

## IN THE SUPREME COURT OF THE STATE OF MONTANA

CASE # DA 22-0272

RICK M. MILLER, DDM

APPELLANT,

V.

APPELLANT'S BRIEF

MT. DEPARTMENT OF LABOR

AND INDUSTRIES, MT,

BOARD OF DENTISTRY,

APPELLEE.

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On appeal from the Montana Eleventh Judicial  
District Court, County of Flathead.

Cause # DV-20-1152, Honorable Heide J. Ulbricht  
Presiding.

## Appearances:

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## STATEMENT OF ISSUES

Did the Court err...?

1. not recognizing the court did not have subject matter jurisdiction.
2. by not recognizing the fact the Board's Ag had lied to the board on their duties as member's.
3. not recognizing all MCA statues involving this this case.
4. not recognizing the fact that the Appellant held a Tribal Denturist License recognized by State statute.
5. not recognizing all arguments in the 3 main authorities by the Appellant.

1                                   **STATEMENT OF THE CASE**

2

3       The Appellant has been trying to become licensed as  
4 a Denturist in the State Montana since 1986. He was  
5 allowed to take the exam and failed. The Denturist  
6 Board, had decided that if the Board of Regrets  
7 recognized his military education he would be allowed  
8 to retake the exam. The Board of Regrets recognized  
9 the accreditation of his military education.

10       Appellants education, was for approximately 18  
11 yrs, and still is, the only education that meets all  
12 requirements of the Montana statues to set for the  
13 exam.

14       From the enactment of the Denturist Act (by  
15 initiative) the Denturist were under attack by the  
16 American Dental Association, directly and by the usage  
17 Of the Montana Dental Association. The American Dental  
18 Association, (here after ADA) immediately introduced  
19 legislation to take control of the Denturist  
20 profession. Which these and other actions are spelled  
21 out in the ADA Policy on how to handle the denturist  
22 profession. ( please see Appellant's Petition page 5-7  
23 exhibit 5) They used all they had, money and  
24 misinformation. **(Lies)** This was proven by the  
25 investigation to the legislature. But to NO prevail the  
26 money had already done its deed.

27

28

1 This was not the end to this kind of tactics. It has  
2 been used though out Appellants application for a  
3 Denturist license. The sad part is, it has been used  
4 by the Assistant Attorney Generals ( here after AAG)  
5 on the board to persuade the vote they were after.  
6 They have along with Department of Labor and Industry  
7 staff lied, concealed documents, made their own laws,  
8 interrupted ones they wanted, and ignored laws. They  
9 have used their positions as officers of the court to  
10 persuade Judges in past cases, as they did with the  
11 Judge in this case..... **No action taken by the Appellee**  
12 **serve any legitimate state purpose.** Please read the  
13 Appellants "Notice of Petition, Statement of Facts,  
14 Brief in Support, for Writ of Mandate (Mandamus or  
15 Other Appropriate Writ). Proof to all allegation are  
16 presented in those documents.....

#### 17 18 19 **STATEMENT OF FACTS** 20

21 1,3,4. 1. Did the Court err when it refused to  
22 recognize it didn't have subject matter jurisdiction?  
23 Answer is yes...

24 3. Not recognizing all MCA statutes involved  
25 in this case ? yes

26 4. not recognizing the fact the Appellant had  
27 an Indian Tribal Denturist License that is  
28 recognized by Montana State Statute ? yes

1  
2 In the Appellants brief, "Plaintiff' Response to  
3 Defendant's Response To Plaintiff's Motion to Dismiss  
4 and For Summary Judgment. The Appellee case should not  
5 of been allowed, they circumvented by not holding a  
6 contested case hearing. (MCA 37-1-136)

7 On page 4 to the end, this is argued to its  
8 fullest extent. The Appellee cited the incorrect  
9 statue for disciplinary authority. They cited MCA  
10 37-4-328- which just happens to be The Dental and  
11 Hygiene Act. Has nothing to do with Denturist who  
12 are govern under the MCA 37-29.

13 Further statues ignored and where the court  
14 doesn't have subject matter jurisdiction to hear  
15 the Appellee/Defendants counterclaim. Start at the  
16 bottom of page 5. These statute are to be read  
17 along with all MCA 37, as long as there is no  
18 conflict. (page 5)

19  
20 MCA Title 37 Profession and Occupation, Chapter 1.  
21 General Provision Part 3, Uniform Professional  
22 Licensing And Regulation Procedures. (page 5&6)  
23 37-1-301 Purpose; " The purpose of this part is to  
24 establish uniform guidelines for the licensing  
25 and regulation of professions and occupations  
26 under the jurisdiction of professional and  
27 occupational licensing boards governed by this  
28



1 part". Denturistry is under and governed by this  
2 part. Mca 37-29

3  
4 MCA 37-1-307 (a) (d) (e) (page6) in part (a) hold  
5 hearings (d) to establish screening panel. A  
6 screening panel is a agency for purposes of  
7 summary suspensions under MCA 2-4-631.

8 (e) grant or deny a license and, upon finding of  
9 unprofessional conduct by a applicant or license  
10 holder impose a sanction provided by this chapter.  
11 Part 6. Contested Cases- MCA 2-4-631 1." When the  
12 grant, denial, renewal, revocation, suspension,  
13 annulment, withdrawal, limitation, transfer, or  
14 amendment of a license is required by law to be  
15 preceded by notice and opportunity for hearing,  
16 the provisions of this chapter concerning  
17 contested cases apply". (page6)

18  
19 MCA 37-1-136. (page 6&7) Disciplinary authority  
20 of boards-injunction. (2) **"ANY"** disciplinary  
21 action by a board shall be conducted as a  
22 contested case hearing under the provisions of the  
23 Montana Administration Procedure Act.

24  
25 MCA 2-4-102 Definitions. (4) (6) (7) (in part)

26 (4) "contested cases" means a proceeding before  
27 an agency in which a determination of legal  
28 rights, duties, or privileges of a party is

1 required by law to be made after an opportunity  
2 for a hearing. The term includes but not  
3 restricted to ratemaking, price fixing, and  
4 licensing. (page7)

5  
6 MCA 37-1-302 . Uniform Professional Licensing and  
7 Regulation Procedures (in part) (page 7&8)

8 (2) "complaint" means a written allegation filed  
9 with a board, if true warrants an injunction,  
10 disciplinary action against a licensee, or **denial**  
11 **of an application submitted by a license**  
12 **applicant.**

13 (5) "Investigation" (page7) means the inquiry,  
14 analysis, audit, or other pursuit of information  
15 by the department, with respect to a written  
16 complaint or other information before a board,  
17 that is carried out the purpose of determining;

18 (a) whether a person has violated a provision of  
19 law justifying discipline against the person.

20 (c) whether a license should be granted, denied,  
21 or conditionally issued, or

22 (d) whether a board should seek an injunction  
23

24 Administrative Rules of Montana; Department 24-  
25 Labor and Industry Chapter 24.101- Business  
26 Standards Division, Subchapter 24.101.4-  
27 Standardized Rules for **Boards** and Programs- Rule  
28 24.101.402-Definitions; As used in **conjunction**

1 with **Title 37**, MCA, the following Definitions  
2 apply: (4) ( page 8)

3 (4) "Disciplinary action" means the procedure by  
4 which unprofessional conduct is addressed by the  
5 board or program pursuant to the contested case  
6 hearing provisions of the Montana Administrative  
7 Procedure Act (Mapa).

8 MCA 37-1-316- The following is unprofessional  
9 conduct for a licensee or **license applicant**  
10 governed by this part; (7) (page9)

11 (7) denial, suspension, revocation, probation,  
12 fine, or other license restriction or discipline  
13 against a licensee by a state, province,  
14 territory, **or Indian Tribal government** or the  
15 federal government if the action is not on appeal,  
16 under judicial review or has been satisfied.

17  
18 The Appellant respectfully ask the court to please  
19 read pages 10-11 12 of this same brief and where  
20 it refers to his Petition. This will save the  
21 court time, and answer any lingering questions.

22  
23 How can a Judge honestly ignore these statues and  
24 that they have no bearing on this case??

25  
26 Statement of Issues #4; Did the court err in not  
27 recognizing the fact that the Appellant was  
28

1 licensed by a Indian Tribal government that has  
2 been recognized by state statute since 1995? yes

3 Appellant/Plaintiff petition, pages 35-43 is  
4 argument and statutes that Tribal license and  
5 state license are to be recognized as the same.  
6

7 Complaints filed against Appellant are unfounded  
8 and are the only defense the Appellee had/have.  
9 (page 11, Plaintiff Response)

10 The information Appellant presented to the  
11 screening panel was not presented to the board  
12 members. (see exhibit 14 in Plaintiffs Petition)  
13 Affidavit of Cliff Christenot former and only  
14 dentist on the board, and president of the  
15 screening panel) Staff for Appellee/Defendants  
16 concealed documents from the board members. A  
17 long standing dentist and board member just out  
18 right lied to the board members telling them  
19 Tribal authorities , (quoting his daughter from  
20 the Crow Agency, supposedly,) did not have the  
21 authority to license professionals. Also, the  
22 Asst. Attorney General on the board, stated that  
23 the Plaintiff had bought his license for  
24 \$30,000.00. Which was another blatant lie.  
25

26 The defendant/Appellee have to this day,  
27 refused to provide Appellant/Plaintiff with a  
28 requested copy of these board minutes along with

1 other documents. ( see exhibit 3 of Plaintiffs  
2 Petition for Writ) The respondent has also  
3 refused subpoenas. In just about everything the  
4 Appellant has written the Appellee has refused to  
5 turn over the requested documents. Appellant has  
6 even tried 4 times to get the court to compel the  
7 Appellee to provide the needed documents. In the  
8 Appellants Petition for Mandate he provided proof  
9 the the Asst. Attorney General had lied to the  
10 board at the Dec.1, 2017 and the 2012 board  
11 hearing where the Asst. AG lied to the board  
12 about the board having the power decide  
13 educational schools and requirement mandated by  
14 law.. The only time the respondents have  
15 responded were on the interrogatories. Where they  
16 answered it was a closed hearing. These minute  
17 will/would tell the truth of this whole case.  
18 While I was trying to get the court to Compel the  
19 documents, these documents were refused to be  
20 filed. Different reason every time, even when the  
21 documents were their. Until the court had decided  
22 the case. Please (see order of the court and  
23 Plaintiffs Motion to Compel under Plaintiff's  
24 Leave to Clarify/Submit Record for Appeal.)

25  
26 The Asst. Ag even advised one of the witnesses  
27 not to answer his interrogatories. With were also  
28 very important to the Plaintiff. Because both

1 complainers came from his office, and went back  
2 to his office and filed complaints against the  
3 Plaintiff. Here again the appearance of wrong  
4 doing is very strong.

5  
6 Why would the court ignore everything submitted  
7 by the Appellant when he had started the case????  
8

9 Perhaps the answer lays in the statement from  
10 the Judge in the Plaintiff's Motion to Dismiss  
11 Defendants Counterclaim and for Summary  
12 Judgement. On the last page 6. She writes,  
13 line 5&6, " Miller's  **cursory briefing and**  
14  **conclusory statements** in his initial brief do not  
15 meet this initial burden"

16 I agree I am not licensed by the state of  
17 Montana and never claimed to be. But my license  
18 is equal to one. And I can assure her and this  
19 court that my Petition for Writ was not cursory  
20 or conclusory....I worked for months on the brief  
21 so anyone with any kind of a open mind would and  
22 could understand. And not a part of it is a lie  
23 or without proof.

### 24 25 **Argument**

26  
27 The Appellee's allege claims of why the  
28 Court cannot do anything the Appellant has

1 claimed. So lets take a quit look at the law.

2 1.The Appellee's have been discriminatory towards  
3 the licensing of Plaintiff Miller. The Appellee  
4 allege the statute of limitations comes into play  
5 with most of the allegations by the plaintiff.  
6 this is untrue. This would bring in the  
7 "Continuing Violation Doctrine"

8 The doctrine relieves a plaintiff of a  
9 limitations bar if he/she can show a series of  
10 related acts to him/her, one or more of which  
11 falls within the limitations period.  
12 Pegram v Honeywell, Inc., 361 F.3d 272,279 (5<sup>th</sup>  
13 Cir. 2004)"

14 The Appellee's have ignored rulings from the  
15 Denturist Board, Attorney General Opinion, State  
16 laws. They have recognized schools that do not  
17 meet the statues and have licensed people  
18 that went to these schools. (Please see  
19 Plaintiff's petition, page 23,24,25,31,32-39,42-  
20 to the end) Basically the whole petition.  
21

22 This was not done by accident. The last date of  
23 their actions towards the Appellant was the  
24 Dec.1, 2017 board meeting. They were holding off  
25 any actions toward the plaintiff to run out  
26 statute of limitations.  
27

28 2. Appellant Miller, should have been able to

1       retake the exam as soon as the Attorney General  
2       made his opinion. But the board chose to conceal  
3       this decision because it did not meet their  
4       agenda, or plan at the time. Appellant should  
5       have been licensed after the 1995 laws were  
6       passed. MCA 37-1-304 (1)(a) states very clearly:  
7       the other state's license standards "**at**  
8       **the time of application**" to this state are  
9       "**substantially**" equivalent to or greater than  
10      the standards of this state" and

11      (b) there is no reason to deny the license under the  
12      laws of this state governing the profession or  
13      occupation..

14      The Respondents reasoning to deny, was because a  
15      state and Tribal land were not the same.  
16      This action, is against state law and/or  
17      discriminatory towards plaintiff Miller.

18  
19      3. The Appellee's allege, the Appellant has not  
20      met the educational requirements. But the AAG at  
21      the 2012 hearing told the board they did not  
22      have the authority to look at these  
23      requirements. (see Plaintiff Petition)  
24      Prior to around the year 2000, there was no  
25      School recognized by the board, other than  
26      Idaho State Un. And thanks to the Mt. Board of  
27      Regency, and Appellant, the US ARMY School.  
28      At the Dec.1,2017 board hearing, a gentleman, I



1 Think it was Dale Chamberlain DDS, when they  
2 were considering my application, said, that no  
3 Indian Tribe had the authority to issue  
4 licenses. Also I think it was the AAG, told the  
5 board members  
6 that I had bought my Tribal license for  
7 \$30,000.00. This is why I have been trying to  
8 get a copy of the minutes/recording from this  
9 hearing.

10 If it does not say this I will drop this case. (see  
11 Affidavit of Cliff Christenot)...How can anyone say this  
12 is not discriminatory..? What State interest or  
13 purpose does this serve? (This is in  
14 Plaintiff's Response to Defendants Motion to  
15 for Summary Judgment, filed under Leave to  
16 Submit, 04-25-2022)

#### 17 18 **MONTANA UNFAIR TRADE PRACTICE ACT**

19 The Appellee's argue that the Montana Unfair  
20 Trade Practice Act (MUTPA) does not provide for  
21 a cause of action against the State of Montana.  
22 This is not true....

23 The Constitution of the State of Montana, Section  
24 18, states:

25 "The state, counties, cities, towns, and all  
26 other local governmental entities shall have  
27 "**NO**" immunity from suit for injury to a person  
28 or property, except as may be specifically

1 provided by law by a 2/3 vote of each  
2 house of the legislature”...

3 **Montana Deceptive Trade Practices Laws at a Glance** “  
4 **Montana law provides broad protections. A general ban on “unfair methods**  
5 **of competition and unfair or deceptive acts or practices” covers a lot of**  
6 **ground. False advertising, fraudulent sales practices, efforts to deceive**  
7 **consumers, and attempts to undercut free and fair competition are**  
8 **outlawed.”**

9 The Appellant thinks that the fact of lying to the board members and conceal  
10 documents would be under efforts to deceive consumers and attempts to  
11 undercut free and fair competition.....

12 MCA 30-14-103: “Unfair methods of competition and  
13 unfair or “**deceptive**” acts or practices in the  
14 conduct of any trade or commerce are unlawful”  
15 The Plaintiff thinks that the fact of lying and  
16 concealing documents to the board members would  
17 be under deceptive acts...

18  
19 MCA 30-14-102(6) (8): “ “Person” means natural  
20 persons, corporations, trust, partnership,  
21 incorporated or unincorporated associations,  
22 and any other legal entity.”

23 Appellant feels this includes the Appellee.

24 All members of the board are members of the  
25 Montana Dental Association, whom are members  
26 of the American Dental Association.

27 This is why the Appellant needs the Dec.1, 2017  
28 Board hearing minutes/recordings....To prove

all this...

The Plaintiff has presented two cases to show that the Writ of Mandate is proper before this court. Both cases are so close to being right on point.

**1. In State ex Rel. Westercamp v. State Board of Chiropractic Examiners...352 P.2d 995 (1960) ..**

Like the Appellant's in this case Appellant Miller was licensed by examination to practice as a denturist, by Tribal authority on the Nooksack reservation. Which according to state law. Means the same as a state. The Appellant in this case, makes the same arguments as in the Westercamp case. Like the Westercamp case, the board of dentistry didn't even look at Mills Grae UN. or the education that was taught.

In part: "We need not decide whether this sole reliance by the Board is an invalid delegation of power. See State v. Wakeen, 263 Wis. 401, 57 N.W.2d 364. But it is such a manifest abuse of discretion as to amount to a failure to act at all. We are not prepared to say that consideration cannot properly be given to recommendations of an association of practitioners which fairly represent the profession and which strive to promote the highest standards of professional educational preparation. In this case, however, where no facts were before the Board for approval purposes save the fact of non-approval by the N.C.A., and where the Board refused to investigate or inspect the Palmer School unless accompanied by representatives of the N.C.A., including Dr. Nugent, who is admittedly hostile toward the school and whose regulations preclude consideration in the first instance because of the corporate structure of the school, the Board has failed to perform its duty as prescribed by law.

1 Section 93-9102, dealing with the writ of mandamus, provides in part:

2 "It may be issued by the supreme court or the district court, or any judge of the  
3 district court, to any inferior tribunal, corporation, board, or person, to compel  
4 the performance of an act which the law specially enjoins as a duty resulting  
5 from an office, trust, or station". It has been established that the writ is available  
6 only to compel performance of a clear legal duty, not involving discretion.  
7 McCarten v. Sanderson, 111 Mont. 407, 416, 109 P.2d 1108, 132 A.L.R. 1229.  
8 But even where discretion is involved, if there has been such an abuse as to  
9 amount to no exercise of discretion at all, mandamus will lie to compel proper  
10 exercise of the powers granted. State ex rel. Marshall v. District Court, 50 Mont.  
11 289, 294, 146 P. 743."

12 "The record discloses that the Palmer School has been inspected by many other  
13 states and is approved by the Veterans Administration for attendance by veterans  
14 under the veterans educational program.

15 Since there is no evidence to indicate that relators' applications do not conform to  
16 the requirements of the statutes, or that the qualifications of the relators are  
17 questioned by the Board in any other respect, it is the duty of the Board to allow  
18 them to take the examination, and in the event of successful completion, to issue  
19 relators a license to practice chiropractic in this state.

20 Mills Grae was recognized by the State of  
21 Montana Dept. of L&I. The Appellant is only  
22 asking the court to do what the Board is powered  
23 to do by statute.

24 Cary v. Bureau of Professional and Occupational and  
25 State Bd . of Medicine, 153 A.3d 1205. This case  
26 relied on the Westercamp case.

27 Its Appellant could not prove her school was or  
28 was not qualified for her to be licensed.

"To survive judicial scrutiny, the Board "must examine the relevant data and  
articulate a satisfactory explanation for its action," and this Court "may not



1 supply a reasoned basis for the [Board's] action that the [Board] itself has not  
2 given." *Motor Vehicle Manufacturers Association* , 463 U.S. at 43, 103 S.Ct.  
3 2856. Therefore, absent a satisfactory explanation as to why the Board decided  
4 that only CHEA and the USDE would be accrediting bodies, this Court is  
5 constrained to conclude that the Board's order denying Cary a license was based  
6 on an arbitrary and capricious exercise of discretionary power.

## 6 Conclusion

7 With the exception of proving that she obtained her master's degree from a  
8 Board-approved school, the Board determined Cary has satisfied all the  
9 requirements necessary to obtain a behavioral specialist license. (F.F. at 15–16.)  
10 Having concluded on the current record that the Board acted arbitrarily and  
11 capriciously when it determined that Cary did not meet the educational  
12 requirements for licensure, because it did not promulgate any regulation and did  
13 not provide any legitimate rationale for choosing CHEA and the USDE as the  
14 accrediting bodies, the Board cannot use this as a basis upon which to deny Cary  
15 a license. Accordingly, we reverse the Board's order and remand to the Board  
16 with instruction to issue Cary a behavioral specialist license. Because this Court's  
17 conclusion rests on non-constitutional grounds, we decline to entertain any of the  
18 constitutional issues that Cary raises. *See In re Fiori* , 543 Pa. 592, 673 A.2d 905,  
19 909 (1996) ("[C]ourts should avoid constitutional issues when the issue at hand  
20 may be decided upon other grounds.").

21 The board has changed the educational requirements  
22 by recognizing the Canadian Schools, and  
23 American schools. And licensed people... Why...?  
24 because the only school that meets all the  
25 educational requirements, ( except for  
26 accreditation ) is Mills Grae University.

27 The Board was denied a opportunity to investigate  
28 this school by the Attorney Generals on the Board.


1 The Board refuses to do it job as outlined by  
2 statute in licensing the Appellant. They have  
3 acted arbitrarily and capriciously and there  
4 actions serve no state purpose.

5  
6 **CLOSEING**

7 The Appellant apologies to this court that his  
8 brief is not in the same form as an Attorney.  
9 But he prays that he has made it clear to the  
10 err's of the former court, and the merits and  
11 facts of this case.

12 The Appellant, respectfully ask this court to  
13 reverse the decision of the lower court. To order  
14 the board to grant him a license to practice as a  
15 denturist. To grant all other issues asked for in  
16 the Petition for Writ. And any thing else this  
17 court deems....  
18

19  
20 DATED THIS 20<sup>TH</sup> DAY OF July 2022  
21

22  
23  
24 Signed: 

25 Rick Miller, pro se, Appellant

26 924 SE 6<sup>th</sup> Ave  
27 Aberdeen, SD 57401  
28 406-210-7834  
rickyreline@att.net



1                                   **CERTIFICATE OF SERVICE**

2

3       I certify that I have filed this Petitioners Brief

4 With the Clerk of the Supreme Court and that I have

5 mailed a copy to each attorney of record and any other

6 party not represented by counsel as follows:

7

8                                   Quinlan L. O'Connor, Graden Marcelle

9                                   Department of Labor & Industry

10                                  1315 Lockey Ave, PO Box 1728

11                                  Helena Mt. 59624-1728

12                                  406-444-1689, [laborlegal@mt.gov](mailto:laborlegal@mt.gov)

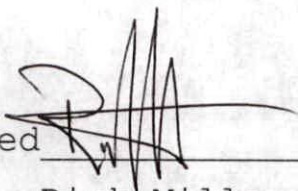
13                                  Agency Counsel for Appellee

14

15

16       Dated this 20 day of July, 2022.

17

18                                   

19       Signed \_\_\_\_\_ pro se

20                                  Rick Miller, Pro Se, Appellant

21

22

23

24

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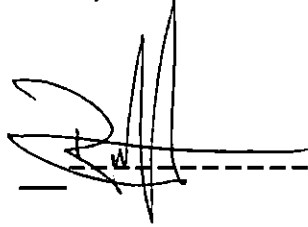
26

27

28

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is  
proportionally spaced typeface of 14 points  
and does not exceed 10,000 words.

A handwritten signature in black ink, appearing to be 'R. W. [unclear]', written over a horizontal dashed line.

-----Pro Se