

BEFORE THE KANSAS DENTAL BOARD

FILED
APR 20 2007
KANSAS DENTAL BOARD

In the Matter of)
)
HENRY R. PASSARO, JR., D.D.S.)
License Number 5185)
_____)

Case No. 06-117

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Henry R. Passaro, Jr., D.D.S. (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Jeremy S. Weis, Berkowitz Oliver Williams Shaw & Eisenbrandt LLP, 2600 Grand Boulevard, Suite 1200, Kansas City, Missouri 64108

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 Law, K.S.A. 65-1401 *et seq.*

3. The Respondent is presently entitled to engage in the practice of dentistry in the State of Kansas by reason of the Board having issued him Kansas license number 5185. At all times relevant hereto, the Respondent has held a current license to engage in the practice of dentistry in the State of Kansas.

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.*

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5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that:

A. On or about September 22, 2006, the Respondent, a general dentist, ordered 2 units of Lorazepam Tablets 500/BT 2 MG, a controlled substance, from Henry Schein, Inc., a distributor of dental products and supplies.

B. By letter dated October 27, 2006, the Board requested an explanation from the Respondent regarding his order for the Lorazepam Tablets from Henry Schein, Inc.

C. On or about November 8, 2006, the Respondent called the Board's Executive Director, Betty Wright, and admitted to the use of Lorazepam beyond the amount prescribed by his doctor and to years of overuse of Lorazepam. The Respondent also admitted to self-prescribing Lorazepam for personal and non-dental related use.

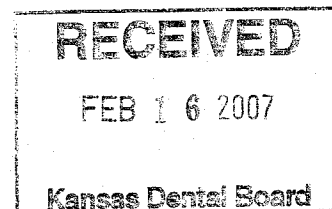
6. The Board finds and concludes that Respondent's conduct, as described above, is grounds for disciplinary action pursuant to K.S.A. 65-1436(a)(10).

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

A. VOLUNTARY SURRENDER OF LICENSE. On or before the effective date of the Final Agency Order contemplated hereby, Respondent hereby agrees and consents to the voluntary surrender of his license to practice dentistry in the State of Kansas, license number 5185.

B. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he must:

1. Comply fully with this Stipulation and Final Agency Order; and



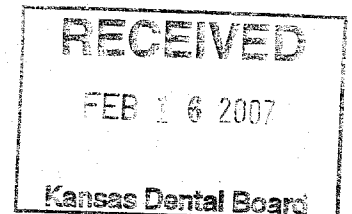
2. Comply fully with the Kansas Dental Act, the Board's rules and regulations and all state and federal laws relating to Kansas dentists.

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

9. 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.

10. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding this matter may be disclosed to and considered by the Board as part of the presentation and consideration of this proposal 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.

11. The stipulations contained herein shall not become binding until this Stipulation and Final Agency Order is approved by the Board and the Final Agency Order contemplated hereby is entered by the Board. The Respondent acknowledges that the approval of the Board's Investigation Member or 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.

12. 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.

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

A. To have formal notice of charges served upon him;

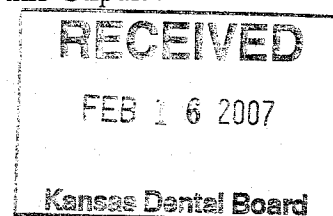
B. To file a response to the charges;

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; and

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 his license 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.

14. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after the opportunity for 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.

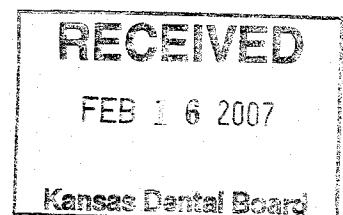
15. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this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

16. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "1145 Voluntary Surrender of License."
- B. Basis for Action: "H2 – Unauthorized Prescribing of Medication."

17. The following statement will be made in the Board's newsletter: "A dentist in Merriam, Kansas was disciplined by the Board accepting a voluntary surrender of license."

18. 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 Betty Wright, its Executive Director, at 900 SW Jackson, Room 564-S, Topeka, KS 66612. The Respondent herein waives those rights.



AGREED AND ACCEPTED BY:

Henry R. Passaro, Jr., D.D.S.
Henry R. Passaro, Jr., D.D.S.

2-7-07
Date

ROBERT HENSON, D.D.S.
Investigation Member

Date

APPROVED BY:

Jeremy S. Weis
Attorney for Respondent

2/06/07
Date

Jeremy S. Weis
2600 Grand Boulevard
Suite 1200
Kansas City, MO 64108
816.627.0311

Randall J. Forbes
Randall J. Forbes, P.A. #09089
FRIEDEN & FORBES
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TEL: (785) 232-7266
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ATTORNEY FOR THE BOARD

2.15.07
Date

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In the Matter of)
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HENRY R. PASSARO, JR., D.D.S.)
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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 and incorporates the provisions thereof as the Final Order of the Board.

The Board finds that on or about September 22, 2006, the Respondent, a general dentist, ordered 2 units of Lorazepam Tablets 500/BT 2 MG, a controlled substance, from Henry Schein, Inc., a distributor of dental products and supplies. By letter dated October 27, 2006, the Board requested an explanation from the Respondent regarding his order for the Lorazepam Tablets from Henry Schein, Inc. On or about November 8, 2006, the Respondent called the Board's Executive Director, Betty Wright, and admitted to the use of Lorazepam beyond the amount prescribed by his doctor and to years of overuse of Lorazepam. The Respondent also admitted to self-prescribing Lorazepam for personal and non-dental related use. The Board finds that said conduct would justify disciplinary action against the Respondent's Kansas dental license pursuant to K.S.A. 65-1436(a)(10).

The Board further finds and concludes that the following disposition is just and appropriate under the circumstances:

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A. VOLUNTARY SURRENDER OF LICENSE. Respondent is hereby ordered to voluntarily surrender his license to practice dentistry in the State of Kansas, license number 5185, on or before the effective date of this Final Agency Order.

B. OTHER REQUIREMENTS. Respondent is also hereby ordered to:

1. Comply fully with this Stipulation and Final Agency Order; and
2. Comply fully with the Kansas Dental Act, the Board's rules and regulations and all state and federal laws relating to Kansas dentists.

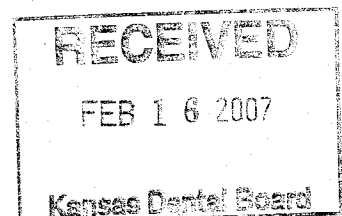
IT IS SO ORDERED.

ENTERED AND EFFECTIVE this 20th day of April, 2007.

KANSAS DENTAL BOARD

By:

Richard T. Darnall
~~Karen Callanan, D.D.S., M.S.~~ Richard Darnall, DDS
President



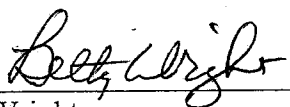
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **STIPULATION AND FINAL AGENCY ORDER** was served by depositing same in the United States mail, postage prepaid, this 1st day of May, 2007, addressed to:

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

Henry Passaro, Jr., D.D.S.
9909 W. 65th Drive
Merriam, Kansas 66203

Jeremy Weis, Esq.
Berkowitz, Oliver, Williams, Shaw & Eisenbrandt
2600 Grand Boulevard, Suite 1200
Kansas City, Missouri 64108



Betty Wright
Executive Director
KANSAS DENTAL BOARD

