

FILED
OCT 30 2009
KANSAS DENTAL BOARD

BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
)
LUISELLA M. TROILO, RDH)
)
Kansas License No. 1198)

Case No. 08-15

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Luisella M. Troilo, RDH (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 her attorney, _____

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. 65-1421 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice dental hygiene.

3. The Board has previously issued to the Respondent Kansas license number 1198 authorizing her to engage in the practice of dental hygiene in the State of Kansas. During the Fall of 2008, the Respondent retired from the active practice of dental hygiene in this State but recently renewed Kansas license number 1198 as retired with inactive status.

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 Practices Act, K.S.A. 65-1421 *et seq.*

5. The 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. During the late winter of 2008, the Board initiated this Case No. 08-15 after receiving a written complaint alleging that the Respondent committed one or more acts of misconduct which, if true, could subject the Respondent and her Kansas license to disciplinary action under the Kansas Dental Practices Act. Following a thorough investigation, it was determined that there are reasonable grounds to believe that the allegations against the Respondent are true and that such misconduct would justify disciplinary action against the Respondent's Kansas license.

B. On or about July 10, 2008, the Respondent entered into a Consent Agreement with the Board whereby the Respondent, in return for the Board's agreement to temporarily withhold issuing an emergency order suspending or otherwise limiting Respondent's Kansas license to practice dental hygiene, agreed to immediately cease practicing dental hygiene in Kansas, immediately enter into an evaluation and treatment program, at her cost, and to continue to fully cooperate with the recommendations and requirements of the persons managing or implementing the Kansas Dental Impaired Provider Program and the further requirements of the Board.

C. In the Consent Agreement, the Respondent also agreed that, should the Board determine, in good faith, but in its sole and exclusive discretion, that the Respondent has

failed to comply with the provisions of the agreement, the Consent Agreement shall cease and shall not thereafter prevent, in any respect, the Board from issuing an emergency order suspending or otherwise limiting the Respondent's Kansas license to practice dental hygiene.

D. The Respondent further agreed that the Consent Agreement also did not prevent, in any manner, the Board from initiating a non-emergency proceeding to revoke, suspend or otherwise limit the Respondent's Kansas license to practice dental hygiene.

E. On or about October 1, 2008, the Board received notice from Heart of America Professional Network (HAPN), the entity that manages and implements the Kansas Dental Impaired Provider Program, that Respondent had left a voice mail message that she was retiring from dental hygiene and asked that her file with HAPN be closed. HAPN notified Respondent by letter of September 29, 2008 that the file had been closed and the Board was being notified of the same. By withdrawing from further participation in the Kansas Dental Impaired Provider Program, the Respondent failed to comply with her obligations under the Consent Agreement.

F. In November of 2008, counsel for the Board informed the Respondent that her retirement from the practice of dental hygiene does not justify or excuse or noncompliance with the Consent Agreement or deprive the Board of its authority to take appropriate disciplinary action against her Kansas license. The Respondent was also offered and refused an opportunity to resolve the complaint in this case pursuant to the terms and conditions of a proposed Stipulation and Consent Agreement.

The Board further finds and concludes that the aforesaid conduct is grounds for disciplinary action in the State of Kansas in accordance with the provisions of K.S.A. 65-

1436(b); K.S.A. 65-1436(a)(2); K.S.A. 65-1436(a)(3), as further defined by K.S.A. 65-1436(c)(3); K.S.A. 65-1436(a)(11); and K.S.A. 65-1436(a)(12).

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

A. VOLUNTARY SURRENDER OF LICENSE WITH CONDITIONS. The Respondent hereby agrees and consents to the Board's entry of an order accepting the voluntarily surrender of Respondent's license to practice dental hygiene in the State of Kansas, with the conditions stated herein. As a condition of the Board accepting the voluntary surrender of her license, in lieu of other disciplinary action, the Respondent further agrees to the Board entering an order that provides if Respondent should ever again apply for licensure as a dental hygienist in Kansas, the Respondent shall have the burden to prove, by clear and convincing evidence, that she is rehabilitated and competent to return to the practice of dental hygiene in the State of Kansas. As a part of that agreement, it is further agreed that in considering whether Respondent has met her burden of proof, the Board may consider any relevant factors, including, but not limited to, the following:

- (1) The moral fitness of the Respondent at the time of the application to terminate the suspension;
- (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- (3) the extent of the Respondent's rehabilitation;
- (4) the seriousness of the original misconduct;
- (5) conduct subsequent to the indefinite suspension;
- (6) the time which has elapsed since the surrender of her license;

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- (7) the Respondent's character, maturity, and experience at the time of the surrender of her license; and
- (8) the Respondent's competence to practice dental hygiene as of the time of the application for licensure.

As part of any future application for licensure, the Board shall have the right to require the Respondent to submit to any physical and/or mental tests or examinations with providers of the Board's choice and totally at Respondent's expense. If the Board elects to have such testing performed, the Respondent shall authorize the release of all information related to such tests or examinations to the Board or its representative. Should the Board determine to relicense the Respondent, the Board may place such conditions on the termination and Respondent's right to practice dental hygiene, as the Board may deem, in its discretion, necessary. The Respondent further agrees not to seek relicensure in Kansas for a period of three years from the effective date of the stipulation and consent order contemplated hereby.

B. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order she 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 Practices Act, the Board's rules and regulations and all state and federal laws relating to Kansas dental hygienists.

7. The 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 her 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. Except as provided in Paragraph 7 above, 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 Practices 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 she has the following rights:

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

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 her 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 she enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of her choosing. The Respondent further acknowledges that she has read this Stipulation and Consent Order in its entirety, that she understands its legal consequences and that she 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 her. 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: "1145 Voluntary Surrender of License."

B. Basis For Action: "F2 – Unable to Practice Safely by Reason of Alcohol or Other Substance Abuse."

18. The Respondent acknowledges that she has been advised by the Board that she 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 30th day of October, 2009.

KANSAS DENTAL BOARD

By: Richard Darnall
RICHARD DARNALL, D.D.S.
President

AGREED TO AND APPROVED BY:

Luisella M. Troilo, RDH
LUISELLA M. TROILO, RDH

9/21/09
Date

JANE CRISER, RDH
Investigation Member

Date

Respondent's Attorney's Name & Address

Date



9.23.09

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

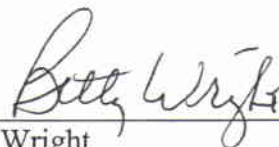
Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the foregoing **STIPULATION AND CONSENT ORDER** was served by depositing same in the United States mail, postage prepaid, on this 12th day of November, 2009, addressed to:

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

Luisella M. Troilo, RDH
4805 E. English St.
Wichita, Kansas 67218



Betty Wright
Executive Director
KANSAS DENTAL BOARD