 So.2d 578 (Fla. 1957). In this case, it is invoked to protect the Dentists from further arbitrary, capricious and discriminatory action by the Department.

With limited resources and knowledge of the regulatory system, the Dentists have conquered every obstacles that they have encountered in the exercise of their statutory right. They have done everything required of them by statute and by the Department in order to be licensed to practice their profession. The Department has shown a flagrant disregard for the rights of the Dentists under the FTEPA and has ignored the importance of the passage of time for these elderly practioners.

The FTEPA required the Department to do several specific acts:

First, the Department was required to issue regulations to provide procedures for examination for licensure under each practice act. §455.218(1), Fla.Stat. It took the Department almost (2) years to issue regulations for the examination of dentistry.

Second, the Department was required to review and approve the Pre-examination course. F.A.C. 21-15.008. The Department waited until the course had been practically completed, 5 months after its submission to the Department, to renege on its verbal approval and to request the inclusion of additional items.

Third, the Department was required to administer an examination under each practice act. It was not until January 30-31, 1989, 2½ years after the enactment of the FTEPA, that the examination for dentistry was administered.

Lastly, the law requires the Department to license all applicants who have passed the examination. Now the Department contends that the issuance of licenses to the Dentists is contingent upon the promulgation of future regulations

which, even if eventually enacted, do not apply to the Dentists.

If the writ sought herein is not issued, the Dentists will be left to the mercy of the Department, who has systematically ignored that the Dentists are not young professionals and that the time left to practice their profession is of the essence. Failure to grant the writ will thrust the Dentists into a black hole, created by the Department's wrongful actions, and from which the Dentists may be unable to extricate themselves in time to practice their profession.

V. CONCLUSION

The language of the FTEPA is clear and mandatory. It requires the Department to license any applicant who qualifies for licensure.

The Department agrees that the Dentists qualify for licensure, but has refused to issue the licenses until certain regulations are passed by the Board of Dentistry.

The Department does not have the power to impose a condition in the issuance of licenses to the Dentists which has no basis at law.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy hereof has been mailed to Laurence A. Gonzalez, Secretary of Department of Professional Regulations, 130 North Monroe Street, Tallahassee, Florida 32399-0750 and to Robert A. Butterworth, Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32399-1050, this 12 day of April, 1989.

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