

B. Wright

BEFORE THE KANSAS DENTAL BOARD
OF THE STATE OF KANSAS

FILED

AUG 18 2010

KANSAS DENTAL BOARD

In the Matter of)
)
John C. Kennedy, DDS)
Kansas License No. 6722)
)

Case No.: 10-27

OAH No. 11DB0001

Pursuant to Chapter 77

INITIAL ORDER

This matter comes on for a formal hearing on August 12, 2010. The petitioner, Kansas Dental Board, appears by and through Randall J. Forbes, Attorney at Law, and Betty Wright, Executive Director, Kansas Dental Board.

The respondent, John C. Kennedy, DDS, was served notice of this hearing on July 14, 2010. John C. Kennedy, DDS, did not appear at the hearing of this matter.

Findings of Fact

1. The respondent is authorized to practice dentistry in the state of Kansas, having been issued Kansas License No. 6722 by the petitioner.
2. The respondent's license was suspended on May 4, 2010 by virtue of an Emergency Agency Order of Suspension.
3. The Circuit Court of Platte County Missouri entered a Consent Judgment Entering Permanent Injunction on September 3, 2009 concerning the practice of dentistry by the respondent.
4. The Missouri court found, in part, as follows:
 - a. On or about August 26, 2009, an employee of Dr. Kennedy reported that Dr. Kennedy was practicing dentistry under the influence of methamphetamine.
 - b. Detective Albert Devalkenaere and Sergeant Stackhouse (collectively referred to as "the Police Officers") of the Platte City Police Department presented at the dental office and observed Dr. Kennedy treating patients.
 - c. Sergeant Stackhouse is a highly trained Drug Recognition Officer able to observe individuals and make educated observations to

- determine if an individual is under the influence of controlled substances.
- d. The Police Officers observed that Dr. Kennedy had trouble remembering and identifying his employees. Dr. Kennedy had to look up his employees names in order to identify the employees to the Police Officers.
 - e. Sergeant Stackhouse observed that Dr. Kennedy acted in a manner consistent with an individual being under the influence of a central nervous system stimulant.
 - f. On or about August 27, 2009, Board Investigator Mark Dudenhoeffer presented at Dr. Kennedy's dental practice and requested a urine sample for the purpose of a drug test.
 - g. Dr. Kennedy produced an observed sample for testing on August 27, 2009.
 - h. Dr. Kennedy tested positive for methamphetamine on August 27, 2009.
 - i. Dr. Kennedy consumed trace methamphetamine and then treated patients at the dental office while under the influence of trace methamphetamine.
 - j. Dr. Kennedy poses a serious danger to the health, safety or welfare of any resident of this state or client or patient of the licensee due to methamphetamine impairment and therefore, grounds exist for granting an injunction or other relief pursuant to § 332.121.1, RSMo.
5. There is no evidence before the Presiding Officer that the respondent has received treatment for his addiction. There is no evidence before the Presiding Officer that the respondent is no longer impaired.
 6. The respondent had contact with the Heart of America Professional Network (HAPN) to assist in treatment for his methamphetamine impairment. As of May 28, 2010, the respondent was non-compliant with the HAPN.

Applicable Law

1. K.S.A. 65-1436 provides as follows:

Grounds for refusal to issue license or for action against license of dentist or dental hygienist; disciplinary action by board; notice and hearing; professionally incompetent defined; physical or mental examination. (a) The Kansas dental board may refuse to issue the license provided for in this act, or may take any of the actions with respect to any dental or dental hygiene license as set forth in subsection (b), whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that any applicant for a

dental or dental hygiene license or any licensed dentist or dental hygienist practicing in the state of Kansas has:

- (1) Committed fraud, deceit or misrepresentation in obtaining any license, money or other thing of value;
- (2) habitually used intoxicants or drugs which have rendered such person unfit for the practice of dentistry or dental hygiene;
- (3) been determined by the board to be professionally incompetent;
- (4) committed gross, wanton or willful negligence in the practice of dentistry or dental hygiene;
- (5) employed, allowed or permitted any unlicensed person or persons to perform any work in the licensee's office which constitutes the practice of dentistry or dental hygiene under the provisions of this act;
- (6) willfully violated the laws of this state relating to the practice of dentistry or dental hygiene or the rules and regulations of the secretary of health and environment or of the board regarding sanitation;
- (7) engaged in the division of fees, or agreed to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or the patient's legal representative, except the division of fees between dentists practicing in a partnership and sharing professional fees, or in case of one licensed dentist employing another;
- (8) committed complicity in association with or allowed the use of the licensed dentist's name in conjunction with any person who is engaged in the illegal practice of dentistry;
- (9) been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;
- (10) prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity outside the scope of practice of dentistry or in a manner that impairs the health and safety of an individual;
- (11) prescribed, purchased, administered, sold or given away prescription drugs, including a controlled substance, for other than legal and legitimate purposes;
- (12) violated or been convicted of any federal or state law regulating possession, distribution or use of any controlled substance;
- (13) failed to pay license fees;

- (14) used the name "clinic," "institute" or other title that may suggest a public or semipublic activity except that the name "clinic" may be used as authorized in K.S.A. 65-1435, and amendments thereto;
 - (15) committed, after becoming a licensee, any conduct which is detrimental to the public health, safety or welfare as defined by rules and regulations of the board;
 - (16) engaged in a misleading, deceptive, untrue or fraudulent misrepresentation in the practice of dentistry or on any document connected with the practice of dentistry by knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement, including the systematic waiver of patient co-payment or co-insurance;
 - (17) failed to keep adequate records;
 - (18) the licensee has had a license to practice dentistry revoked, suspended or limited, has been censured or has had other disciplinary action taken, an application for license denied, or voluntarily surrendered the license after formal proceedings have been commenced by the proper licensing authority or another state, territory or the District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;
 - (19) failed to furnish the board, or its investigators or representatives any information legally requested by the board; or
 - (20) assisted suicide in violation of K.S.A. 21-3406, and amendments thereto, as established by any of the following:
 - (A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, and amendments thereto.
 - (B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto.
 - (C) A copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.
- (b) Whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a licensee is in any of the circumstances or has committed any of the acts described in subsection (a), the Kansas dental board may take one or any combination of the following actions with respect to the license of the licensee:
- (1) Revoke the license.
 - (2) Suspend the license for such period of time as may be determined by the board.

- (3) Restrict the right of the licensee to practice by imposing limitations upon dental or dental hygiene procedures which may be performed, categories of dental disease which may be treated or types of patients which may be treated by the dentist or dental hygienist. Such restrictions shall continue for such period of time as may be determined by the board, and the board may require the licensee to provide additional evidence at hearing before lifting such restrictions.
 - (4) Grant a period of probation during which the imposition of one or more of the actions described in subsections (b)(1) through (b)(3) will be stayed subject to such conditions as may be imposed by the board including a requirement that the dentist or dental hygienist refrain from any course of conduct which may result in further violation of the dental practice act or the dentist or dental hygienist complete additional or remedial instruction. The violation of any provision of the dental practice act or failure to meet any condition imposed by the board as set forth in the order of the board will result in immediate termination of the period of probation and imposition of such other action as has been taken by the board.
- (c) As used in this section, "professionally incompetent" means:
- (1) One or more instances involving failure to adhere to the applicable standard of dental or dental hygienist care to a degree which constitutes gross negligence, as determined by the board;
 - (2) repeated instances involving failure to adhere to the applicable standard of dental or dental hygienist care to a degree which constitutes ordinary negligence, as determined by the board; or
 - (3) a pattern of dental or dental hygienist practice or other behavior which demonstrates a manifest incapacity or incompetence to practice dentistry.
- (d) In addition to or in lieu of one or more of the actions described in subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-1444, and amendments thereto, the board may assess a fine not in excess of \$10,000 against a licensee. All fines collected pursuant to this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and of the amount so remitted, an amount equal to the board's actual costs related to fine assessment and enforcement under this subsection, as certified by the president of the board to the state treasurer, shall be credited to the dental board fee fund and the balance shall be credited to the state general fund.

- (e) The board, upon its own motion or upon the request of any licensee who is a party to a licensure action, may require a physical or mental examination, or both, of such licensee either prior to a hearing to be held as a part of a licensure action or prior to the termination of any period of suspension or the termination of any restrictions imposed upon the licensee as provided in subsection (b).

Conclusions of Law

1. The respondent, by his pattern of dental practice while under the influence of methamphetamine, demonstrates a manifest incapacity or incompetence to practice dentistry and is subject to discipline pursuant to K.S.A. 65-1436(a)(3).
2. Through his practice of dental medicine, the respondent committed conduct which was detrimental to the health, safety, or welfare of the public through practicing dentistry while under the influence of methamphetamine. This violates K.S.A. 65-1436(a)(15).
3. The respondent had his right to practice dentistry in the state of Missouri suspended by the Circuit Court of Platte County Missouri. Pursuant to K.S.A. 65-1436(a)(18), this subjects the respondent to discipline by the petitioner.
4. The respondent, through his habitual use of methamphetamine, has rendered himself unfit for the practice of dentistry in the state of Kansas and is in violation of K.S.A. 65-1436(a)(2).

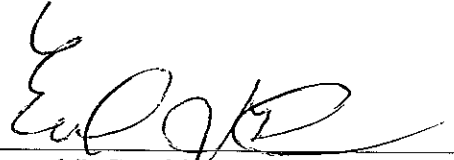
Conclusion

Pursuant to K.S.A. 65-1436, there are grounds for the petitioner to impose discipline. Therefore, the petitioner hereby suspends the respondent's license, Kansas License No. 6722, indefinitely. The respondent shall immediately cease and desist any practice of dentistry in the state of Kansas. This suspension shall be effective until evidence is provided to the petitioner that the respondent has been rehabilitated and that the respondent's practice of dentistry would no longer pose a danger to the health, safety, and welfare of the public.

IT IS SO ORDERED.

NOTICE REGARDING REVIEW

Pursuant to K.S.A. 77-527, either party may appeal this Initial Order. A petition for review must be filed within 15 days from the date of this Initial Order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this Initial Order becomes final and binding on the 30th day following its mailing. Petitions for review shall be mailed or personally delivered to: Executive Director, Kansas Dental Board, 900SW Jackson, Room 564-S, Topeka, Kansas 66612.



Edward J. Gaschler
Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On Aug. 18, 2010, I mailed by U.S. mail, a copy of this Initial Order to:

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