

**AGENDA
CONNECTICUT STATE DENTAL COMMISSION**

**Thursday, July 21, 2021 at 1:00 PM
Department of Public Health
410 Capitol Avenue, Hartford Connecticut**

CALL TO ORDER

NEW BUSINESS

Frank Podarsky, DDS – Petition No. 2021-390

- Respondent Motion to Reopen Hearing, Motion for Reinstatement and Request for Further Reconsideration
- Department of Public Health Objection to Respondent's Repeat Motion to Reopen Hearing and Request for Further Reconsideration

ADJOURN

This meeting will be held by video conference.

Connecticut State Dental Commission - Special Meeting 7-21-2022 via Microsoft Teams

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[+1 860-840-2075](tel:+18608402075) - Phone Conference ID: 730 946 827#

***SUBMITTED UNDER SEAL PURSUANT TO STATE AND FEDERAL LAWS
GOVERNING PRIVACY OF MEDICAL AND MENTAL HEALTH INFORMATION***

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH**

IN RE: Frank Podrasky, DDS

Petition No. 2021-390

July 7, 2022

**MOTION TO REOPEN HEARING, MOTION FOR REINSTATEMENT
AND REQUEST FOR FURTHER RECONSIDERATION**

Petitioner, Frank Podrasky, DDS (“Dr. Podrasky”) hereby respectfully requests that the state of Connecticut Department of Public Health (the “DPH”) and the state Dental Commission (the “Commission”) reopen the hearing in this proceeding to allow Dr. Podrasky a full and fair opportunity to (1) present information and evidence in support of the reinstatement of his license under appropriate probationary terms and conditions; (2) support his defense against the initial suspension and final revocation of his license and in support of probationary terms which will permit him to return to the practice of dentistry; (3) correct certain evidence previously admitted into the Record relating to the allegations raised by the DPH and his response; (4) demonstrate that that the information submitted by the DPH at the hearing was incomplete and provides an insufficient basis upon which to discipline or revoke his dental license; (5) cross examine and present evidence in response to the DPH’s evidence including documents and testimony of witnesses at the hearing in this proceeding on August 30, 2021 which was not previously

available to him, as a part of his defense against license revocation; and (6) present new evidence based upon his continued participation in treatment, relapse prevention and support groups prior to and since the hearing which demonstrates his commitment to remaining abstinent from alcohol and actively participating in on-going relapse prevention activities. These activities include those typically incorporated by the Commission in probationary orders issued to dentists with alcohol use disorders and/or dependency and/or substance abuse disorders.

The undersigned counsel respectfully represents that the instant motion should be granted for the following reasons:

1. Respondent has not practiced as a dentist since April 2021, when he had a witnessed cardiac arrest and was hospitalized.
2. The Department initiated an investigation and disciplinary action against the Respondent's license after it received a report from a mandated reporter from the hospital due to the Respondent's alcohol use disorder. During the investigation the Respondent cooperated and refrained from practice. He also endeavored to negotiate a probationary consent order with the Department but this effort failed when the Department withdrew its offer.
3. This case was heard by the Commission on August 31, 2021.

4. After the “hearing” which has been challenged previously as inadequate for the reasons set forth in the Motion to Reopen Hearing dated November 1, 2021, the Commission issued its verbal decision to revoke the license of the Respondent.
5. Respondent filed a Motion to Reopen Hearing with the Commission which was heard on December 8, 2021. The motion was denied with direction from the Commission that it was premature and could be renewed and considered by the Commission at a later date after the written Proposed and/or Final Decision were issued.
6. No Proposed or Final Decision in written form has ever been issued by the Commission or the Department.
7. It has been over a year since the Respondent has practiced. He has fully recovered from his medical issues. His alcohol use disorder is in full remission. He has been actively involved in recovery and relapse prevention for his use alcohol use disorder since his hospitalization in April 2021. See **Exhibit 1** attached hereto.
8. Respondent desires to return to his work as a dentist and Respondent’s employer seeks his return to work.
9. Respondent respectfully requests that the Commission Reopen the Hearing and reinstate his license to practice under the appropriate terms and conditions as deemed applicable for Respondent. Respondent respectfully requests that the Commission consider the probationary terms applied against other dentists suffering from alcohol use disorders

which have allowed them to return to practice. Respondent intends to make a full submission of affirmative evidence supporting his position that he is safe to practice, that his alcohol use disorder is in remission and that he is physically and mentally fit to return to work under the appropriate probationary orders issued by the Commission.

10. In further support hereof, Respondent submits and reasserts his first Motion to Reopen Hearing dated November 1, 2021 which statements are incorporated herein as further reasons for the Commission to grant the instant motion:

- a. Dr. Podrasky was not given proper notice of the hearing where, as here, the DPH and its counsel were aware that email notification to Dr. Podrasky was insufficient.
- b. Dr. Podrasky was notified during the hearing by telephone of the fact of the hearing that was underway and he informed the Commission that he had not been aware of the hearing proceeding on that date.
- c. Once Dr. Podrasky joined the hearing, he did not have sufficient prior notice of the evidence both documentary and the verbal testimony of the Department's witness to permit him to engage in a meaningful cross examination of the witness, document or to present an effective response.
- d. Dr. Podrasky, as a pro se respondent who had advised he was not prepared for the hearing, should have been offered a continuance so he could prepare for the hearing.

- e. As indicated by Dr. Podrasky, he thought, based upon representations made to him by the DPH attorney, the purpose of the hearing was for the Consent Order he had discussed which he had signed and returned to her, to be presented to the Board for its review, consideration and hoped for approval. Since he was willing to abide by the conditions presented in the standard Consent Order, he thought he would not need an attorney and the hearing would not be contentious.
- f. It is clear from the transcript of the hearing that the DPH had changed its position and was moving for revocation. What is also clear is that Dr. Podrasky was ambushed with this position as it was contrary to his stated understanding; he never thought the hearing was to be adversarial. Moreover, it is of great concern from a due process standpoint, that any effort on the part of the Commissioners to better understand Dr. Podrasky's position and what he tried to convey during his limited presentation about his belief that he was there in connection with a proposed Consent Order, was readily dismissed as information about settlement negotiations which were "not admissible."
- g. Clearly, Dr. Podrasky had not been notified that the DPH had changed its position, withdrawn the proposed Consent Order and was advocating for revocation at the hearing. The DPH disingenuously and improperly tried to keep these material facts away from the Commission to overcome the lack of Notice issue.

- h. What is also abundantly clear is the lack of due process for this licensee at the hearing.
- i. There exists new evidence which was not available to Dr. Podrasky prior to the August 30, 2021 hearing which Dr. Podrasky seeks to offer in his defense and in support of his request that rather than revocation, the Commission extend to him the standard probationary terms offered to other dentists with a history of excessive alcohol use and dependency.
- j. The Commission should hear the evidence and testimony in order to base its decision upon first hand credible evidence instead of limited medical record excerpts chosen by the DPH to present to the Commission and what was largely hearsay testimony from one witness, in support of its request for revocation. None of this evidence was not subjected to cross-examination, since Dr. Podrasky was not present when the evidence was admitted and he did not have the transcript or documents in his possession during the unexpected phone call that brought him into the hearing. The right to cross examination is inveterate. *Morgan v. United States*, 304 U.S. 1 1938). The right to a "full hearing" embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise, the right may be but a barren one. Those who are brought into

contest with the Government in a *quasi*-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. *Id.*, 304 U. S. 18.

- k. As much of the DPH's evidence which was admitted when Dr. Podrasky was not yet present, was merely hearsay, the record does not support revocation. Licensure disciplinary action including revocation cannot be based upon hearsay evidence but rather must be based upon the substantial evidence in the record.. It is well established that if hearsay evidence is the only evidence upon which a decision affecting the rights of an interested party is based, then the evidence must be sufficiently trustworthy and reliable or the substantial evidence requirement will not be met. *Carlson v. Kozlowski*, 172 Conn. 263, 267-268 (1977). Under the "substantial evidence rule" applicable to contested case proceedings such as this, the erroneous admission or consideration of evidence will invalidate an administrative decision where, as here, the evidence is insufficiently trustworthy to be considered "substantial evidence" and where substantial prejudice is demonstrated. *Id.*
- l. Dr. Podrasky maintains the verbal notice he received on the day of the hearing was *insufficient* to comply with Conn. Gen. Stat. §4-177 and that it was inadequate to provide him with sufficient notice and a fundamentally fair opportunity to present his

rebuttal to the hearsay submission of the DPH's . *See Cornelius v. Dept. of Banking*, 05-CBAR-1039, 2005 Conn. Super. LEXIS 1636 (June 9, 2005), *aff'd* 94 Conn. App. 547, *appeal denied* 278 Conn. 913 (2006).

- m. It is well established that it is within the Commissioner's discretion to take judicial notice of facts. *De Luca v. Board of Park Comm'rs*, 94 Conn. 7, 10, 107 A. 611, 612 (1919). Judicial notice may be taken at any time during the presentation of evidence at trial. *State v. Zayas*, 195 Conn. 611, 614, 490 A. 2d 68, 70-71 (1985). The Commission is hereby requested to take administrative notice of the extensive Consent Orders and Memoranda of Decision involving dentists with alcohol dependency issues and the probationary orders issued which allowed dentists like Dr. Porasky who were willing to practice with probationary monitoring procedures in place for safe practice, to return to practice.
- n. The admission into the Record of the evidence Dr. Podrasky seeks to introduce is in the interests of fairness and justice and is consistent with the notions of due process contemplated under the Uniform Administrative Procedures Act, Conn. Gen. Stat. §§ 4-166 *et seq.*
- o. Granting of the instant motion is also in the interests of administrative and judicial economy as it is possible that the outcome will obviate the need for appeals and extensive protracted future proceedings.

WHEREFORE, in view of the foregoing, the Respondent, Frank Podrasky, DDS respectfully requests that the foregoing Motion be granted as follows:

The Motion to Reopen Hearing is GRANTED;

Having reviewed and considered the evidence the Motion for consideration of reinstatement is GRANTED;

The terms and conditions of REINSTATEMENT will be determined by and articulated by the Commission at the hearing.

Notice of a Hearing will be issued no later than 10 days from this ORDER.

RESPECTFULLY SUBMITTED,
Frank Podrasky, DDS

By: /s/
Mary Alice Moore Leonhardt
Moore Leonhardt & Associates LLC
6 Russ Street
Hartford, CT 06106
E-mail: ma@mooreleonhardt.com
Telephone: (860) 500-9308
Juris No. 303506
His Attorney

ORDER

The foregoing MOTION TO REOPEN AND REINSTATE having been heard, it is hereby GRANTED as follows:

BY THE COMMISSIONER


CERTIFICATION

I hereby certify that a copy of the foregoing has been sent via email transmission on this date to the following:

Jeffrey A. Kardys
Jeffrey.kardys@ct.gov

Joelle Newton, Esq.
Joelle.newton@ct.gov

Olinda Morales, Esq.
c/o Jeffrey A. Kardys
Jeffrey.kardys@ct.gov


Mary Alice Moore Leonhardt

**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
HEALTHCARE QUALITY AND SAFETY BRANCH**

In re: Frank Podrasky, DDS

Petition No. 2021-390

July 11, 2022

**OBJECTION TO RESPONDENT'S REPEAT MOTION TO REOPEN HEARING
AND REQUEST FOR FURTHER RECONSIDERATION**

The Department of Public Health ("Department") objects to Respondent's Repeat Motion to Reopen Hearing and Request or Further Reconsideration.

As ground for this objection, the Department states as follows:

**RESPONDENT'S REPEAT-MOTION TO REOPEN IS BARRED BY THE LAW OF
THE CASE**

On November 1, 2021, respondent filed a Motion to Reopen Hearing and Request or Further Reconsideration ("Motion to Reopen"). On December 8, 2021, after oral argument, the Connecticut State Dental Commission ("Commission") denied respondent's Motion to Reopen. Respondent has now filed another Motion to Reopen ("Repeat Motion") making the same arguments despite having already received the Commission's Order. Respondent's Repeat Motion is barred as the Commission has already ruled and the "law of the case" applies. The "law of the case" doctrine stands for the proposition that "[w]here a matter has previously been ruled upon interlocutorily, the court in a subsequent proceeding in the case may treat that decision as the law of the case." *Breen v. Phelps*, 186 Conn. 86, 99 (1982)."

**RESPONDENT'S REPEAT MOTION IS PREMATURE AND CAN ONLY BE
CONSIDERED AFTER THE COMMISSION ISSUES A FINAL DECISION.**

Respondent's Repeat Motion is premature as the Commission can only grant such a motion after it issues a final decision which has not occurred. Connecticut General Statutes §4-181a(a)(1) provides that "a party in a contested case may, within fifteen days...after the personal delivery or mailing of the final decision, file with the agency a petition for reconsideration of the decision." Respondent must wait to file a request after receiving personal delivery or mailing of the final decision. The final decision will

provide the Commission's findings, analysis and conclusions which could then be addressed by respondent. Additionally, respondent states, "There exists new evidence which was not available to Dr. Podrasky prior to the August 30, 2021." If such new evidence exists and was unavailable prior to the hearing, respondent should provide such evidence along with any request for the Commission to evaluate at the appropriate time.

As the Commission has not yet issued a final decision, the Commission is without authority to reopen the hearing for further reconsideration.

RESPONDENT RECEIVED NOTICE OF THE HEARING AND WAS AWARE IT WAS BEING HELD ON AUGUST 30, 2021

Respondent argues that "he was not given proper notice of the hearing." Connecticut General Statutes §4-177 requires that a notice of hearing must be "reasonable" and "in writing." On July 20, 2021, a Statement of Charges and Notice of Hearing scheduling a hearing before the Commission on August 2, 2021, were emailed to respondent. The Notice of Hearing included the following statement: "At the aforementioned hearing you may be represented by an attorney and present evidence on your behalf. Although you may represent yourself (pro se), you are urged to obtain the services of an attorney." On July 28, 2021, respondent requested a continuance of the hearing "to acquire all necessary documentation." On July 29, 2021, a Notice of Rescheduled Hearing with an August 30, 2021, hearing date was emailed to respondent. On July 30, 2021 a video link to attend the hearing via Microsoft Teams was emailed to respondent. On August 27, 2021, respondent received an email reminding him of the hearing. The series of emails from the Department to respondent clearly establish that he received written, reasonable notice of the hearing *multiple* times.

In addition to claiming that he did not receive notice of the hearing, respondent also argues "he had not been aware of the hearing proceeding" which was held before the Commission on August 30, 2021. Such an argument is a contradiction on its face since respondent requested a continuance of the hearing originally scheduled August 2, 2021. Respondent cannot claim lack of knowledge of a hearing for which he requested a continuance. Further, respondent himself testified under oath that he was aware the hearing was going forward and stated, "I just didn't realize that I needed to be present at the meeting per se. That's all. I'm sorry."

DUE PROCESS WAS FULLY SATISFIED AFTER A FULL AND FAIR HEARING WAS HELD AND FACT-FINDING WAS CONDUCTED ON AUGUST 30, 2021.

On August 30, 2021, a full and fair hearing was conducted before a panel of the Commission. Arguments were made, evidence was submitted, and witnesses testified. Respondent had every opportunity to participate fully. He was able to enter and object to evidence, call and cross-examine witnesses, and argue his case. Having asked once for a continuance, he also had the opportunity to ask for a second continuance to obtain counsel or additional documents with which to present as evidence. He did neither. The panel members were qualified and carefully reviewed the evidence. They heard from witnesses, including hearing respondent's testimony. Respondent provides no valid reason for the Commission to reopen the hearing. The Board members clearly and unanimously ordered that respondent's license should be revoked. Respondent not being satisfied with the Commission's fact finding is not a reason to reopen the hearing.

Wherefore, the Department respectfully requests that the Commission sustain its Objection to Respondent's Motion to Reopen Hearing and Request for Further Reconsideration since respondent's motion is both premature and without merit.

Respectfully submitted,
THE DEPARTMENT OF PUBLIC HEALTH
Joelle C. Newton
Joelle C. Newton
Staff Attorney, Office of Legal Compliance

ORDER

The foregoing objection having been duly considered by the Connecticut State Dental Commission is hereby SUSTAINED/OVERRULED.

Dated on this ____ day of _____, 2022.

Connecticut State Dental Commission

CERTIFICATION

On 7/11/2022 a copy of this Objection was emailed to Attorney Leonhardt, ma@mooreleonhardt.com and to Department of Public Health, Public Health Hearing Office, phho.DPH@ct.gov.

Joelle C. Newton
Joelle C. Newton
Staff Attorney, Office of Legal Compliance