

BEFORE THE KANSAS DENTAL BOARD

FILED

NOV - 5 2010

KANSAS DENTAL BOARD

In the Matter of )  
 )  
SCOTT H. NEARING, D.D.S. )  
Kansas License No. 60020 )

Case No. 09-15

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Scott H. Nearing, 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, Neil B. Kringman of Dickinson Wright PLLC, 424 Church St, Ste. 1401 Nashville, Tennessee 37219-2392.

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 60020. 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.* 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 on one or more occasions allowing an unlicensed dental assistant to practice dentistry by placing a final crown.

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)(5); K.S.A. 65-1436(b); and K.S.A. 65-1436(d).

5. 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. 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.

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.

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. Upon execution by all parties and entry as an order by the Board, this Stipulation and Consent Order shall fully resolve the controversy pending between the parties, which arose because of the facts that resulted in the findings described in paragraph 4 hereof.

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. 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 5<sup>th</sup> day of November, 2010.

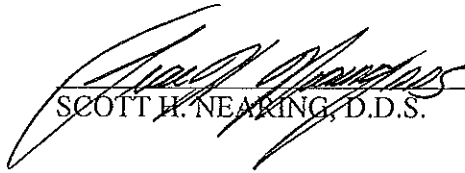
KANSAS DENTAL BOARD

By: Denise J. Maus, RDH  
DENISE MAUS, RDH  
President

STIPULATION AND CONSENT ORDER

*Matter of Scott H. Nearing, D.D.S., Kansas Dental Board Case No. 09-15*  
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AGREED TO AND APPROVED BY:

  
SCOTT H. NEARING, D.D.S.

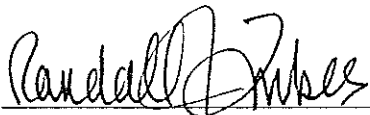
10/10/2010  
Date

Neil B. Krugman  
Signature of Respondent's Attorney

10/20/2010  
Date

Neil B. Krugman  
Printed Name of Respondent's Attorney

Dickinson Wright PLLC, 424 Church St., Ste. 1401, Nashville, TN 37219-2392  
Printed Address of Respondent's Attorney

  
Randall J. Forbes #09089

10.21.10  
Date

FRIEDEN, UNREIN, FORBES & BIGGS, LLP  
555 S. Kansas Avenue, Suite 303  
Topeka, Kansas 66603  
TEL: (785) 354-1100  
FAX: (785) 354-1113  
*Disciplinary Counsel for the  
Kansas Dental Board*

CERTIFICATE OF SERVICE

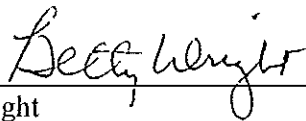
The undersigned hereby certifies that a copy of the foregoing STIPULATION AND CONSENT ORDER was served by depositing same in the United States mail, postage prepaid, on this 10<sup>th</sup> day of November, 2009, addressed to:

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

and

Scott H. Nearing, D.D.S.  
650 North Carriage Parkway #60  
Wichita, Kansas 67208

Neil Krugman  
Dickinson Wright PLLC  
424 Church St, Ste 1401  
Nashville, TN 37219-2392

  
\_\_\_\_\_  
Betty Wright  
Executive Director  
KANSAS DENTAL BOARD