

FILED

OCT 27 2015

BEFORE THE KANSAS DENTAL BOARD

In The Matter Of)
)
WHITNEY ANNE SIMONET, D.D.S.)
LICENSE NO. 60106)

Case No. 15-17
OAH No. 16DB0004

KANSAS DENTAL BOARD

FINAL AGENCY ORDER

The Kansas Dental Board, after notice and opportunity for hearing in accordance with the provisions of the Kansas Administrative Procedure Act and the Kansas Dental Practices Act, hereby enters this Final Agency Order **REVOKING** the Kansas license to practice dentistry of Whitney Anne Simonet, D.D.S., License No. 60106, effective as provided herein.

I. BACKGROUND

On September 28, 2015, Administrative Law Judge / Presiding Officer Chris J. Kellogg, entered a Notice of Proposed Default Order and Proposed Default Order in accordance with K.S.A. § 77-520. The Presiding Officer found that:

1. The respondent failed to attend the prehearing conference schedule for September 24, 2015. Notice of the prehearing date, time and procedure was sent to the respondent's last known address. The respondent did not request a continuance or notify the ALJ that she would not be able to attend. The ALJ and counsel for the petitioner were present at the appointed time and date. Therefore, the respondent has failed to participate in the adjudicatory process and is in default. K.S.A. 77-520.
2. This proposed Default Order shall become effective seven days after service or ten days after mailing of this order unless the respondent files a written motion with the ALJ stating why the Proposed Default Order should be vacated and the order is then vacated.

Furthermore, the Presiding Officer ordered as follows:

3. If this Proposed Default Order becomes effective, the following findings and orders shall be in effect:

Due to respondent's failure to appear, the allegations, counts and proposed discipline continued in the August 14, 2015, Petition for Disciplinary action are hereby found to be uncontested.

Accordingly, the tribunal finds the factual allegations set forth in the Petition for Disciplinary Action to be true and accurate. Further, based on those allegations, the respondent has committed multiple violations of K.S.A. 65-1436 and K.A.R. 71-1-15, subjecting her to appropriate discipline by the petitioner.

Because the respondent failed to appear at the prehearing conference, and is in default, the respondent is not entitled to any notice regarding further proceedings by the petitioner. K.S.A. 77-520. The Kansas Dental Board is free to impose appropriate discipline against the respondent, without further notice to her.

The ALJ, being well and duly advised in the premises, now enters this Proposed Default Order against the appellant. It shall take effect as specified in the above findings.

(The Notice of Proposed Default Order and Proposed Default Order is incorporated herein by this reference).

Respondent was provided proper notice of the Notice of Proposed Default Order and Proposed Default Order as required by K.S.A. § 77-526. Respondent did not file a motion requesting that the proposed default order be vacated and stating the grounds relied upon within seven (7) days of service of the Notice of Proposed Default Order and Proposed Default Order, under K.S.A. § 77-520(b).

Pursuant to Respondent's default in this matter, the Board now enters the following findings of fact and conclusions of law, and discipline against Respondent's license to practice dentistry in the State of Kansas.

II. FINDINGS OF FACT

1. Per the finding of the Presiding Officer, the facts as set forth in the Petition for Disciplinary Action, filed with the Board on August 14, 2015, and recited herein below, are true and accurate:

a. Respondent is currently entitled to practice dentistry in the State of Kansas by reason of the Board having issued her License No. 60106 ("Kansas license"). At all times

relevant to this petition, Respondent has held a current license to engage in the practice of dentistry in the State of Kansas. Respondent may be served with this petition at her residential address of 21520 W. 53rd Street, Shawnee, KS 66226.

b. The Board's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of K.S.A. § 65-1436(a) that would justify the revocation or imposition of other disciplinary action against her Kansas License under the provisions of K.S.A. § 65-1436(b) and/or the assessment of a civil fine against Respondent under the provisions of K.S.A. § 65-1436(d).

c. The United States Drug Enforcement Administration (“DEA”) and the City of Shawnee Police Department (“Shawnee PD”) began investigating Respondent in early 2012 for the suspected prescribing of controlled substances to persons without a legal or legitimate dental purpose.

d. The DEA / Shawnee PD investigation established that from approximately May 1, 2011 through June 5, 2012, Respondent prescribed 10 mg Hydrocodone, 30 tablets to nine (9) different persons for reasons other than legitimate dental purposes and/or otherwise outside of the scope of the practice of dentistry.

e. On or about June 5, 2012, Respondent admitted to the DEA and Shawnee PD that nearly all of the recipients of Hydrocodone during this time period were friends and acquaintances, and not legitimate dental patients, said prescriptions were not written for legitimate dental needs, and/or the recipients of were not dental patients of record.

f. Moreover, Respondent admitted to the DEA and Shawnee PD, and/or the DEA and Shawnee PD investigation established, that Respondent would obtain approximately

half of the Hydrocodone tablets from the prescriptions written for Respondent's own personal use.

g. On or about June 5, 2012, Respondent completed DEA Form 104, "Voluntary Surrender of Controlled Substances Privileges," by and through which Respondent voluntarily surrendered her DEA Registration, BS7519006, "for cause," in lieu of facing a show-cause hearing before the DEA, relating to the prescribing of controlled substances to persons without a legal or legitimate dental purpose and/or otherwise outside of the scope of the practice of dentistry, and without a patient record.

h. On or about September 24, 2013, Respondent was charged by the State of Kansas in Johnson County Case No. 13-CR-2168 (the "Criminal Case"), with twenty (20) counts of the unlawful, willful and felonious distribution of a controlled substance, in violation of K.S.A. § 65-4109(d)(4), K.S.A. § 21-5705(a)(1), and K.S.A. § 21-6808.

i. On or about December 9, 2014, Respondent plead guilty to (2) two counts of the unlawful, willful and felonious distribution of a quantity of Hydrocodone, in violation of K.S.A. § 65-4109(d)(4) and K.S.A. § 21-5705(a)(1).

j. Respondent completed renewal of her Kansas License with the Board on or about February 26, 2013 via the paper renewal application entitled "BI-ANNUAL RENEWAL FORM."

k. Respondent did not disclose the for cause surrender of her DEA certificate to the Board in her February 26, 2013 renewal application. Specifically, Respondent answered "no" to the following question in the Legal Information section of the renewal application:

Has any disciplinary action been taken or initiated against you by a state licensing agency or other state or federal agency or have you surrendered or consented to limitation of license to practice in any state since your last renewal?

l. Respondent completed an online renewal of her Kansas license with the Board on or about Friday, December 5, 2014.

m. Respondent did not disclose, in her December 5, 2014 renewal application the surrender of her DEA certificate for cause, the charges pending against her in the Criminal Case, or her guilty plea in the Criminal Case, which Respondent knew was to be entered the following Tuesday, December 9, 2014.

n. Subsequent to her conviction of two counts of the unlawful, willful and felonious distribution of a controlled substance in violation of K.S.A. § 65-4109(d)(4) and K.S.A. § 21-5705(a)(1), Respondent has never informed the Board of the surrender of her DEA certificate for cause or her guilty pleas in the Criminal Case.

III. CONCLUSIONS OF LAW

1. The Board is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Kansas Dental Practices Act, which is codified in article 14 of chapter 65 and article 14 of chapter 74 of the Kansas Statutes Annotated and amendments thereto (“KDPA” or “Act”). Pursuant to applicable provisions of the KDPA and the Kansas administrative procedure act, K.S.A. §§ 77-501 *et seq.*, whenever it is established that a licensee has committed any of the acts described in K.S.A. § 65-1436(a), the Board may revoke, suspend and/or limit the licensee’s Kansas license to practice dentistry and/or assess a civil fine against the licensee in an amount not in excess of \$10,000.00.

2. Pursuant to K.S.A. § 65-1436(a):

The Kansas dental board may refuse to issue the license under the dental practices 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;

.....

(3) been determined by the board to be professionally incompetent;

.....

(9) been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the Respondent fails to show that the Respondent 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;

.....

(17) failed to keep adequate records;

.....

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.

3. Pursuant to K.A.R. § 71-1-15:

For the purposes of K.S.A. 65-1436 and amendments thereto, each Respondent shall maintain for each patient an adequate dental record for 10 years after the date any professional service was provided. Each record shall disclose the justification for the course of treatment and shall meet all of the following minimum requirements:

- (a) It is legible.
- (b) It contains only those terms and abbreviations that are comprehensible to similar Respondents.
- (c) It contains adequate identification of the patient.
- (d) It indicates the date any professional service was provided.
- (e) It contains pertinent and significant information concerning the patient's condition.
- (f) It reflects what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each.
- (g) It indicates the initial diagnosis and the patient's initial reason for seeking the Respondent's services.
- (h) It indicates the medications prescribed, dispensed, or administered and the quantity and strength of each.
- (i) It reflects the treatment performed or recommended.
- (j) It documents the patient's progress during the course of treatment provided by the Respondent.

4. Furthermore, pursuant to K.S.A. § 65-1436(b):

Whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a Respondent 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 Respondent:

(1) revoke the license. . . .

5. Respondent's failure to disclose her "for cause" surrender of her DEA certificate to the Board in her February 26, 2013 renewal application; specifically, answering "no" following question in the Legal Information section of the renewal application:

Has any disciplinary action been taken or initiated against you by a state licensing agency or other state or federal agency or have you surrendered or consented to limitation of license to practice in any state since your last renewal?

constitutes a violation of K.S.A. §65-1436(a)(1), in that Respondent committed fraud, deceit or misrepresentation in obtaining the renewal of her license to practice dentistry in the state of Kansas.

6. Respondent's failure to disclose her "for cause" surrender of her DEA certificate, and impending guilty plea in the Criminal Case, which Respondent knew as of the date of her renewal was to be submitted four (4) days later, to the Board in her December 5, 2014 renewal application; specifically answering "no" in response to the same or substantially similar question listed in paragraph 5 above, constitutes a violation of K.S.A. §65-1436(a)(1), in that Respondent committed fraud, deceit or misrepresentation in obtaining the renewal of her license to practice dentistry in the state of Kansas.

7. Respondent's guilty plea and resulting conviction of two (2) counts of the unlawful, willful and felonious distribution of a quantity of Hydrocodone, in violation of K.S.A. § 65-4109(d)(4) and K.S.A. § 21-5705(a)(1), constitutes a felony involving moral turpitude in violation of K.S.A. § 65-1436(a)(9). Respondent has further failed to make any showing to the Board that she has been sufficiently rehabilitated to warrant the public trust.

8. Respondent's prescription of Hydrocodone to nine (9) different patients for reasons other than legitimate dental purposes and/or otherwise outside the scope of the practice

of dentistry constitute a violation of K.S.A. §65-1436(a)(10), in that Respondent prescribed 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 the nine (9) individual patients.

9. Respondent's prescription of Hydrocodone to nine (9) different patients for reasons other than legitimate dental purposes and/or otherwise outside the scope of the practice of dentistry constitute a violation of K.S.A. §65-1436(a)(11), in that Respondent prescribed prescription drugs, including a controlled substance, for other than legal and legitimate purposes.

10. Respondent's prescription of Hydrocodone to nine (9) different patients for reasons other than legitimate dental purposes and/or otherwise outside the scope of the practice of dentistry, and conviction of two (2) counts of the unlawful, willful and felonious distribution of a quantity of Hydrocodone, in violation of K.S.A. § 65-4109(d)(4) and K.S.A. § 21-5705(a)(1), constitute a violation of K.S.A. §65-1436(a)(12), in that Respondent violated and has been convicted of a state law regulating distribution of a controlled substance.

11. Respondent's failure to keep any records relating to any of the nine (9) patients to whom she prescribed Hydrocodone constitutes a failure to keep adequate records in violation of K.S.A. § 65-1436(a)(17) and K.A.R. § 71-1-15.

12. Respondent has been determined by the Board to be professionally incompetent as that term is defined in K.S.A. § 65-1436(c), in violation of K.S.A. § 65-1436(a)(3), due to Respondent's prescription of Hydrocodone to nine (9) different patients for reasons other than legitimate dental purposes and/or otherwise outside the scope of the practice of dentistry and due to Respondent's failure to disclose her "for cause" surrender of her DEA license and subsequent conviction two (2) counts of the unlawful, willful and felonious distribution of a quantity of

Hydrocodone, in violation of K.S.A. § 65-4109(d)(4) and K.S.A. § 21-5705(a)(1) to the Board on her February 26, 2013 and December 5, 2014 renewal applications, and due to Respondent's failure to keep adequate records.

IV. DISCIPLINE

1. Pursuant to K.S.A. § 65-1436(b) and K.S.A. § 65-1449, and based upon the foregoing findings and conclusions, Respondent's Kansas License is hereby **REVOKED**.

2. The Kansas Dental Board hereby orders that pursuant to K.S.A. § 77-530(a), this Final Agency Order constitutes be a Final Order of The Kansas Dental Board, effective upon service of this Final Agency Order.

V. NOTICE REGARDING REVIEW

Within fifteen (15) days after service of this Emergency Agency Order, either party may file a petition for reconsideration pursuant to K.S.A. § 77-529 with the Executive Director of the Kansas Dental Board.


Pursuant to K.S.A. § 77-528, until the time at which a petition for judicial review would no longer be timely, a party may submit to the presiding officer or agency head a petition for stay of this final order, unless otherwise provided by statute or stated in the final order.

Within the time limits established in K.S.A. § 77-613, either party may seek judicial review of this Emergency Agency Order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

B. Lane Hemsley
Executive Director
Kansas Dental Board
900 SW Jackson, Room 455-S
Topeka, Kansas 66612-1230

IT IS SO ORDERED.

Dated this 27 day of October, 2015.



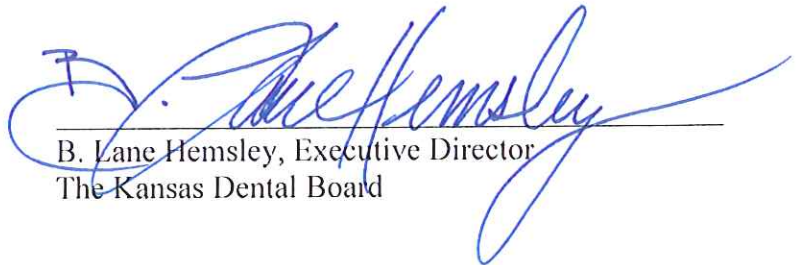
Glenn Hemberger, President
The Kansas Dental Board

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Final Agency Order was served upon the following by depositing the same in the United States Mail, postage prepaid, on the 27th day of October, 2015, addressed to:

Whitney Anne Simonet, D.D.S.
21520 W. 53rd St.
Shawnee, KS 66226
Respondent

Randall J. Forbes
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B. Lane Hemsley, Executive Director
The Kansas Dental Board