O Pioneer!

Or how a fired-up dental hygienist turned his walking papers into marching orders.

April 1, 2001 By Kevin O'Leary

My private physician did an HIV test," Spencer Waddell says. "When the results came back positive, he called my employer -- and yee-haw!" *Yee-haw* is Southern for the 37-year-old Atlantan's uphill battle of his forced resignation in October 1997. Last August, a federal district court ruled in *Waddell v. Valley Forge Dental Associates* that because he posed a significant health risk to patients, the firing was justified. The case will be heard later this year by the United States Court of Appeals for the Eleventh Circuit. (He is pursuing separate litigation against his doctor.) And Waddell is determined to win one for the team.

The morning after getting the big news, Waddell's then-boss and mentor, Eugene Witkin, DDS, called him to say "he wasn't sure what to do and needed time," says Waddell, who waited at home for a decision. A day turned into a week, and then two. Finally, Waddell was invited back to work -- as a clerk, for $9 an hour. "I had made $25 an hour doing what I'd trained to do," he says. "When I didn't accept, they considered that my 'resignation.'"

Witkin left no doubt that the dismissal was due to the virus in Waddell's blood. But the lip service given to concerns about his future stunned Waddell almost as much as the shabby treatment from colleagues he considered family. But it was, he says, sadly familiar -- in 1986 he'd been booted from the Navy for being gay. "That was a time when there wasn't anything to be done," he recalls. "Then to lose a job for something the experts were saying wasn't even a problem..." He trails off. "I said, 'I've got to do something this time.' I mean, if you say I can't clean teeth, you'll say the same stuff when I wait tables: 'What if he pokes himself with a fork?' If we don't draw a line somewhere, we'll have nothing left."

Enter Stephen Scarborough, staff attorney at the Lambda Legal Defense and Education Fund's Atlanta office. "I met Spencer shortly after he was fired," Scarborough says. "A lot of people who face discrimination wait a long time to work up the courage, and memory fades. Not Spencer."

What's more, Waddell understood that with these cases, it's all risk. Under the Americans With Disabilities Act and the 1998 Supreme Court case *Bragdon v. Abbott*, if you're considered a direct threat, the employer is justified in firing you. *Bragdon* requires that the assessment be based on "medical or other objective evidence;" something that Scarborough says Valley Forge did not provide. But Waddell still ran into a lower-court judge's zero-tolerance of any HIV risk, no matter how statistically or medically remote.

Now armed with an appeal and supporting briefs from the American Dental Association and the Equal Employment Opportunity Commission, Scarborough is ready to restore some rational thinking to this case. “We have tried to get across in a nonsarcastic way,” he says, “that if you’re scared of your dental hygienist, you may as well never leave the house. And even then you’re probably afraid of the ceiling caving in.”

For his part, Waddell has been blown away by the support he’s received. “Those briefs alone are wonderful,” he says. “I’m just a little ol’ hygienist and somewhere there are individuals I may never meet working on this case, HIV positive or not, because they care.”

But he’s not the first trailblazer in his family -- Waddell’s ancestors helped settle parts of Texas and his native Arkansas. “There’s a pioneer nature to our family,” he says. “Hard work wasn’t something to be avoided, because it hasn’t killed us.”

Currently, Waddell is working as a dental hygienist at Atlanta’s HIVer-packed Grady Oral Health Care Center. “I get daily reassurance from my patients,” he says. “One will say he lost a job and didn’t have the health to come out and fight.” Another filed suit against a company, then settled and wishes she hadn’t. They remind me that this is about more than just me.“ Waddell’s new employers have become some of his biggest supporters. ”It’s great to go from ’Oooh, you’re HIV positive? You’re fired’ to ’You have HIV? You can help us,’" Waddell says.

Shoring up all this community affirmation is the support of Waddell’s partner of one year, Jim, a peer counselor at AIDS Survival Project in Atlanta. “He’s proactive about alternative medicine,” Waddell says. “Our kitchen is not a kitchen -- it’s a medicine cabinet. I’ve got a Chinese remedy for whatever you’ve got.” It’s a good thing: “I’m on a really fun regimen,” he says. “Epivir [3TC], Zerit [d4T], Viramune [nevirapine] -- I’m in the rash-of-the-month club. Of course, it had to break out right under my eye.”

On tough days, Waddell uses his own brand of dream therapy as mental floss to strip the stress. “I can manipulate them really well,” Waddell says of his somnambulist sojourns. “Usually I’m scuba diving with my two brothers. We’re just diving down into a wreck or out in the blue looking over the coral reefs.”

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