

BEFORE THE KANSAS DENTAL BOARD

FILED
APR 23 2010
KANSAS DENTAL BOARD

In the Matter of)
)
SCOTT C. KENNEDY, D.D.S.)
Kansas License No. 5183)

Case No. 08-138

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Scott C. Kennedy, 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, Timothy P. McCarthy, Gilliland & Hayes, P.A., Corporate Woods Building 14, 8717 W. 110th Street, Suite 630, Overland Park, Kansas 66210.

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 5183. At all times relevant hereto, the Respondent has held a current license to engage in the practice of dentistry in the State of Kansas.

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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. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board finds, that:

A. On February 27, 2009, the Board's Investigator, Dr. Steven Johnson, D.D.S, completed a record review at Respondent's office on behalf of the Board. Dr. Johnson reviewed ten patient records selected randomly for the Respondent's active patient files. The review of these patients' records reflects that Respondent has at times failed: (i) to adequately record decay or other appropriate diagnosis; (ii) record a treatment plan; and (iii) record the results of periodontal charting. The review of these patients' records also revealed that the Respondent would often make chart entries on sticky notes that could become dislodged and lost rather than permanent entries in the patient chart.

B. Under the circumstances of this case, Respondent has failed to fulfill his obligation to keep adequate records.

The Board further finds and concludes that the aforesaid conduct is grounds for disciplinary action in the State of Kansas pursuant to the following: K.S.A. 65-1436(a)(17); K.S.A. 65-1436(b); and K.S.A. 65-1436(d).

6. The Respondent agrees and consents, and the Board finds and concludes, that the following disposition is just and appropriate under the circumstances:

A. ADMINISTRATIVE FINE. Respondent agrees, and the Board further orders the Respondent, to pay to the Board, within ten (10) days of the effective date of this

Stipulation and Consent Order, an administrative fine in the amount of One Thousand Dollars (\$1,000).

B. ADDITIONAL RECORDKEEPING. Respondent agrees, and the Board further orders the Respondent, to create and maintain an adequate clinical record for each patient which includes, but is not limited to, the following information:

(i) All hard and soft tissue disease and/or abnormalities diagnosed, regardless of whether there is an intent to treat the condition;

(ii) The results of each periodontal examination (Once any periodontal disease is diagnosed, Respondent will reevaluate by a periodontal examination each time the patient returns to his office and record the results of all such follow-up examinations); and

(iii) Treatment options addressed with the patient and a treatment plan for each hard and soft tissue disease and/or abnormality diagnosed, even if treatment is deferred or refused by the patient.

Respondent further agrees, and the Board also orders Respondent, to fully cooperate with a record review that will take place approximately 6 months from the effective date of this Stipulation and Consent Order.

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

(i) Comply fully with this Stipulation and Consent Order; and

(ii) Comply fully with the Kansas Dental Law, the Board's rules and regulations and all state and federal laws applicable to Kansas dentists.

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7. 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 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 further 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 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. In the event that this Stipulation and Consent Order is not accepted and approved by the Board, Respondent is not bound by the stipulations made in this Stipulation and Consent Order.

8. The stipulations and orders contained herein shall not become binding until this Stipulation and Consent Order is approved and 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 Consent Order.

9. 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.

10. 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.

11. 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 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.

12. 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.

13. 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.

14. 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.

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

16. 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.

17. 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. Basis For Action: "45 Failure to Maintain Records or Provide Medical, Financial or Other Required Information."

18. 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

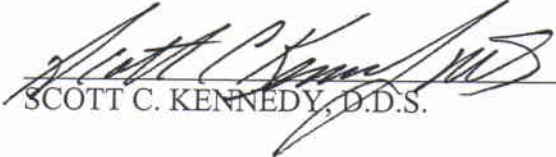
Shawnee County, Kansas in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, and to serve such a petition for judicial review on the Kansas Dental Board by serving Betty Wright, its Executive Director, at 900 SW Jackson, Room 564-S, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 23rd day of April, ~~2009~~²⁰¹⁰.

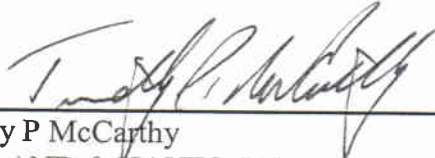
KANSAS DENTAL BOARD

By: Denise A. Maus RDH BS
~~RICHARD DARNALL, D.D.S.~~ Denise Maus, RDH
President

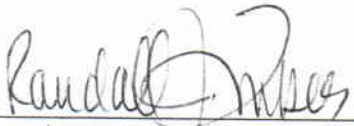
AGREED TO AND APPROVED BY:


SCOTT C. KENNEDY, D.D.S.

3/15/10
Date


Timothy P McCarthy
GILLILAND & HAYES, P.A.
Corporate Woods Building 14
8717 W. 110th Street, Suite 630
Overland Park, KS 66210
TEL: (913) 317-5100
FAX: (913) 317-9100
Attorney for Respondent

3/22/10
Date


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

3.30.10
Date

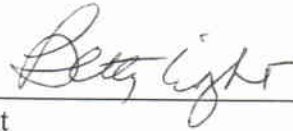
CERTIFICATE OF SERVICE

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, on this 27th day of April, ~~2009~~, 2010, addressed to:

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

Scott C. Kennedy, D.D.S.
1107 SW Gage
Topeka, Kansas 66604

Timothy P McCarthy
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Corporate Woods Building 14
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Overland Park, KS 66210



Betty Wright
Executive Director
KANSAS DENTAL BOARD