

BEFORE THE KANSAS DENTAL BOARD

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KANSAS DENTAL BOARD

In the Matter of)
)
PHILIP GAUS, D.D.S.)
Kansas License No. 6706)

Case No. 09-115

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Philip Gaus, 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, Terrence J. Campbell of Barber Emerson, L.C., 1211 Massachusetts, P.O. Box 667, Lawrence, KS 66044.

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.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice dentistry.

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 6706. 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.*

5. Specifically, the Board finds and concludes that:

On or about December 17, 2008, Licensee was attending to multiple patients, and after applying local anesthetic to one patient, proceeded to apply anesthetic to a second patient with the same needle and syringe without first sterilizing the needle between patients.

6. The Board further finds and concludes that the aforesaid conduct is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1436(b), K.S.A. 65-1436(a)(4), and K.S.A. 65-1436(a)(3) as defined in K.S.A. 65-1436(c)(1).

7. The Respondent has elected not to contest the Board's findings and conclusions and hereby waives any further proof of the aforesaid conduct in this or any other proceeding before the Board.

8. The Board finds and concludes, and the Respondent does not contest, that the following disposition is just and appropriate under the circumstances:

A. ADMINISTRATIVE FINE. Respondent agrees to the Board entering, and the Board does hereby enter a final agency order requiring the Respondent to pay to the Board, within ten (10) days of the effective date of the Board's order, an administrative fine in the amount of Five Thousand Dollars (\$5,000.00).

B. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order he must, and the Board further orders the Respondent to:

1. Comply fully with this Stipulation and Consent 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.

9. 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 and in connection with this 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 Consent Order, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Consent Order is not accepted and approved by the Board, the Respondent demands a full hearing on the merits but waives any objection to the Board members' consideration of this Stipulation and Consent Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due process violation as a result of the Board member's consideration 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.

10. The stipulations and orders contained herein shall not become binding until this Stipulation and Consent Order is approved and entered by the Board. When entered by the Board, it shall be constitute a final agency order. 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 Consent Order.

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

12. This Stipulation and Consent Order constitutes the entire agreement of the parties and once it is approved by the Board, it may only be modified by a subsequent writing signed by the parties. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

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.

If the Board accepts this Stipulation and Consent Order, he 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 Consent Order if it is accepted by the Board.

14. The Respondent acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Consent 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. Time is of the essence to this Stipulation and Consent Order. Respondent acknowledges and agrees that any violation of this Stipulation and Consent 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 Consent Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Consent Order.

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

17. Upon execution by all parties and approval and entry as an order by the Board, this Stipulation and Consent Order shall be a final agency order and a public record in the custody of the Board.

18. This Stipulation and Consent 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 President or the President's authorized representative.

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

A. Adverse Action Classification: "1173 Publicly Available Fine/Monetary Penalty."

B. Bases For Action: "11 - Incompetence" and "F6 - Substandard or Inadequate Care"

20. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of this Stipulation and Consent Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Stipulation and Consent Order 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. If the Board accepts this Stipulation and Consent Order, the Respondent waives those rights.

ENTERED AND EFFECTIVE this 12th day of February, 2010.

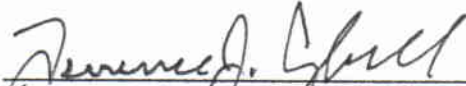
KANSAS DENTAL BOARD

By: Jane A. Criser, RDH vice president
~~RICHARD DARNALL, D.D.S.~~
President


AGREED AND APPROVED BY:

[Signature]
PHILIP GAUS, D.D.S.

1-14-2010
Date


Terrence J. Campbell #18327
Barber Emerson, L.C.
1211 Massachusetts, P O Box 667
Lawrence, KS 66044

1/14/10
Date


Randall J. Forbes #09089
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, Kansas 66603
TEL: (785) 232-7266
FAX: (785) 232-5841
Attorney for the Kansas Dental Board

1.24.10
Date

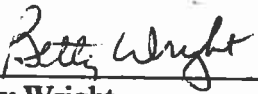
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **STIPULATION AND CONSENT ORDER** was served by depositing same in the United States mail, postage prepaid, this 16th day of February, 2010, addressed to:

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

Terrence J. Campbell
Barber Emerson, L.C.
1211 Massachusetts, P O Box 667
Lawrence, KS 66044
Attorney for Philip Gaus

Philip Gaus
4901 Legends Dr.
Lawrence, KS 66049



Betty Wright
Executive Director
KANSAS DENTAL BOARD