

IN THE CIRCUIT COURT OF CAPE GIRARDEAU COUNTY, MISSOURI

DAVID L. KAELIN, D.M.D.,)
)
) Petitioner,)
)
 v.) Case Number: 05CG-CC00112
)
) MISSOURI DENTAL BOARD,)
) P.O. BOX 1367)
) 3605 Missouri Boulevard)
) Jefferson City, Missouri 65102)
)
) Respondent.)

JUDGMENT AND ORDER

On the 25th day of January, 2007, appeared Petitioner David L. Kaelin, D.M.D., in person and also with his attorney, A.M. Spradling, III and also appeared Respondent Missouri Dental Board by its attorney Nanci R. Wisdom. This matter coming on regularly to be heard and being called, the parties announce ready for trial. Evidence is adduced, exhibits are received into evidence and the Court takes judicial notice of the proceedings of the Missouri Dental Board in the case of David L. Kaelin, including record on appeal, legal file and transcript. At the conclusion of the hearing the Court finds:

- A. It has jurisdiction over the parties and the subject matter of the proceeding.
- B. The Conclusions of Law and Disciplinary Order in the case of Missouri Dental Board vs. David L. Kaelin Case No: 04-0566DB, except for the fourteen day suspension of the license of David L. Kaelin is arbitrary, capricious and unreasonable, not supported by competent evidence, and therefore should be set aside.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

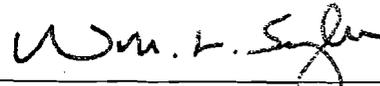
- 1. The Conclusions of Law and Disciplinary Order entered in Case No: 04-0566DB,

FILED
FEB 13 2007

CHARLES P. HUTSON
CIRCUIT CLERK

Missouri Dental Board, Petitioner vs. David L. Kaelin D.M.D., Respondent, is set aside except for the provision that pertains to the suspension of the license of David L. Kaelin for fourteen days, which suspension is upheld and suspension should commence effective June 15, 2007.

2. The Conclusions of Law and Disciplinary Order above cited is remanded to the Missouri Dental Board for it to enter an appropriate Order consistent with this Judgment and Order.
2. Each party shall bear his or its own costs in this action.



William L. Syler, Circuit Judge

Dated: February 9, 2007

STATE OF MISSOURI
COUNTY OF CAPE GIRARDEAU } ss.

I, **CHARLES P. HUTSON**, Clerk of the Circuit Court in and for said County do hereby certify that the above and foregoing is a full, true, and correct copy of the original document as recorded in my office.

Done at the office in the City of Cape Girardeau, MO

Dated: 2-14-07

SEAL

Charles P. Hutson
Circuit Clerk
Cape Girardeau County, MO

By  , deputy

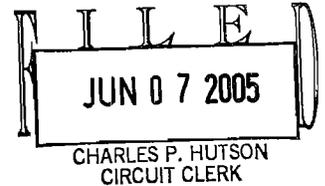
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CHARLES P. HUTSON
CIRCUIT CLERK

IN THE CIRCUIT COURT OF CAPE GIRARDEAU COUNTY, MISSOURI

DAVID L. KAELIN, D.M.D.,)
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 Petitioner,)
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 v.)
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 MISSOURI DENTAL BOARD,)
 P.O. BOX 1367)
 3605 Missouri Boulevard)
 Jefferson City, Missouri 65102)
)
 Respondent.)

Case Number:



PETITION FOR ADMINISTRATIVE REVIEW

COMES NOW, the Petitioner, David L. Kaelin, D.M.D., by and through his attorneys Spradling, Spradling & Southard, and in support of his Petition states to the Court as follows:

1. That the Petitioner is a resident of Cape Girardeau County, Missouri and is a licensed and certified dentist in the State of Missouri.
2. That the Respondent, The Missouri Dental Board, is an agency of the State of Missouri, created and established pursuant to Missouri Revised Statutes sections 332.021 to 332.061 for the purpose of executing and enforcing the provisions of Chapter 332 Dentistry.
3. That on or about April 23, 2005, a hearing was conducted before The Missouri Dental Board on an Amended Compliant regarding alleged violations of RSMo. 332.321.
4. That on or about May 31, 2005, the Respondent, Missouri Dental Board, issued its Findings of Fact, Conclusions of Law and Disciplinary Order. A copy of said

Findings of Fact, Conclusions of Law and Disciplinary Order are attached hereto as Exhibit A in incorporated herein by reference.

5. Pursuant to the Disciplinary Order issued by The Missouri Dental Board the Petitioner's license to practice dentistry is suspended for a period of two weeks effective June 15, 2005 and the Petitioner is placed on a period of probation with the terms as contained in the Order, which is attached hereto as Exhibit A and is incorporated herein by reference.
6. The decision in the Missouri Dental Board was rendered in violation of the Petitioner's constitutional rights and violated the constitutional due process rights of the Petitioner in that the Missouri Dental Board was predisposed prior to the formal hearing of the matter due to the fact that the Missouri Dental Board filed an original Complaint, which was amended, alleging less serious violations, but the final decision rendered by the Missouri Dental Board was identical to the offer of settlement, which was made by the Missouri Dental Board to Petitioner prior to filing of an Amended Complaint. That the decision by the Missouri Dental Board is unsupported by competent and substantial evidence upon the whole record and there is no evidence or record to support the suspension of the Petitioner's license.
7. The decision rendered by the Missouri Dental Board is arbitrary, capricious and unreasonable due to the fact that the Complaint to which a hearing was held was one of a minor violation of failure to maintain records properly and the punishment rendered by the Missouri Dental Board in this case is unjust and atypical of the type of punishment typically received for someone who is found to

have committed a minor charge of not keeping records.

8. That the decision by the Missouri Dental Board is unsupported by competent and substantial evidence upon the whole record and is based solely on allegations contained in a Complaint and an Amended Complaint and not on charges, which were proven or supported by the testimony or the evidence or the record of a whole.
9. That the decision rendered by the Missouri Dental Board involves an abuse of discretion by the Missouri Dental Board in that the discipline rendered was inappropriate for the charges and the decision was based upon allegations not charged with or were proven by the way of the evidence.
10. That the decision of the Missouri Dental Board was rendered without a fair trial in that the Missouri Dental Board was biased, prejudiced and predisposed as to the Petitioner and already had a predetermined result in mind in that the final decision was identical to an offer of settlement, which was rendered prior to an Amended Complaint being filed with the charges in the Amended Complaint being significantly less severe than the charges in the original Complaint.
11. That for the above mentioned reasons, the decision of the Missouri Dental Board is not supported or cannot be sustained as a matter of law and the decision should be vacated and overturned.

WHEREFORE, Petitioner prays this Court enter an order overturning and overruling the decision of the Missouri Dental Board, dismissing the Complaint / Amended Complaint filed in this action by the Missouri Dental Board, to review the decision of the Missouri Dental Board

and to find that same is not supported by competent evidence, violated the Petitioner's constitutional due process rights, was unauthorized by law, was rendered in an arbitrary, capricious and unreasonable fashion and involved an abuse of discretion by the Missouri Dental Board and to overturn said decision, and for such other and further relief and the Court find just and proper in the premises.

SPRADLING, SPRADLING & SOUTHARD

By A. M. Spradling III
A.M. Spradling, III #23702
1838 Broadway, P.O. Drawer 1119
Cape Girardeau, MO 63702-1119
(573)335-8296 Fax: (573)335-8525
spradlaw@swbell.net
ATTORNEYS FOR PETITIONER

Pursuant to notice and § 621.110, RSMo, the Board held a hearing on April 23, 2005, at the Country Club Hotel, Horseshoe Bend Parkway (HH) & Carol Road in Lake Ozarks, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. The Board was represented by Nanci R. Wisdom. Respondent appeared with his Counsel, A.M. Spradling, III. Kristi R. Flint, Assistant Attorney General, served as hearing advisor. Five members of the Board were present and participated in the Board's deliberation, vote, and order.

Findings of Fact

1. Respondent, David L. Kaelin, DMD, is licensed by the Board as a dentist, license number 015160.
2. In accordance with the Administrative Hearing Commission's March 15, 2005, Consent Order, the dental license of Respondent is subject to disciplinary action by the Board pursuant to § 332.321.2(6), (13), and (15), RSMo 2000.

Conclusions of Law

3. The Board has jurisdiction over this proceeding pursuant to § 621.110, RSMo 2000 and § 332.321.3, RSMo 2000.

Order

THEREFORE, having fully considered all the evidence before this Board, and giving full weight to the Waiver of Hearing, Joint Stipulation and Request for Consent Order and the Consent Order of the Administrative Hearing Commission, it is the Order of the Missouri Dental Board that Respondent's license to practice as a dentist in the state of Missouri, License No. 015160, is hereby SUSPENDED for a period of TWO (2) WEEKS to be followed by a period of PROBATION for FIVE (5) YEARS beginning immediately following the period of suspension ("disciplinary period").

1. The suspension shall begin on the effective date of this Order. Licensee shall return his dental license, wall-hanging certificate, pocket card, and all other indicia of licensure to the Board no later than the day before the first day of suspension to be held by the Board during the period of suspension. Failure to return the license, wall-hanging certificate, pocket card, and other indicia of licensure shall be a violation of this Order. During Licensee's suspension, Licensee shall not engage in the practice of dentistry under Chapter 332, RSMo, nor shall Licensee hold himself out in any fashion as being authorized to engage in the practice of dentistry under Chapter 332, RSMo. The following activities are identified for illustrative or informational purposes only and are not intended to be an exhaustive listing of the activities that would constitute the practice of dentistry and that Licensee shall not engage in during suspension. During suspension, Licensee shall not engage in any gratuitous or occasional treatment of any person; shall not maintain an office; shall not provide consultation services or opinions of any kind

concerning the dental care and treatment of any person; shall not charge or accept compensation for dental services from any person or entity unless the dental services were provided prior to the effective date of this Order; shall not provide testimony as an expert dental witness; and shall not endeavor in any manner to evaluate, test, diagnose, or treat any person.

2. Following the period of suspension, Licensee's license shall be returned and shall be placed on probation as provided above. During Licensee's probation, Licensee shall be allowed to practice dentistry under Chapter 332, RSMo, provided he adheres to all the following terms and conditions during the disciplinary period:

I. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Order by no later than January 1 and July 1 during each year of the disciplinary period.
- C. Licensee shall keep the Board apprized of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

- D. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- E. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- F. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Order.
- H. If Licensee fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate.

I. This Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

II. REQUIREMENTS REGARDING CHEMICAL DEPENDENCY TREATMENT AND REHABILITATION:

A. Within fifteen days of the effective date of this Order, Licensee shall, at Licensee's cost, undergo an evaluation for chemical dependency through the Missouri Dental Well Being Committee ("Committee"). Within 15 days of entering the Committee, Licensee shall cause the Committee to send written notification to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, confirming that Licensee has joined the program. Licensee shall also direct the Committee to forward an evaluation report to the Board detailing the treating professional's findings, specification of DSM IV diagnosis/es, prognosis, and treatment recommendations within 15 days of completing the evaluation. Licensee shall follow all recommendations for treatment or aftercare made by the treating professional. Licensee shall show this Order to the treating professional.

B. If treatment is recommended, Licensee shall execute a medical release or other appropriate release that shall remain in effect for the entire period

covered by this Order authorizing the Board to obtain records of Licensee's treatment for chemical dependency. Licensee shall not take any action to cancel this release. Licensee shall take any and all steps necessary to continue the release in effect and shall provide a new release when requested.

C. Licensee shall cause a letter of ongoing treatment evaluation from the treating professional to be submitted to the Board by January 1 and July 1 during each year of the disciplinary period beginning the effective date of this Order.

(1) The letter shall include an evaluation of Licensee's current progress and status related to the treatment recommendations/plan and Licensee's current prognosis and treatment recommendations/plan.

(2) The letter shall be sent by the treating professional and/or the Committee addressed to: Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102.

D. If the treatment of Licensee is successfully completed at any time during the period covered by this Order, Licensee shall cause the treating professional and/or the Committee to submit a letter of final evaluation/summary that includes a statement that Licensee has successfully completed treatment and indicates whether Licensee should

continue in a 12-step program. If continuance in a 12-step program is recommended, Licensee shall comply with terms of documentation as outlined in paragraph E.

- E. If attendance is recommended, Licensee shall submit evidence of weekly (or recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board by January 1 and July 1 during each year of the disciplinary period beginning the effective date of this Order. The documentation shall include the date, time, and place of the meeting and shall bear a signature or abbreviated signature of another person verifying attendance.
- F. During the disciplinary period, Licensee shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological sample shall constitute a violation of Licensee's discipline.
- G. During the disciplinary period, Licensee shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless that use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Licensee has a bona fide relationship as a patient. Licensee shall forward to the Board written documentation of any such prescription within ten days of issuance of the prescription specifying the medication prescribed, dosage

prescribed, and the condition for which the substance was prescribed. Upon request, Licensee shall execute a medical release authorizing the Board to access all records pertaining to Licensee's condition, treatment, and prescription maintained by the health care professional that prescribed the controlled substance. The presence of any controlled substance whatsoever in a biological fluid sample for which Licensee does not hold a valid prescription or for a prescription that Licensee has not forwarded documentation to the Board as required herein shall constitute a violation of Licensee's discipline.

- H. Licensee shall inform any professional preparing a prescription for Licensee that Licensee is chemically dependent.

III. DRUG SCREENS

During the disciplinary period, Licensee shall, at Licensee's cost, submit to biological testing as required by the Board. Licensee shall, upon demand and without delay, allow the Board's designated representative to obtain witnessed biological samples and shall cooperate fully and completely with the Board's designated representative in providing such samples. The presence of any controlled substance whatsoever in a biological sample for which Licensee does not hold a valid prescription shall constitute a violation of Licensee's discipline.

3. The Missouri Dental Board will maintain this Order as an open and public record of the Board as provided in Chapters 332, 610, and 620, RSMo.

4. Upon the expiration of said discipline, Licensee's license as a dentist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Licensee has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the Licensee.

5. No Order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

6. If the Board determines that Licensee has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED EFFECTIVE THIS 15th day of June, 2005.

MISSOURI DENTAL BOARD

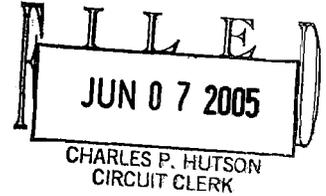
Sharlene Rimiller

Sharlene Rimiller
Executive Director

IN THE CIRCUIT COURT OF CAPE GIRARDEAU COUNTY, MISSOURI

DAVID L. KAELIN, D.M.D.,)
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 v.)
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 MISSOURI DENTAL BOARD,)
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 P.O. BOX 1367)
)
 3605 Missouri Boulevard)
)
 Jefferson City, Missouri 65102)
)
 Respondent.)

Case Number:



MOTION FOR STAY OF ENFORCEMENT OF ADMINISTRATIVE ORDER

COMES NOW, the Petitioner, David L. Kaelin, D.M.D., by and through his attorneys Spradling, Spradling & Southard, and in support of his Motion for Stay as pursuant to RSMo.

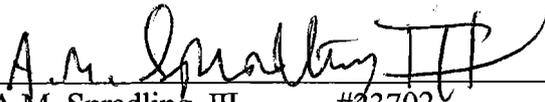
536.120 states to the Court as follows:

1. That the Petitioner has filed a Petition for Administrative Review in the Circuit Court of Cape Girardeau County, Missouri in the above referenced case.
2. That Petitioner is seeking to judicial determination and judicial review of a certain disciplinary order, which was rendered by the Missouri Dental Board on or about May 31, 2005, which becomes effective on June 15, 2005.
3. That the Petitioner would be irreparably harmed if said stay is not entered prior to the Court having fully reviewed and help a hearing on the Petitioner's Petition for Administrative Review in that the Order to which review is sought provides that Petitioner's license to practice dentistry would be suspended for a two week period beginning June 15, 2005.

4. That said suspension would cause irreparable harm to the Petitioner due to the loss of business and public embarrassment for said suspension if suspension is unwarranted as alleged by the Petitioner.

WHEREFORE, Petitioner requests this Court to enter an order staying the Order of the Missouri Dental Board, and for such other and further relief and the Court find just and proper in the premises.

SPRADLING, SPRADLING & SOUTHARD

By 
A.M. Spradling, III #23702
1838 Broadway, P.O. Drawer 1119
Cape Girardeau, MO 63702-1119
(573)335-8296 Fax: (573)335-8525
spradlaw@swbell.net
ATTORNEYS FOR PETITIONER

BEFORE THE MISSOURI DENTAL BOARD
STATE OF MISSOURI

MISSOURI DENTAL BOARD,)
)
 Petitioner,)
)
 v.) No. 04-0566 DB
)
 DAVID L. KAELIN, D.M.D.,)
 Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER

Statement of the Case

On March 15, 2005, the Administrative Hearing Commission entered its Consent Order in the case of Missouri Dental Board v. David L. Kaelin, D.M.D., Case No. 04-0566 DB, wherein the Administrative Hearing Commission incorporated the Waiver of Hearing, Joint Stipulation and Request for Consent Order and found that Respondent's dental license is subject to disciplinary action by the Missouri Dental Board ("Board") for violating § 332.321.2(6), (13), and (15), RSMo 2000.

The Board has received and reviewed the record of the proceedings before the Administrative Hearing Commission. The Waiver of Hearing, Joint Stipulation and Request for Consent Order and the Consent Order of the Administrative Hearing Commission is incorporated herein by reference.

The Board set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

Pursuant to notice and § 621.110, RSMo, the Board held a hearing on April 23, 2005, at the Country Club Hotel, Horseshoe Bend Parkway (HH) & Carol Road in Lake Ozarks, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. The Board was represented by Nanci R. Wisdom. Respondent appeared with his Counsel, A.M. Spradling, III. Kristi R. Flint, Assistant Attorney General, served as hearing advisor. Five members of the Board were present and participated in the Board's deliberation, vote, and order.

Findings of Fact

1. Respondent, David L. Kaelin, DMD, is licensed by the Board as a dentist, license number 015160.
2. In accordance with the Administrative Hearing Commission's March 15, 2005, Consent Order, the dental license of Respondent is subject to disciplinary action by the Board pursuant to § 332.321.2(6), (13), and (15), RSMo 2000.

Conclusions of Law

3. The Board has jurisdiction over this proceeding pursuant to § 621.110, RSMo 2000 and § 332.321.3, RSMo 2000.

Order

THEREFORE, having fully considered all the evidence before this Board, and giving full weight to the Waiver of Hearing, Joint Stipulation and Request for Consent Order and the Consent Order of the Administrative Hearing Commission, it is the Order of the Missouri Dental Board that Respondent's license to practice as a dentist in the state of Missouri, License No. 015160, is hereby SUSPENDED for a period of TWO (2) WEEKS to be followed by a period of PROBATION for FIVE (5) YEARS beginning immediately following the period of suspension ("disciplinary period").

1. The suspension shall begin on the effective date of this Order. Licensee shall return his dental license, wall-hanging certificate, pocket card, and all other indicia of licensure to the Board no later than the day before the first day of suspension to be held by the Board during the period of suspension. Failure to return the license, wall-hanging certificate, pocket card, and other indicia of licensure shall be a violation of this Order. During Licensee's suspension, Licensee shall not engage in the practice of dentistry under Chapter 332, RSMo, nor shall Licensee hold himself out in any fashion as being authorized to engage in the practice of dentistry under Chapter 332, RSMo. The following activities are identified for illustrative or informational purposes only and are not intended to be an exhaustive listing of the activities that would constitute the practice of dentistry and that Licensee shall not engage in during suspension. During suspension, Licensee shall not engage in any gratuitous or occasional treatment of any person; shall not maintain an office; shall not provide consultation services or opinions of any kind

concerning the dental care and treatment of any person; shall not charge or accept compensation for dental services from any person or entity unless the dental services were provided prior to the effective date of this Order; shall not provide testimony as an expert dental witness; and shall not endeavor in any manner to evaluate, test, diagnose, or treat any person.

2. Following the period of suspension, Licensee's license shall be returned and shall be placed on probation as provided above. During Licensee's probation, Licensee shall be allowed to practice dentistry under Chapter 332, RSMo, provided he adheres to all the following terms and conditions during the disciplinary period:

I. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Order by no later than January 1 and July 1 during each year of the disciplinary period.
- C. Licensee shall keep the Board apprized of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

- D. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- E. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- F. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Order.
- H. If Licensee fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate.

I. This Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

II. REQUIREMENTS REGARDING CHEMICAL DEPENDENCY TREATMENT AND REHABILITATION:

A. Within fifteen days of the effective date of this Order, Licensee shall, at Licensee's cost, undergo an evaluation for chemical dependency through the Missouri Dental Well Being Committee ("Committee"). Within 15 days of entering the Committee, Licensee shall cause the Committee to send written notification to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, confirming that Licensee has joined the program. Licensee shall also direct the Committee to forward an evaluation report to the Board detailing the treating professional's findings, specification of DSM IV diagnosis/es, prognosis, and treatment recommendations within 15 days of completing the evaluation. Licensee shall follow all recommendations for treatment or aftercare made by the treating professional. Licensee shall show this Order to the treating professional.

B. If treatment is recommended, Licensee shall execute a medical release or other appropriate release that shall remain in effect for the entire period

covered by this Order authorizing the Board to obtain records of Licensee's treatment for chemical dependency. Licensee shall not take any action to cancel this release. Licensee shall take any and all steps necessary to continue the release in effect and shall provide a new release when requested.

C. Licensee shall cause a letter of ongoing treatment evaluation from the treating professional to be submitted to the Board by January 1 and July 1 during each year of the disciplinary period beginning the effective date of this Order.

(1) The letter shall include an evaluation of Licensee's current progress and status related to the treatment recommendations/plan and Licensee's current prognosis and treatment recommendations/plan.

(2) The letter shall be sent by the treating professional and/or the Committee addressed to: Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102.

D. If the treatment of Licensee is successfully completed at any time during the period covered by this Order, Licensee shall cause the treating professional and/or the Committee to submit a letter of final evaluation/summary that includes a statement that Licensee has successfully completed treatment and indicates whether Licensee should

continue in a 12-step program. If continuance in a 12-step program is recommended, Licensee shall comply with terms of documentation as outlined in paragraph E.

- E. If attendance is recommended, Licensee shall submit evidence of weekly (or recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board by January 1 and July 1 during each year of the disciplinary period beginning the effective date of this Order. The documentation shall include the date, time, and place of the meeting and shall bear a signature or abbreviated signature of another person verifying attendance.
- F. During the disciplinary period, Licensee shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a biological sample shall constitute a violation of Licensee's discipline.
- G. During the disciplinary period, Licensee shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless that use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Licensee has a bona fide relationship as a patient. Licensee shall forward to the Board written documentation of any such prescription within ten days of issuance of the prescription specifying the medication prescribed, dosage

prescribed, and the condition for which the substance was prescribed. Upon request, Licensee shall execute a medical release authorizing the Board to access all records pertaining to Licensee's condition, treatment, and prescription maintained by the health care professional that prescribed the controlled substance. The presence of any controlled substance whatsoever in a biological fluid sample for which Licensee does not hold a valid prescription or for a prescription that Licensee has not forwarded documentation to the Board as required herein shall constitute a violation of Licensee's discipline.

- H. Licensee shall inform any professional preparing a prescription for Licensee that Licensee is chemically dependent.

III. DRUG SCREENS

During the disciplinary period, Licensee shall, at Licensee's cost, submit to biological testing as required by the Board. Licensee shall, upon demand and without delay, allow the Board's designated representative to obtain witnessed biological samples and shall cooperate fully and completely with the Board's designated representative in providing such samples. The presence of any controlled substance whatsoever in a biological sample for which Licensee does not hold a valid prescription shall constitute a violation of Licensee's discipline.

3. The Missouri Dental Board will maintain this Order as an open and public record of the Board as provided in Chapters 332, 610, and 620, RSMo.

4. Upon the expiration of said discipline, Licensee's license as a dentist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Licensee has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the Licensee.

5. No Order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

6. If the Board determines that Licensee has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED EFFECTIVE THIS 15th day of June, 2005.

MISSOURI DENTAL BOARD

Sharlene Rimiller

Sharlene Rimiller
Executive Director

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

MAR 10 2005

ADMINISTRATIVE HEARING
COMMISSION

MISSOURI DENTAL BOARD,)
P.O. BOX 1367)
3605 Missouri Blvd.)
Jefferson City, Missouri 65102)
Petitioner,)

v)

CAUSE NO 04-0566DB

DAVID L KABLIN, D M D.,)
2502 William Ste 2A)
Cape Girardeau, MO 63701)
Respondent)

RECEIVED

MAR 10 2005

Administrative Hearing Commission

AMENDED COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for the Allegations Common to All Counts states and alleges as follows:

1 The Missouri Dental Board is an agency of the State of Missouri, created and established pursuant to Missouri Revised Statute sections 332.021 to 332.061 for the purpose of executing and enforcing the provisions of Chapter 332 Dentistry.

2 Respondent is and at all times herein relevant, has been a licensed and certified dentist in the State of Missouri.

3. Respondent is and at all times herein relevant, has been and is properly licensed by the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration to distribute or dispense controlled substances pursuant to Missouri Revised Statutes sections 195.005 to 195.425

4 This Commission has jurisdiction to hear this Complaint pursuant to the provisions in the Missouri Revised Statute section 621.045

5. That on or about the following dates, Respondent made the following purchases from Henry Schein Company:

- a) 08-04-99 – Five-hundred (500) tabs of Diazepam
- b) 02-13-02 – Five-hundred (500) tabs of Diazepam

6. That on or about the following dates, Respondent received the following samples from Watson Pharmaceuticals.

08/01/01	60 tabs of Norco
1998	30 tabs of Norco

7. That on or about September 24, 2002, Respondent possessed the following controlled substances:

2 tabs of Lortab 7.5 mg
1 Vicoprofin
218 Diazepam

8. That on or about September 24, 2002, Respondent was unable to account for the following controlled substances:

500 Diazepam purchased on August 4, 1999
282 Diazepam purchased on February 13, 2002
60 Norco tabs received on August 1, 2001
30 Norco tabs received in 1998

9. That on or about the following dates, Respondent wrote the following prescriptions for:

a)	03-29-95	Ten (10) Diazepam	10 mg
b)	04-26-99	Twenty (20) Diazepam	10 mg

10. That the following drugs are controlled substances under Missouri Revised Statute section 195.017:

- a) Diazepam is a Schedule IV controlled substance pursuant to Missouri Revised Statute Section 195 017
- b) Norco is a Schedule III controlled substance pursuant to Missouri Revised Statute Section 195 017
- c) Lortab is a Schedule III controlled substance pursuant to Missouri Revised Statute Section 195 017
- d) Vicoprofin is a Schedule III controlled substance pursuant to Missouri Revised Statute Section 195 017

COUNT I

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for Count I of its Complaint states as follows:

11 Petitioner incorporates by reference the statements and allegations contained in the Allegations Common to All Counts herein.

12. In regards to the controlled substances listed in paragraphs five (5), six (6), seven (7) and eight (8) of Allegations Common to All Counts:

a) Respondent did not maintain a controlled substance dispensing log or other controlled substance disposition records, in violation of Section 195 050 6, RSMo 1994, and 19 CSR 30-1.030(3)(S), which state respectively:

6 Every person registered to manufacture, distribute or dispense controlled substances under sections 195 005 to 195 425 shall keep records and inventories of all such drugs in conformance with the recordkeeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health

and

(S) Records for Practitioners and Researchers

1 Each individual practitioner, institutional practitioner and pharmacy shall maintain records with the following information for each controlled substance received, maintained, dispensed or disposed

A The name of the substance,

B Each finished form (for example, ten milligram (10 mg) tablet or ten milligram (10 mg) concentration per fluid ounce or milliliter) and the number of units or volume

of finished form in each commercial container (for example, one hundred (100) tablet bottle or three milliliter (3 ml) vial),

- C The number of units or volume of the finished form dispensed including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed and the written or typewritten name or initials of the individual who dispensed or administered the substance,

b). Respondent did not maintain initial or biennial inventories of controlled substances, in violation of 19CSR 30-1.030(3)(H) and (I), which state

(H) Initial Inventory Date

- 1 Every person required to keep records who is registered with the Department of Health after May 1, 1971 and who was not registered previously shall take an inventory of all stocks of controlled substances on hand the dates s/he first engages in the manufacture, distribution or dispensing of controlled substances
- 2 Compliance with federal initial inventory date requirements is deemed satisfactory Duplicate inventories are not required

- (I) Biennial Inventory Date Every two (2) years following the date on which the initial inventory is taken by a registrant, the registrant shall take a new inventory of all stocks of controlled substances on hand The biennial inventory may be taken on the date of the year on which the initial inventory was taken, on the registrant's regular general physical inventory date, if any, which is nearest to and does not vary by more than six (6) months from the biennial date that would otherwise apply or any other fixed date which does not vary by more than six (6) months from the biennial date that would otherwise apply If the registrant elects to take the biennial inventory on his/her regular general physical inventory date or another fixed date, s/he shall notify the Department of Health of this election and of the date on which the biennial inventory will be taken

c) Respondent did not keep a record of receipt of the controlled substances he received as required by Missouri Revised Statutes Section 195.050

13. Missouri Revised Statute section 332.361.2 provides that a registered and currently licensed dentist may possess, have under his control, administer, dispense or distribute a controlled substance only to the extent that:

- (4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

14. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances

... (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

. (13) Violation of any professional trust or confidence,

. (15) Violation of the drug laws or rules and regulations of this state, or any other state or the federal government

15 That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332.321.2 and section 332.361

16 That Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has caused to take disciplinary action against Respondent or, in the alternative, this matter be set for an evidentiary hearing.

COUNT II

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for Count III of its Complaint states as follows.

17. Petitioner incorporates by reference the statements and allegations contained in the Allegations Common to All Counts herein.

18. In regards to the controlled substances listed in paragraph ten (10) of the Allegations Common to All Counts failed to make record entries of the two prescriptions as required by law.

19. Missouri Revised Statute section 332.361.2 provides that a registered and currently licensed dentist may possess, have under his control, administer, dispense or distribute a controlled substance only to the extent that:

(4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein

20. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

... (13) Violation of any professional trust or confidence,

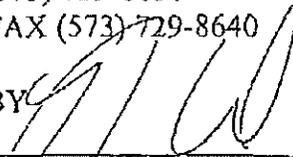
(15) Violation of the drug laws or rules and regulations of this state, or any other state or the federal government.

21. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332.321.2 and section 332.361.

22. That Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has caused to take disciplinary action against Respondent or, in the alternative, this matter be set for an evidentiary hearing

NANCI R WISDOM, L C.
ATTORNEY AT LAW
P O. BOX 983
107 W. FOURTH STREET
SALEM, MISSOURI 65560
(573) 729-8630
FAX (573) 729-8640

BY 

Nanci R. Wisdom #39359
Attorney for Petitioner

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

APR 30 2004

ADMINISTRATIVE HEARING
COMMISSION

MISSOURI DENTAL BOARD,)
P O. BOX 1367)
3605 Missouri Blvd)
Jefferson City, Missouri 65102)
Petitioner,)
v.)
DAVID L KAELIN, D.M.D ,)
2502 William Ste 2A)
Cape Girardeau, MO 63701)
Respondent.)

CAUSE NO. 04-0566 DB

COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for the Allegations Common to All Counts states and alleges as follows:

1. The Missouri Dental Board is an agency of the State of Missouri, created and established pursuant to Missouri Revised Statute sections 332.021 to 332.061 for the purpose of executing and enforcing the provisions of Chapter 332 Dentistry
2. Respondent is and at all times herein relevant, has been a licensed and certified dentist in the State of Missouri.
3. Respondent is and at all times herein relevant, has been and is properly licensed by the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration to distribute or dispense controlled substances pursuant to Missouri Revised Statutes sections 195.005 to 195 425
4. This Commission has jurisdiction to hear this Complaint pursuant to the provisions in the Missouri Revised Statute section 621 045.

5. That on or about the following dates, Respondent made the following purchases from Henry Schein Company:

- a) 08-04-99 – Five-hundred (500) tabs of Diazepam
- b) 02-13-02 – Five-hundred (500) tabs of Diazepam

6. That on or about the following dates, Respondent received the following samples from Watson Pharmaceuticals:

08/01/01 60 tabs of Norco
1998 30 tabs of Norco

7. That on or about September 24, 2002, Respondent possessed the following controlled substances:

2 tabs of Lortab 7.5 mg
1 Vicoprofin
218 Diazepam

8. That on or about September 24, 2002, Respondent was unable to account for the following controlled substances:

500 Diazepam purchased on August 4, 1999
282 Diazepam purchased on February 13, 2002
60 Norco tabs received on August 1, 2001
30 Norco tabs received in 1998

9. That on or about the following dates, Respondent made the following purchases of Nitrous Oxide Gas.

02-22-02	2 small cylinder	2 2 1 each
03-12-02	2 small cylinder	2 2 1 each
04-04-02	2 small cylinder	2 2 1 each
04-23-02	1 small cylinder	2 2 1 each
04-29-02	2 small cylinder	2 2 1 each
05-15-02	1 small cylinder	2 2 1 each
05-23-02	1 small cylinder	2 2 1 each
05-31-02	2 small cylinder	2 2 1 each
06-19-02	3 small cylinder	2 2 1 each
06-30-02	2 small cylinder	2 2 1 each

07-03-02	2 small cylinder	2 2 1 each
08-05-02	2 small cylinder	2 2 1 each
08-22-02	2 small cylinder	2 2 1 each

10 That on or about the following dates, Respondent wrote the following prescriptions for ξ k.

a)	03-29-95	Ten (10) Diazepam	10 mg
b)	04-26-99	Twenty (20) Diazepam	10 mg

11. That the following drugs are controlled substances under Missouri Revised Statute section 195.017:

- a) Diazepam is a Schedule IV controlled substance pursuant to Missouri Revised Statute Section 195.017
- b) Norco is a Schedule III controlled substance pursuant to Missouri Revised Statute Section 195.017.
- c) Lortab is a Schedule III controlled substance pursuant to Missouri Revised Statute Section 195.017
- d) Vicoprofin is a Schedule III controlled substance pursuant to Missouri Revised Statute Section 195.017.

COUNT I

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for Count I of its Complaint states as follows:

12 Petitioner incorporates by reference the statements and allegations contained in the Allegations Common to All Counts herein.

13. Respondent administered all or a portion of the Nitrous Oxide referred to in paragraph nine (9) of the Allegations Common to All Counts to himself.

14. That Missouri Revised Statute Section 332.361.2 provides that:

2. Any duly registered and currently licensed dentist in Missouri may possess, have under his control, prescribe, administer, dispense, or distribute a "controlled substance" as that term is defined in section 195.010, RSMo, only to the extent that:

...

(2) The dentist prescribes, administers, dispenses, or distributes the controlled substance in the course of his professional practice of dentistry, and for no other reason,

(3) A bona fide dentist-patient relationship exists; and

(4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

15. That Missouri Revised Statute Section 332.321.2 provides that the Missouri Dental Board may file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

... (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

... (6) Violation of, or assisting or enabling any person to violate any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

... (13) Violation of any professional trust or confidence,

... (15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

... 19) Administering, or causing or permitting to be administered, nitrous oxide gas in any amount to himself or herself, or to another unless as an adjunctive measure to patient management; . . .

16 That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute Section 332.321.2 and 332.361.

17 That Missouri Revised Statute Section 332.321.3 gives the Petitioner the authority to take disciplinary action against a dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute Section 332.321.2

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has cause to take disciplinary action against Respondent or, in the alternative, this matter be set for an evidentiary hearing

COUNT II

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for Count II of its Complaint states as follows:

18. Petitioner incorporates by reference the statements and allegations contained in the Allegations Common to All Counts herein.

19. In regards to the controlled substances listed in paragraphs five (5), six (6), seven (7) and eight (8) of Allegations Common to All Counts:

a) Respondent did not maintain a controlled substance dispensing log or other controlled substance disposition records, in violation of Section 195.050.6, RSMo 1994, and 19 CSR 30-1.030(3)(S), which state respectively,

6 Every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the recordkeeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health

and

(S) Records for Practitioners and Researchers

- I Each individual practitioner, institutional practitioner and pharmacy shall maintain records with the following information for each controlled substance received, maintained, dispensed or disposed
 - A The name of the substance,
 - B Each finished form (for example, ten milligram (10 mg) tablet or ten milligram (10 mg) concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (for example, one hundred (100) tablet bottle or three milliliter (3 ml) vial),
 - C The number of units or volume of the finished form dispensed including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed and the written or typewritten name or initials of the individual who dispensed or administered the substance, .

b) Respondent did not maintain initial or biennial inventories of controlled substances, in violation of 19CSR 30-1.030(3)(H) and (I), which state:

(H) Initial Inventory Date.

- 1 Every person required to keep records who is registered with the Department of Health after May 1, 1971 and who was not registered previously shall take an inventory of all stocks of controlled substances on hand the dates s/he first engages in the manufacture, distribution or dispensing of controlled substances
- 2 Compliance with federal initial inventory date requirements is deemed satisfactory Duplicate inventories are not required

(I) Biennial Inventory Date Every two (2) years following the date on which the initial inventory is taken by a registrant, the registrant shall take a new inventory of all stocks of controlled substances on hand. The biennial inventory may be taken on the date of the year on which the initial inventory was taken, on the registrant's regular general physical inventory date, if any, which is nearest to and does not vary by more than six (6) months from the biennial date that would otherwise apply or any other fixed date which does not vary by more than six (6) months from the biennial date that would otherwise apply. If the registrant elects to take the biennial inventory on his/her regular general physical inventory date or another fixed date, s/he shall notify the Department of Health of this election and of the date on which the biennial inventory will be taken

c) Respondent did not keep a record of receipt of the controlled substances he received as required by Missouri Revised Statutes Section 195.050.

20. Missouri Revised Statute section 332.361 2 provides that a registered and currently licensed dentist may possess, have under his control, administer, dispense or distribute a controlled substance only to the extent that:

. . . (4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

21. Missouri Revised Statute section 332.321 2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

. (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

. . (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

. . . (13) Violation of any professional trust or confidence,

. . (15) Violation of the drug laws or rules and regulations of this state, or any other state or the federal government

22. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332 321.2 and section 332.361

23. That Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332 321.2.

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has caused to take disciplinary action against Respondent or, in the alternative, this matter be set for an evidentiary hearing.

COUNT III

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for Count III of its Complaint states as follows:

24 Petitioner incorporates by reference the statements and allegations contained in the Allegations Common to All Counts herein.

25. In regards to the controlled substances listed in paragraph ten (10) of the Allegations Common to All Counts failed to make record entries of the two prescriptions as required by law.

26 Missouri Revised Statute section 332 361.2 provides that a registered and currently licensed dentist may possess, have under his control, administer, dispense or distribute a controlled substance only to the extent that:

. (4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts. including the keeping of records and inventories when required therein

27. Missouri Revised Statute section 332 321.2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

. . (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

. . . (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

. . . (13) Violation of any professional trust or confidence,

. . (15) Violation of the drug laws or rules and regulations of this state, or any other state or the federal government.

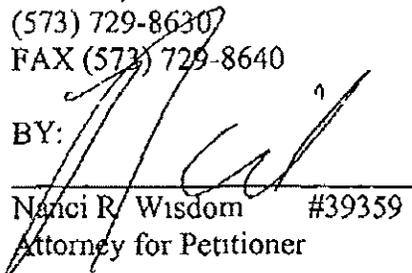
28. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332 321 2 and section 332.361.

29. That Missouri Revised Statute section 332.321 3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the

State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has caused to take disciplinary action against Respondent or, in the alternative, this matter be set for an evidentiary hearing.

NANCI R. WISDOM, L.C.
ATTORNEY AT LAW
P.O. BOX 983
107 W. FOURTH STREET
SALEM, MISSOURI 65560
(573) 729-8630
FAX (573) 729-8640

BY: 

Nanci R. Wisdom #39359
Attorney for Petitioner

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

MISSOURI DENTAL BOARD,)
P.O. Box 1367)
3605 Missouri Blvd)
Jefferson City, Missouri 65102)
Petitioner,)

MAR 10 2005

ADMINISTRATIVE HEARING
COMMISSION

v)

CAUSE NO. 04-0566 DB

DAVID L. KAELIN, D.M.D.,)
2502 William Ste. 2A)
Cape Girardeau, MO 63701)
Respondent.)

WAIVER OF HEARING, JOINT STIPULATION, AND
REQUEST FOR CONSENT ORDER

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney, Nanci R. Wisdom, and Respondent, David L. Kaelin, D.M.D., by and through his attorney, A. M. Spradling, III, and pursuant to the provisions of 4 C.S.R. 20-2.130 and Missouri Revised Statutes Section 536.060 as applicable to this Commission by the provisions of Section 621.135 RSMo (2004), and jointly state that the parties waive their right to a hearing before the Administrative Hearing Commission in the above-referenced cause, enter this Joint Stipulation consistent with the content of this document. In support of their motion, Petitioner, Missouri Dental Board, and Respondent, David L. Kaelin, D.M.D., hereby stipulate and agree to the following:

1. Respondent, David L. Kaelin, D.M.D. acknowledges that he is familiar with the various rights and privileges afforded by operation of law, including the right to a hearing on the charges against him, the right to appear and be represented by counsel,

the right to have all charges against him proved upon the record by competent and substantial evidence, the right to cross-examine any witnesses appearing at the hearing against him, the right to present evidence on his own behalf at the hearing, the right to a decision upon the record by a fair and impartial Administrative Hearing Commissioner concerning the charges pending against him; the right to appeal a decision in favor of the Petitioner, Missouri Dental Board, by the Administrative Hearing Commission on the basis if said decision is not supported by substantial and competent evidence. Being familiar with these and other attendant rights provided Respondent, David L. Kaehn, D.M.D., by operation of law, he knowingly and voluntarily waives each and every one of these rights and fully and freely enters into this "Waiver of Hearing, Joint Stipulation and Request for Consent Order" and consents and agrees to abide by the terms and conditions of this document.

2 Petitioner, Missouri Dental Board, is an agency of the State of Missouri created and established pursuant to Missouri Revised Statutes Section 332.021, as applicable to this matter for the purpose of administering and enforcing the provisions of Chapter 332, Dentistry.

3 Respondent, David L. Kaehn, D.M.D., is, and at all times relevant to this cause was, the holder of a current and valid license to practice dentistry and certificate of registration issued by Petitioner, Missouri Dental Board.

4 That the Amended Complaint of Petitioner in cause number 04-0566 DB in the above-styled cause is attached hereto as Exhibit A and made a part hereof by reference.

5. Respondent, David L Kaelin, D M D , admits the allegations contained in the Amended Complaint of Petitioner in cause number 04-0566 DB and further admits that said conduct falls within the intendment of Section 332.321 RSMo (2004) as applicable to each allegation contained in the Amended Complaint and further admits that said conduct subjects his license to discipline under the provisions of Section 332.321 RSMo (2004) as applicable to the allegations contained in the Amended Complaint

6 Based on the foregoing, the parties mutually agree that this document will be filed with the Administrative Hearing Commission and that the parties request that the Administrative Hearing Commission issue its order finding cause for discipline of the license of David L. Kaelin, D M D. pursuant to the provisions of Section 332.321 RSMo (2004) as alleged in the Amended Complaint heretofore filed in the above-styled cause and further referring this matter to the Missouri Dental Board for a formal disciplinary hearing

7. The parties further agree that following the entry of the order of the Administrative Hearing Commission, the Missouri Dental Board will hold a hearing regarding discipline at which time David L Kaelin, D M D shall have the opportunity to offer evidence in mitigation Respondent, David L Kaelin, D M D , further agrees and stipulates that no promises have been made to him regarding the nature or quantum of discipline which shall be imposed by the Missouri Dental Board following the disciplinary hearing and further agrees and stipulates that the Missouri Dental Board will have the entire range of discipline open to it as provided in Section 332.321 RSMo (2004).

WHEREFORE, based upon the foregoing, the parties mutually request that the Administrative Hearing Commission issue a Consent Order embodying the terms and conditions of this "Waiver of Hearing, Joint Stipulation, and Request for Consent Order" in the above-styled cause, and that cause number 04-0566 DB be closed.

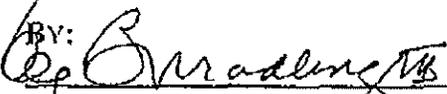


DAVID L. KAELIN

3-2-05

Date

A.M. SPRADLING, III
ATTORNEY AT LAW
P.O. DRAWER 1119
CAPE GIRARDEAU, MISSOURI 63702-1119
(573)335-8296
FAX (573)335-8525

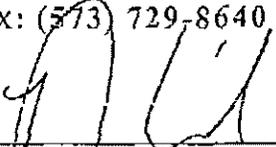
BY: 

A.M. Spradling, III #23702
Attorney for Respondent

3-1-05

Date

NANCI R. WISDOM, L.C.
ATTORNEY AT LAW
POST OFFICE BOX 983
107 WEST FOURTH STREET
SALEM, MISSOURI 65560
(573) 729-8630
FAX: (573) 729-8640

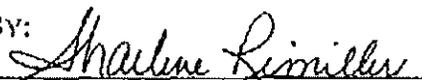
BY: 

Nanci R. Wisdom #39359
Attorney for Petitioner

03-07-05

Date

MISSOURI DENTAL BOARD

BY: 

SHARLENE RIMILLER,
EXECUTIVE DIRECTOR

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI DENTAL BOARD,

Petitioner,

vs.

DAVID L. KAELIN, D.M.D.,

Respondent

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No 04-0566 DB

CONSENT ORDER

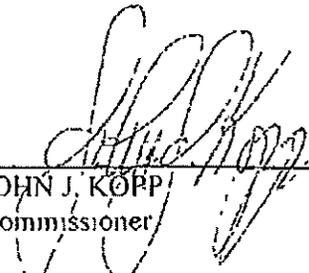
The licensing authority filed a complaint. Section 621.045, RSMo 2000, gives us jurisdiction.

On March 10, 2005, the parties filed a "Waiver of Hearing, Joint Stipulation, and Request for Consent Order." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 332.321 2(6), (13) and (15), RSMo 2000. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo 2000.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo 2000.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3, RSMo 2000. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n.* 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on March 15, 2005


JOHN J. KÖPP
Commissioner