

BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
)
RICHARD T. DARNALL, D.D.S.)
Kansas License No. 5591)

File No. 11-51

FILED
MAY 06 2013
KANSAS DENTAL BOARD

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Richard T. Darnall, D.D.S. (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by N. Larry Bork, Goodell, Stratton, Edmonds & Palmer, LLP, 515 South Kansas Avenue, Topeka, Kansas 66603.

2. The Board is the Kansas agency vested with the authority, pursuant to K.S.A. 74-1404 and K.S.A. 74-1406, to carry out and enforce the provisions of the Kansas Dental Act, K.S.A. 65-1401 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice dentistry.

3. The Respondent was previously entitled to engage in the practice of dentistry in the State of Kansas by reason of the Board having issued him Kansas license number 5591, but has voluntarily surrendered that license. The Board had also issued to the Respondent a specialty certificate in the specialty of oral surgery, which he has also voluntarily surrendered. At the time of the events discussed in paragraph 4 hereof, the Respondent has held a current license to engage in the practice of dentistry in the State of Kansas and an oral surgery specialty certificate.

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the Kansas Dental Act, K.S.A. 65-1401 *et seq.*

Without admitting their validity, Respondent hereby agrees not to contest, in this or any other administrative action before the Board, the following allegations:

- A. On June 8, 2010, Respondent performed oral surgery on patient NG.
- B. The decision to perform the surgery, in light of the patient's low hemoglobin count, the decision to complete the surgery in light of a very large blood loss and the post surgical care by Respondent constituted multiple deviations from the applicable standard of care for a dentist/oral surgeon to a degree constituting ordinary negligence.

The Board finds and concludes that if the foregoing allegations were proven, they would be grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1436(b) and K.S.A. 65-1436 (a)(3).

5. The Board finds and the Respondent agrees that the following disposition is just and appropriate under the circumstances:

A. PRACTICE LIMITATION UPON REAPPLICATION. Respondent hereby agrees and consents to a Board order being entered indicating that if Respondent should in the future apply for a Kansas dental license and the Board were to determine the then existing circumstances warranted granting the application, which it is not obligated by these provisions to do, that such license would be limited by prohibiting him from performing any orthognathic surgery which involves bony movement or repositioning of the maxilla or mandible until further order of the Board.

B. OTHER PROVISIONS. Respondent acknowledges and agrees that he does not currently possess a license to practice dentistry in the State of Kansas and therefore may not engage in the practice of dentistry in the State.

6. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the complaint which led to this disciplinary action, the investigation of the complaint and all information discovered during the pendency of the disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

7. The stipulations contained herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Final Agency Action or the Final Order provided for herein.

8. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and

enter the Final Order provided for herein. The Respondent further agrees that the Kansas Dental Act, K.S.A. 65-1421 *et seq.* is constitutional on its face and as applied in this case.

9. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

10. The Respondent acknowledges that he has the following rights:

- A. To have formal notice of charges served upon him;
- B. To file a response to the charges;
- C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing.

D. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Act For Judicial Review and Civil Enforcement of Agency Action.

The Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's limiting the disciplinary action taken against him to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Final Agency Order and the Final Order provided for herein.

11. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Final Agency order in its

entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

12. Time is of the essence to this Stipulation and Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order shall constitute a willful violation of a lawful Board order and grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

13. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

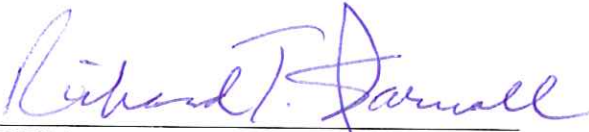
14. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

15. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

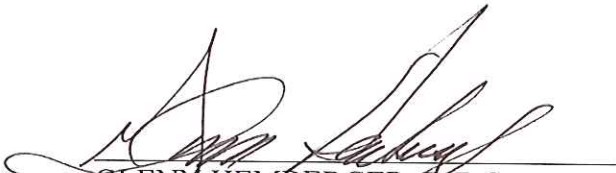
16. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Act for Judicial Review and Civil

Enforcement of Agency Actions, K.S.A. 77-601 *et seq.* and to serve such a petition for judicial review on the Kansas Dental Board by serving B. Lane Hemsley, its Executive Director at 900 SW Jackson, Room 564-S, Topeka, Kansas 66612. The Respondent hereby waives those rights.

AGREED BY:

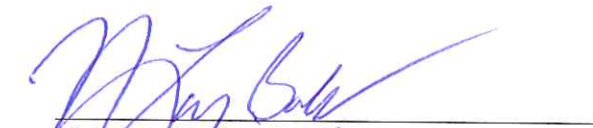

RICHARD T. DARNALL, D.D.S.
Respondent

4.19.2013
Date

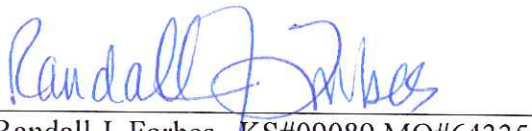

GLENN HEMBERGER, D.D.S.
Chairman, Investigation Committee

05/03/2013
Date

APPROVED BY:


N. Larry Bork # 11810
GOODELL, STRATTON, EDMONDS
& PALMER, LLP
515 South Kansas Avenue
Topeka, KS 66603
(785) 233-0593

April 22, 2013
Date


Randall J. Forbes, KS#09089 MO#64335
FRIEDEN, UNREIN & FORBES, LLP
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 354-1100

4/25/13
Date

BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
)
RICHARD T. DARNALL, D.D.S.)
Kansas License No. 5591)

File No. 11-51

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Dental Board (the "Board") approves and accepts the within Stipulation and Final Agency Order regarding Richard T. Darnall, DDS ("Respondent") and incorporates the provisions thereof as the Final Order of the Board. Specifically, the Board's Final Order acknowledges that Respondent has voluntarily surrendered his license to practice dentistry in Kansas and the specialty certificate issued to him by the Board and includes the following requirements:

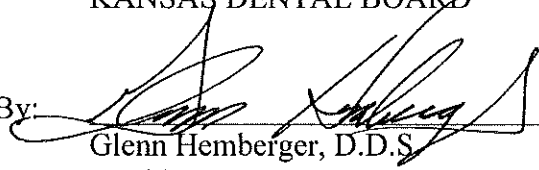
If Respondent should in the future apply for a Kansas dental license and the Board were to determine the then existing circumstances warranted granting the application, which it is not obligated by these provisions to do, that such license would be limited by prohibiting Respondent from performing any orthognathic surgery which involves bony movement or repositioning of the maxilla or mandible until further order of the Board.

IT IS SO ORDERED.

ENTERED AND EFFECTIVE this 3rd day of May, 2013.

KANSAS DENTAL BOARD

By: _____


Glenn Hemberger, D.D.S.
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing FINAL ORDER was served upon the Respondent and counsel by depositing same in the United States mail, postage prepaid, this 6th day of May, 2013, addressed to:

Randall J. Forbes
FRIEDEN, HAYNES & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603

Richard T. Darnall, D.D.S.
2201 SW Westport Dr., Suite 200
Topeka, Kansas 66614

N. Larry Bork
GOODELL, STRATTON, EDMONDS
& PALMER, LLP
515 South Kansas Avenue
Topeka, KS 66603



Lane Hemsley
Executive Director
KANSAS DENTAL BOARD