

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

MAY 27 2014

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF ARKANSAS**  
By: JAMES W. McCORMACK CLERK  
[Signature] DEP. CLERK

BENJAMIN BURRIS and ELIZABETH  
GOHL,

Plaintiffs,

vs.

DONNA F. COBB, in her official capacity as  
Executive Director of the Arkansas State Board  
of Dental Examiners; GEORGE MARTIN,  
ROBERT D. KEENE, DAVID J. BELL,  
TIMOTHY D. CHASE, ROBERT H. CARTER,  
JENNIFER LAMB, and DONNA WHITE in  
their official capacities as Members of the  
Arkansas State Board of Dental Examiners,

Defendants.

Civil Action No. 4:14 cv 319 BSM

This case assigned to District Judge Miller  
and to ~~Administrative Judge~~ Hearney.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**INTRODUCTION**

1. This is a civil-rights lawsuit seeking declaratory and injunctive relief. Plaintiffs are Dr. Benjamin Burris and Dr. Elizabeth Gohl. Dr. Burris is a licensed dentist and licensed orthodontist in the state of Arkansas. Dr. Gohl is a licensed dentist and licensed orthodontist in the state of Arkansas. Both Dr. Burris and Dr. Gohl currently practice as orthodontists in Arkansas at Dr. Burris's orthodontic practice.

2. In the summer of 2013, Dr. Burris began offering low-cost teeth cleanings at his Jonesboro orthodontic office, and would later expand them to four other offices. The price was

\$99 per cleaning for adults and \$69 for children. The cleanings were performed by licensed dental hygienists under the supervision of Dr. Burriss and other orthodontists at his office.

3. Despite the fact that Dr. Burriss is a licensed dentist, the Arkansas State Board of Dental Examiners (the “Dental Board” or “Board”) has taken the position that it was illegal for Dr. Burriss to offer these low-cost teeth cleanings for the sole reason that Dr. Burriss is also a licensed orthodontist. Orthodontists are “dental specialists,” meaning they are dentists who also specialize in a particular area. In Arkansas, dental specialists may not practice outside of their area of specialization, even to offer basic services like teeth cleanings.

4. When the Dental Board discovered that Dr. Burriss was offering low-cost cleanings separate from his orthodontic work, it threatened to revoke both his dental license and his orthodontic license.

5. Faced with the possible destruction of his orthodontic practice, Dr. Burriss agreed to stop offering low-cost teeth cleanings.

6. Dr. Gohl, who is also an orthodontist and an employee of Dr. Burriss, would participate in the low-cost cleaning program, and also participate in *pro bono* dental service programs, but for her fear that the Dental Board will threaten to revoke her dental license and orthodontic license if she does so.

7. The Board’s actions arbitrarily deprive Dr. Burriss and Dr. Gohl of their right to pursue the occupation of their choice, in violation of the Equal Protection, Due Process, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution.

8. Plaintiffs seek a declaratory judgment that Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3), as applied to the cleaning, X-ray, and other services that Dr. Burriss offered and which he and Dr. Gohl would like to continue offering, and to the *pro bono* dental service

programs that Drs. Burris and Gohl would like to participate in, violates the Equal Protection, Due Process, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution.

9. Plaintiffs seek a permanent injunction forbidding future enforcement of Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3) against them and other dental specialists practicing outside of their area of specialization.

10. Plaintiffs seek an award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988.

11. Plaintiffs do not seek money damages against any party.

#### **JURISDICTION AND VENUE**

12. Plaintiffs bring this civil-rights lawsuit pursuant to the Fourteenth Amendment to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343 and 42 U.S.C. § 1983.

14. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b). All Defendants are residents of Arkansas and operate, in their official capacities, in the Western Division of the Eastern District of Arkansas. Therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391(b).

#### **PARTIES**

15. Plaintiff Benjamin Burris is a licensed dentist and licensed orthodontist in the state of Arkansas, the owner of Braces By Burris and Arkansas Braces, and a resident of Fort Smith, Arkansas.

16. Plaintiff Elizabeth Gohl is a licensed dentist and orthodontist in the state of Arkansas, an employee of Arkansas Braces, and a resident of Fayetteville, Arkansas.

17. Defendant Donna F. Cobb is the Executive Director of the Arkansas State Board of Dental Examiners, charged with enforcing orders of the Dental Board. Defendants George Martin, Robert D. Keene, David J. Bell, Timothy D. Chase, Robert H. Carter, Jennifer Lamb, and Donna White are members of the Dental Board. As members of the Dental Board, they are empowered to issue declaratory rulings interpreting the Dental Practice Act and to impose civil penalties for violations of the Act. All of the Defendants are sued only in their official capacities.

#### **FACTUAL ALLEGATIONS**

##### **Orthodontists Are Dentists Who Also Specialize in a Particular Area**

18. Arkansas orthodontists have two licenses: a dental license and an orthodontic license. The dental license is a prerequisite for obtaining an orthodontic license. In Arkansas, someone cannot be a licensed orthodontist without also being a licensed dentist. Orthodontists have met all of the requirements for dental licensure and are dentists in good standing with the state of Arkansas.

19. In addition to orthodontics, the other areas in which Arkansas allows dentists to specialize are: dental public health, endodontics, oral pathology, oral and maxillofacial surgery, oral and maxillofacial radiology, pediatric dentistry, periodontics, and prosthodontics. Arkansas State Board of Dental Examiners Rules & Regulations, Article VII. Like orthodontists, and as described more fully below, dentists who choose to specialize in any of these areas are completely prohibited from offering services outside of their area of specialization, except in case of an emergency.

20. In order to become a licensed dentist, an individual must complete the necessary undergraduate prerequisites; take and pass the Dental Admissions Test; attend four years of dental school (including clinical courses); graduate with a Doctor of Dental Surgery or Doctor of Dental Medicine degree; and take and pass examinations administered by the National Board of Dental Examinations and the relevant state or regional examination agency (which, for Arkansas, is the Southern Regional Testing Association). Only then will Arkansas issue a dental license.

21. Orthodontists have completed all of the requirements listed above, since they are fully licensed dentists. After completing these requirements, dental specialists go on to complete a dental specialty program. In the case of Dr. Burriss and Dr. Gohl, this consisted of a three-year residency in orthodontics. These programs are very rigorous, and are typically undertaken by dental school students who graduate near the top of their class. After completing this program, specialists will sit for a specialty exam in their area of specialization. If they pass the exam, they will be issued a specialty license in addition to their dental license.

**The Arkansas Practice Act Prevents Dental Specialists  
From Offering Even Simple Services**

22. In Arkansas, dental specialists cannot perform any services outside of their area of specialization despite the fact that they possess all the same training as regular dentists. Arkansas Dental Practice Act § 17-82-305(g)(2) provides that, “Any member granted [a specialist license] must limit his or her practice to the specialty in which he or she is licensed except in an emergency situation.”

23. This means that a specialist must strictly limit his or her practice to his or her specific specialization, and may not perform (except in an emergency) any services unrelated to performing those specialty services.

24. A specialist who practices outside of his or her specialty can have his or her license revoked or suspended. Arkansas Dental Practice Act § 17-82-305(g)(3).

25. When practicing in their area of specialization, dental specialists can and do provide basic dental services in conjunction with specialized services. For example, when someone comes in for orthodontics (braces), Dr. Burriss takes a set of pictures and a panoramic X-ray of that individual's teeth. He then diagnoses any decay or other problems that he identifies because those problems must be addressed before braces can be applied.

26. Dr. Burriss and Dr. Gohl are allowed to perform X-rays, diagnose disease, and do many other things general dentists do, but only as necessary to apply braces.

27. If they offered these same services as stand-alone services unrelated to orthodontic work, Dr. Burriss or Dr. Gohl would violate the Dental Practice Act and could potentially have their licenses revoked.

28. The converse is not true for general dentists. Despite the fact that dental specialists cannot practice outside of their area of specialization, general dentists can practice any and every form of dentistry, including offering services that are typically provided by specialists, like orthodontics and oral surgery.

29. Nothing in the Arkansas Dental Practice Act limits the ability of general dentists to legally perform any and all kinds of dental services, regardless of the complexity of that service.

30. The only restriction is that general dentists may not hold themselves out (advertise) as specializing in a particular area. Arkansas Dental Practice Act § 17-82-305(e).

### **Dr. Burris and His Practice**

31. Dr. Ben Burris is a licensed dentist and licensed orthodontist in Arkansas.

32. After completing his undergraduate work in biology at The Citadel, Dr. Burris completed his Doctor of Dental Surgery and dental residency (through which he earned his Master of Dental Science) at the University of Tennessee in Memphis. He was first licensed as a dentist and orthodontist, in Arkansas, in 2004.

33. Dr. Burris has received training in all aspects of dental care, including cleaning teeth; polishing teeth; reading X-rays; diagnosing dental disease; extracting teeth; performing fillings, crowns, bridges, and on-lays; performing oral surgery; performing root canals; preparing teeth for treatment; and all other aspects of dental care, diagnosis, and treatment. This training was a prerequisite to his specific training in orthodontics. Dr. Burris is also willing and able to supervise dental hygienists who perform any and all dental procedures, like teeth cleaning, that they are legally allowed to perform.

34. Until the Dental Board threatened to revoke both his dental license and his orthodontic license for offering low-cost teeth cleaning services, Dr. Burris had never been the subject of a patient complaint or any other disciplinary action before any state dental board.

35. Dr. Burris owns Benjamin G. Burris DDS MDS, PA, and Gateway Ventures, LLC. These companies own and operate 11 offices across the state of Arkansas. The offices in Jonesboro, Paragould, Blytheville, and West Memphis are branded as "Braces By Burris." The offices in Bentonville, Fayetteville, Van Buren, Siloam Springs, Fort Smith, and Clarksville are branded as "Arkansas Braces." Except as noted, the 11 offices are referred to collectively in this complaint as "Braces by Burris."

36. Dr. Burris's practice employs other orthodontists, like Dr. Gohl, as well as licensed dental hygienists, dental assistants, office staff, and others, totaling approximately 100 individuals. Across its 11 offices, the practice has approximately 15,000 active patients at any one time. Approximately 85% of these patients are children and 15% adults.

37. In 2008, Dr. Burris established the Smile For a Lifetime Foundation, a charity that provides orthodontics "scholarships" (free of charge) to low-income children who cannot otherwise afford braces. Smile For a Lifetime now includes over 150 chapters across the United States and Canada and gives away approximately \$6 million in free braces per year. It has given away approximately \$20 million in free braces since its inception.

#### **Dr. Burris Begins the Low-Cost Cleaning Program**

38. As a continuation of his mission to expand access to dental care to low-income individuals, Dr. Burris, in early June 2013, started offering low-cost teeth cleanings, which especially benefit low-income individuals without insurance. He started small, offering the cleanings only in his Jonesboro office. Before he suspended the program, he had extended it to his offices in Blytheville, Forest City, Paragould, and West Memphis.

39. These low-cost cleanings were completely separate from any orthodontic work, and were performed by licensed dental hygienists under the supervision of Dr. Burris or other orthodontists working for him. Dr. Burris advertised the program throughout northeastern Arkansas. He charged \$99 for adults and \$69 for children. Adults could also sign-up for two cleanings per year on a no-interest payment plan of \$16 per month.

40. When a patient came to Dr. Burris for the low-cost cleaning program, the cleaning would be performed by a licensed hygienist under the supervision of Dr. Burris or another orthodontist at the office. The patient would receive a comprehensive examination which



includes a thorough look at the mouth, head, and neck area, periodontal examination, and clinical examination. X-rays would be taken if needed to look for decay or other dental problems that cannot be seen during clinical examination. The periodontal examination is used to determine gingival health. A periodontal probe is used to measure around each individual tooth. The depth of the pockets determines if gum disease has begun or not. During the assessment, gingival color, texture, mobility, recession, and bleeding are noted. The patient would then receive a cleaning, based on the patients' needs from the previous examinations. A fluoride treatment would be given at every appointment, to help fight erosion and tooth decay. If anything looked suspicious the patient would be referred to their primary care dentist or the appropriate dental specialist. If the patient did not have a primary care dentist, the patient would be referred to one. At the end of the appointment, oral hygiene instructions would be given to the patient, to help improve oral health status.

41. Dr. Burris was charging below the market price for cleaning services for patients who do not have dental insurance. Dr. Burris estimates that the standard out-of-pocket price for a teeth cleaning in Arkansas is \$200-300, which he believes is part of the reason why approximately half of Arkansas residents do not receive regular access to dental care. Dr. Burris aimed to change that with the low-cost cleaning program.

**The Dental Board Threatens to Revoke Dr. Burris's License  
Over the Low-Cost Teeth Cleanings**

42. On June 26, 2013, the week after he began the low-cost cleaning program, Dr. Burris received a letter from the Dental Board. The letter informed him that the Board had received complaints about the program. The complaints did not come from patients and were not related to the quality of care Dr. Burris was providing. Instead, they alleged that Dr. Burris was violating the Dental Practice Act by practicing outside of his orthodontic specialty. Dr. Burris

did not immediately discontinue the program. Instead, he waited to obtain more information from the Dental Board.

43. In September, 2013, while the low-cost cleaning program was ongoing, Dr. Burris attended a meeting of the Dental Board at the Board's invitation. At the meeting, various Board members spoke against Dr. Burris for practicing outside of his area of specialization. During the meeting, Dr. Burris's attorney and representative met privately with the Board's attorney. At that private meeting, the Board's attorney informed them that Dr. Burris's dental license and orthodontic license would be "in severe jeopardy" if he continued to offer teeth cleanings at his orthodontic offices.

44. Based on the Dental Board's threat to revoke both of his licenses, and fearful that such revocation would result in the destruction of his practice and the loss of his career, Dr. Burris suspended the low-cost cleaning program on September 13, 2013, approximately three months after it began. By then, the program had served approximately 200 adults and children.

45. After suspending the program in September, Dr. Burris on October 30, 2013, signed a consent order with the Dental Board, under which he formally agreed that he would cease offering cleanings at his orthodontic practice.

46. Although the low-cost program has been suspended, Dr. Burris continues to operate his orthodontic practice and participate in the Smile for a Lifetime Foundation.

47. But for his reasonable fear that resuming the cleaning program would result in revocation of his dental license and orthodontic license, Dr. Burris would resume offering low-cost teeth cleanings at his orthodontic offices. Since he has already invested in the office space and equipment, and since he already employs licensed hygienists, his cost for the cleanings is

much lower than the traditional delivery model. Since he has this capability, Dr. Burris believes he should use it, and would resume doing so but for the restrictions he challenges here.

48. Dr. Burris believes that the expense of basic dental care is too high for many individuals and families. If he can lower the cost of care, he can help expand the population of Arkansans who regularly go to the dentist to have their teeth cleaned. These visits are important for two reasons. First, they help prevent tooth disease because they maintain clean teeth. Second, regular dental visits often allow a dentist to diagnose disease before it progresses very far, which results in less-expensive and more-successful treatment outcomes.

**Dr. Gohl, Her Practice, and Her Charity Efforts**

49. Dr. Elizabeth Gohl is a licensed dentist and licensed orthodontist in Arkansas. She was first licensed in Arkansas in 2010.

50. Prior to becoming an orthodontist, Dr. Gohl was a dentist in the U.S. Navy. She was first licensed as a dentist in 2000. Prior to that, she earned her B.A. in psychology and B.S. in exercise science, M.S. in neurobiology, and Doctor of Dental Surgery from the University of Southern California. From 2000 to 2004, Dr. Gohl did dental work on Navy sailors, including performing teeth extractions and complex procedures.

51. In 2004, after an honorable discharge from the Navy, Dr. Gohl entered her orthodontic residency at the University of California with a full Navy scholarship. In 2007, she earned a certificate in orthodontics and an M.S. in craniofacial biology. She then became licensed as an orthodontist in California, where she practiced until 2010, when she moved to Arkansas.

52. Dr. Gohl has received training in all aspects of dental care, including cleaning teeth; polishing teeth; reading X-rays; diagnosing dental disease; extracting teeth; performing

fillings, caps, crowns, bridges, and on-lays; performing oral surgery; performing root canals; preparing teeth for treatment; and all other aspects of dental care, diagnosis, and treatment. This training is in addition to her specific training in orthodontics. Dr. Gohl is also willing and able to supervise dental hygienists who perform any and all dental procedures, like teeth cleaning, that they are legally allowed to perform.

53. Dr. Gohl has never been subject to disciplinary action by any dental board.

54. Dr. Gohl is currently employed by Arkansas Braces, where she practices as an orthodontist in the Fayetteville, Siloam Springs, Jonesboro, Bentonville, and Clarksville offices.

55. Dr. Gohl has provided volunteer *pro bono* dental services in countries all over the world, including Brazil, Kenya, India, and the United States.

56. When Dr. Gohl arrived in Arkansas, she attempted to volunteer for a *pro bono* “Free Extraction Day” program, where low-income individuals can have teeth removed for free at a dental clinic. These programs exist to provide needed dental services to populations that cannot otherwise afford them, with the goal of improving dental health.

57. Dr. Gohl was told by the supervising dentist that her participation in Free Extraction Day would be illegal because she is a licensed orthodontist and participating in the program would constitute practicing outside of her area of specialization. Dr. Gohl therefore did not volunteer her services.

58. Dr. Gohl participates in the Smile For a Lifetime Foundation, which she is allowed to do as a licensed orthodontist, but she does not participate in any other *pro bono* programs due to Arkansas’ restrictions on dental specialists.

59. Dr. Burriss has also attempted to volunteer for *pro bono* dental programs. In September 2007, Dr. Burriss offered to perform volunteer dentistry at a *pro bono* clinic at the

Central Baptist Church in Jonesboro, but was prevented from doing so because he is a licensed orthodontist.

60. But for their reasonable fear that doing so would result in suspension of their dental and orthodontic licenses, Drs. Burris and Gohl would participate in *pro bono* dental service assistance programs on a regular basis.

61. Dr. Gohl believes it is important to give back to the community. Like Dr. Burris, she is troubled by the fact that many Arkansans cannot afford basic dental care. She and Dr. Burris would like to help alleviate this problem by offering *pro bono* services, but they cannot do so because of the restrictions they challenge in this lawsuit.

62. Dr. Gohl would also participate in Dr. Burris's low-cost cleaning program if she could legally do so. Dr. Burris would allow her to participate in the program if doing so would not put both of their licenses at risk. Instead, Dr. Gohl refrains from participating in the low-cost cleaning program both because she reasonably fears that participating in such a program would result in revocation of her dental license and orthodontic license, and because the cleaning program is currently suspended.

### INJURY

63. After the Dental Board threatened to revoke both his dental license and orthodontic license for offering low-cost teeth cleanings at his orthodontic practice, Dr. Burris suspended the program and ceased providing those services.

64. Dr. Burris currently does not offer stand-alone cleaning services at his orthodontic offices because he reasonably fears the Dental Board will revoke his orthodontic license should he resume offering the low-cost teeth cleanings, pursuant to Arkansas Dental Practice Act §§ 17-

82-305(g)(2) and (3). If he could legally do so, he would resume the program immediately. He still has the office space, equipment, materials, and staff to do so.

65. Further, even though § 17-82-305(g)(3) does not specifically provide for it, Dr. Burris reasonably fears the Dental Board will revoke his dental license, as well, because they have previously threatened to do so as a result of Dr. Burris offering low-cost teeth cleanings.

66. Likewise, Dr. Gohl does not participate in the low-cost cleaning program because she reasonably fears that the Arkansas Board of Dental Examiners will revoke her orthodontic license should she perform such services, pursuant to Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3).

67. Drs. Burris and Gohl do not participate in *pro bono* dental service programs because they reasonably fear that the Arkansas Board of Dental Examiners will revoke their orthodontic licenses should they participate in such programs, pursuant to Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3).

68. But for Arkansas' prohibition on dental specialists offering non-specialty services, and but for the specific application of Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3), both Dr. Burris and Dr. Gohl would offer low-cost teeth cleanings at Dr. Burris's orthodontic offices. They estimate that but for the specific application of Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3), they could provide thousands of low-cost cleanings at Dr. Burris's orthodontic offices every year since Dr. Burris would reinstate the program and offer it at all of his offices in an effort to serve more patients.

69. Further, but for the specific application of Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3), Drs. Burris and Gohl would participate in charitable dental service programs. As explained more fully below, Drs. Burris and Gohl have been denied their right to equal

protection under the law as protected by the Equal Protection Clause of the U.S. Constitution, and their right to economic liberty (the right to earn an honest living) as protected by the Due Process and Privileges or Immunities Clauses of the Fourteenth Amendment.

70. If they offer teeth cleanings, or participate in *pro bono* dental service programs, they will lose their licenses and, thus, their whole careers.

71. Due to the specific application of Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3), they have been irreparably injured by the deprivation of their rights to equal protection under the laws, their substantive due process right to earn an honest living free of arbitrary and irrational government interference, and their rights to the privileges or immunities of citizenship.

## **LEGAL CLAIMS**

### **Count I: Equal Protection**

72. Plaintiffs incorporate and reallege the allegations of Paragraphs 1 to 71 as if fully set forth herein.

73. Count One is brought pursuant to the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

74. Arkansas Dental Practice Act § 17-82-305(g)(2) provides that licensed dental specialists may not practice outside of their area of specialization.

75. Plaintiffs are licensed dentists who perform many kinds of simple dental work (X-rays, diagnosing disease, polishing teeth) that are routinely performed by general dentists, but Plaintiffs may only perform that work in the context of offering their orthodontic services. If Plaintiffs perform that work separate from applying orthodontics, they face revocation of their licenses.

76. On the other hand, general dentists are allowed to perform any kind of dental work they choose, without limitation, including work in areas of specialization like orthodontics and oral surgery.

77. The Equal Protection Clause of the Fourteenth Amendment does not allow the government to treat similarly situated persons differently unless the reason for doing so bears a rational relationship to a legitimate governmental interest.

78. Plaintiffs have been denied equal protection of the law because there is no rational reason for Arkansas to prohibit dental specialists from performing dental work outside of their area of specialization, particularly while allowing general dentists—who are required to possess significantly less training—to perform any and all dental services, without limitation.

79. Defendants, their agents, and employees, acting under color of state law, violate Plaintiffs' right to equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

80. Unless Defendants are enjoined from committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

#### **Count II: Due Process**

81. Plaintiffs incorporate and reallege the allegations of Paragraphs 1 to 80 as if fully set forth herein.

82. Count Two is brought pursuant to the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. The Due Process Clause protects Americans' economic liberty, or the right to earn an honest living in the occupation of one's choice, subject only to regulations that are rationally related to a legitimate government interest.



83. There is no legitimate governmental interest for preventing dental specialists from offering basic dental services (like teeth cleanings, X-rays, extractions, etc.) or otherwise practicing outside of their area of specialization.

84. Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3)'s prohibition on dental specialists practicing outside of their area of specialization violates Plaintiffs' right to due process of law, and is not rationally related to any legitimate governmental interest.

85. The Dental Practice Act's prohibition on dental specialists practicing outside of their area of specialization deprives Plaintiffs of their right to earn an honest living of their choice by imposing restrictions on dental specialists that are not rationally related to any legitimate governmental interest, and unreasonably and arbitrarily interferes with Plaintiffs' ability to offer their patients low-cost cleaning services and participate in *pro bono* dental clinics.

86. The arbitrary diminution of Plaintiffs' economic liberty by Defendants' application of Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3) to dental specialists deprives them of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

87. Defendants, their agents, and employees, acting under color of state law, violate Plaintiffs' right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

88. Unless Defendants are enjoined from committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

### **Count III: Privileges or Immunities**

89. Plaintiffs incorporate and reallege the allegations of Paragraphs 1 to 88 as if fully set forth herein.

90. Count Three is brought pursuant to the Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. The Privileges or Immunities Clause protects the right to earn an honest living.

91. Arkansas Dental Practice Act § 17-82-305(g)(2), as applied to Plaintiffs, deprives them of the privileges or immunities of citizenship by imposing arbitrary and unreasonable restrictions on dental specialists, that interfere with their ability to offer low-cost teeth cleaning services and participate in *pro bono* dental clinics.

92. Defendants, their agents, and employees, acting under color of state law, violate Plaintiffs' privileges or immunities as guaranteed by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

93. Unless Defendants are enjoined from committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

#### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. For entry of judgment declaring that Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3) is unconstitutional as applied to Plaintiffs and others similarly situated, to the extent that they impair Plaintiffs' ability to provide low-cost cleaning services and charity dental work, in violation of the Equal Protection, Due Process, and Privileges or Immunities Clauses of the Fourteenth Amendment to the U.S. Constitution;
2. For entry of permanent injunctions against all Defendants prohibiting the enforcement of Arkansas Dental Practice Act §§ 17-82-305(g)(2) and (3) against Plaintiffs and other dental specialists practicing outside of their area of specialization, and prohibiting the

imposition of fines, civil or criminal penalties, dental or dental specialist license revocation, or otherwise subjecting the aggrieved to harassment;

3. For an award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and,

4. For further non-monetary legal and equitable relief as the Court may deem just and proper.



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\* Application for admission *pro hac vice* filed concurrently with this document.