

FILED

FEB 26 2008

BEFORE THE KANSAS DENTAL BOARD

KANSAS DENTAL BOARD

In the Matter of)
)
MICHAEL GORSKY, D.D.S.,)
Applicant.)

Case No. 07-120

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Michael Gorsky, D.D.S. (the "Applicant") 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 Applicant is represented herein by his attorney, Bruce Woner of Woner, Glenn, Reeder, Girard & Riordan, P.A., 5611 SW Barrington Court South, P.O. Box 67689, Topeka, Kansas 66667-0689.

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 Applicant is not presently entitled to engage in the practice of dentistry in the State of Kansas. At all times relevant hereto, the Applicant was seeking a license by credentials from the State of Colorado.

4. The Board has received certain information, has investigated and has determined that there are reasonable grounds to believe that the Applicant has committed an act or acts in violation of the Kansas Dental Act, K.S.A. 65-1401 *et seq.*

5. Applicant 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. The Applicant had an active license to practice dentistry in the State of Kansas, License Number 5806, from November 2, 1981 until it was cancelled on December 1, 2004, upon the Applicant's written request.

B. On or about August 1, 2007, the Board received an application from the Applicant requesting a license to practice dentistry by credentials from Colorado. The application was complete on or about September 7, 2007.

C. In response to paragraph 4(a) on the application by credential for a dentist, the Applicant answered "No" to the following question: "Has any adverse judgment, award or settlement been paid in which you were named resulting from a professional liability claim?"

D. A search of the National Practitioner Data Bank ("NPDB"), however, revealed two settlements paid by the Applicant's malpractice insurance carrier; one in 1987 and the other in 1990.

E. On October 31, 2007, the Board issued a Summary Order of Denial, whereby the Applicant's application to practice dentistry in Kansas was summarily denied.

F. On February 1, 2008, the Board held a hearing on the application of the Applicant for a license to practice dentistry in the State of Kansas. The Applicant appeared in person and through counsel, Bruce Woner of Woner, Glenn, Reeder, Girard & Riordan, P.A. Randall J. Forbes of Frieden & Forbes acted as the Board's counsel. At the hearing, the Applicant asserted that his negative response to paragraph 4(a) on the application by credential for a dentist was an oversight of the prior settlements reported to the NPDB. In order to

recognize the seriousness of omitting negative information on a dental license application, the Board agreed to grant the Applicant a license in exchange for the Applicant's agreement to perform one hundred (100) hours of community service within six (6) months from February 1, 2008 and provide evidence to the Board reflecting the completion of his community service.

The Board further finds and concludes that the conduct listed in paragraphs 5B through 5D above is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1436(b) and K.S.A. 65-1436(a)(1).

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

A. **COMMUNITY SERVICE.** Applicant agrees, and the Board further orders the Applicant, to complete one hundred (100) hours of community service within six (6) months from February 1, 2008 and provide evidence to the Board reflecting the completion of such community service.

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

7. The stipulations and orders contained herein shall not become binding until this Stipulation and Consent Order is approved and entered by the Board's President. The Applicant acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board's President.

8. The Applicant 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 Applicant 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.

9. 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.

10. The Applicant 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 Applicant 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 Applicant further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order.

11. The Applicant acknowledges that he enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of his choosing. The Applicant 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.

12. Time is of the essence to this Stipulation and Consent Order. Applicant 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 Applicant to comply with all terms and conditions of this Stipulation and Consent Order.

13. 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.

14. 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.

15. 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.

16. The Applicant 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 Applicant hereby waives those rights.

ENTERED AND EFFECTIVE this 26th day of February, 2008.

KANSAS DENTAL BOARD

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

AGREED AND APPROVED BY:

Michael Gorsky DDS
MICHAEL GORSKY, D.D.S.

2-25-08
Date

Bruce Woner #10297
WONER, GLENN, REEDER, GIRARD &
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Attorney for the Applicant

2.25.08
Date

Randall J. Forbes #09089
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Attorney for the Kansas Dental Board

2.25.08
Date

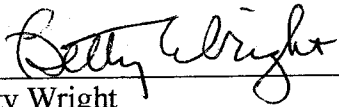
CERTIFICATE OF SERVICE

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 26th day of February, 2008, addressed to:

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

Bruce Woner
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433 Huttom Circle
Lawrence, KS 66049



Betty Wright
Executive Director
KANSAS DENTAL BOARD