

**Before the Missouri Dental Board**  
**State of Missouri**

**MISSOURI DENTAL BOARD,** )  
P.O. BOX 1357 )  
3605 Missouri Blvd. )  
Jefferson City, Missouri 65102 )  
**Petitioner,** )

v. )

**CAUSE NO.: 06-0563 DB**

**VERNON C. RAINEY, D.M.D.** )  
207 West Seventh St. )  
P.O. Box 396 )  
Cassville, MO 65625 )  
**Respondent.** )

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND**  
**DISCIPLINARY ORDER**

On July 19, 2008, the Missouri Dental Board held a hearing on the Notice of Disciplinary Hearing in the above-styled cause. The hearing was held at the Doubletree Hotel and Conference Center, 16625 Swingley Ridge Road, Chesterfield, Missouri. The Missouri Dental Board was represented by Nanci R. Wisdom, outside counsel. Loretta Schouten advised the Board on legal matters. Respondent, Vernon C. Rainey, D.M.D., appears in person and without counsel. The Board heard evidence on the issue of what, if any, disciplinary action should be taken against the certificate of registration and license of Vernon C. Rainey, D.M.D. The Board heard testimony of Respondent, Vernon C. Rainey, D.M.D., Elizabeth Rainey and Carolyn Hunter, D.D.S. The Board received into evidence Exhibits A, B, and C. At the conclusion of the hearing, the Board went into closed session to make its determination.

Some time after the hearing, the Board received written correspondence from Elizabeth Rainey on behalf of Vernon C. Rainey, D.M.D. This Findings of Fact, Conclusions of Law and Disciplinary Order is based on evidence presented at hearing.

### **FINDINGS OF FACT**

1. The Missouri Dental Board is created by the provisions of Chapter 332 RSMo, and has jurisdiction under the provisions of said chapter and Chapters 536 and 621 RSMo, to hear this case.

2. The Administrative Hearing Commission is an agency of the State of Missouri created and established pursuant to Section 321.105 RSMo for the purposes of conducting hearings and making findings.

3. At all times relevant herein, Vernon C. Rainey, D.M.D. holds a certificate of registration and license to practice dentistry in the State of Missouri. On January 8, 2008, the Administrative Hearing Commission issued its Order in the matter of Missouri Dental Board v. Vernon C. Rainey, D.M.D., cause number 06-0563 DB finding that cause exists for the Missouri Dental Board to discipline Respondent's license under Section 332.321.2 (2), (3), (5), (6), (13) and (15) RSMo. based on the record before the Administrative Hearing Commission.

### **CONCLUSIONS OF LAW**

1. The Missouri Dental Board has jurisdiction to take disciplinary action against the license and certificate of registration of Vernon C. Rainey, D.M.D., pursuant to the provisions of Chapters 332, 536, and 621 RSMo.

2. Vernon C. Rainey, D.M.D.'s certificate of registration and license are subject to revocation or suspension, and/or probation by the Missouri Dental Board pursuant to the Section 332.321.2 RSMo.

**ORDER**

Therefore, having considered all the evidence before this body, the Missouri Dental Board orders that the certificate of registration and license to practice dentistry in the State of Missouri issued to Vernon C. Rainey, D.M.D. be revoked effective immediately.

ENTERED THIS 4th DAY OF NOVEMBER, 2008.



Brian Barnett  
Executive Director  
Missouri Dental Board

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI DENTAL BOARD,

Petitioner,

vs.

VERNON C. RAINEY, D.M.D.,

Respondent.

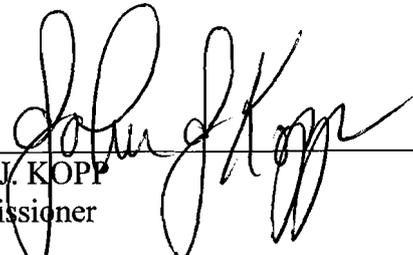
No. 06-0563 DB

**DECISION**

On January 8, 2008, we issued our order granting part of Petitioner's motion for partial summary determination. We concluded that Respondent's license is subject to discipline on some, but not all, charges in the complaint. On January 14, 2008, Petitioner filed a motion to dismiss the charges on which we did not find cause for discipline. Regulation 1 CSR 15-3.440(2)(B)2. Therefore, those charges are dismissed.

We incorporate by reference our January 8, 2008, order into this final decision and will certify our record to Petitioner in thirty days.

SO ORDERED on January 16, 2008.

  
\_\_\_\_\_  
JOHN J. KOPP  
Commissioner

Before the  
Administrative Hearing Commission  
State of Missouri

MISSOURI DENTAL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 06-0563 DB
	)	
VERNON C. RAINEY, D.M.D.,	)	
	)	
Respondent.	)	

**ORDER**

We grant in part the Missouri Dental Board's ("Board") motion for partial summary determination and conclude that the Board may discipline Vernon C. Rainey, D.M.D., for having been convicted of a crime, for lying about it to get a license, and for violating statutory, regulatory, and professional standards of practice.

**Procedure**

The Board filed a complaint on May 1, 2006. We served Rainey with notice of this case, a copy of the complaint, and notice of hearing on May 9, 2006. On November 21, 2006, the Board filed an amended complaint. On February 16, 2007, the Board filed a second amended complaint. The Board filed the motion on November 16, 2007. We grant the motion if the Board establishes facts that entitle it to a favorable decision and Rainey raises no genuine issue as to such facts. We gave Rainey until November 16, 2007, to respond to the motion, but he did not respond. Therefore, the facts as established by the Board's affidavits are undisputed.

**Findings of Fact**

1. Rainey held a Missouri dentist license and certificate from the Board at all relevant times. Rainey also held a registration from the United States Drug Enforcement Agency and a registration from the Missouri Bureau of Narcotics and Dangerous Drugs (“BNDD”). The BNDD registration authorizes Rainey to stock, prescribe, dispense and administer controlled substances under Missouri controlled substances registration from October 12, 2004, to November 30, 2007.

#### A. S.N.’s Implants

2. On March 24, 2004, Rainey treated S.N. by installing dental implants (“implants”). S.N. was Rainey’s first implant patient. S.N. presented a complex case especially for a dentist who had never performed implants. Rainey’s only training in placing implants was a few hours of continuing education. He did not inform patient S.N. of his lack of experience.

3. Rainey placed five small screw type mini implants in the maxilla and four lower mandibular implants in S.N. Rainey did not adjust the implants of, and provided no follow-up care for, patient S.N. because S.N. did not return to him. By August 13, 2004, patient S.N.’s implants had failed and caused S.N. much pain. S.N. was unable to wear dentures. Two of the implants were mobile, and those at #6, #7, #8, #9, #11, #24, and #25 had to be removed.

4. Rainey did not treat S.N. with that degree of skill and learning that a dentist ordinarily uses in treating a complex implant case.

#### B. Controlled Substance Practice

5. On October 11, 2005, Rainey stocked:

- hydrocodone/APAP, a drug containing hydrocodone; and
- Halcion, a brand name for a drug containing triazolam.

On that date, Rainey did not maintain:

- controlled substance receipt records for hydrocodone and Halcion;
- controlled substance dispensing records separate from the patient charts; or
- an annual inventory for controlled substances in his possession.

Also on that date, Rainey stored controlled substances at his home, though his BNDD registration did not authorize that conduct.<sup>1</sup>

### C. Criminal Conviction

6. On December 20, 2005, the District Court of Bentonville, Arkansas, convicted Rainey of third degree battery, a Class A misdemeanor (“the offense”) based on a confrontation with a neighbor.

### D. Sedation Practice

7. Rainey held no permit (“ECS permit”) to provide enteral conscious sedation (“ECS”). Rainey felt that he needed no ECS permit. He filed an application for an ECS permit anyway on June 20, 2005. The Board denied the application by notice dated February 22, 2006. Rainey received notice of such denial by certified mail.

8. Nevertheless, Rainey used lorazepam<sup>2</sup> and diazepam<sup>3</sup> for ECS. Both lorazepam and diazepam are benzodiazepines, a type of sedative agent. A combination of a benzodiazepine with another benzodiazepine, or with nitrous oxide gas, or with both, is an effective sedation.

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<sup>1</sup>The Board alleged and proved that Rainey committed that conduct on that date. The Board alleges other conduct with regard to controlled substances, including receiving, dispensing, labeling, destruction and record keeping with no allegation as to when Rainey committed such conduct. Instead, the Board cites the date of an investigation—October 11, 2005—in which such conduct was allegedly “revealed.” (Second Am. Compl. ¶¶ 12, 13, 14, 15, 16, 18, 19, and 20.) Because Rainey has been licensed since November 4, 1999, those allegations address a six-year period. Such pleading does not give Rainey sufficient notice of the course of conduct at issue for him to prepare a defense. *Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 538-39 (Mo. App., E.D. 1988). Therefore, we do not make findings of fact on those charges.

<sup>2</sup>Marketed under the name Ativan.

<sup>3</sup>Marketed under the name Valium.

9. From March 2, 2006, to August 9, 2006, Rainey prescribed lorazepam and diazepam on at least four separate occasions for his patients. Rainey also prescribed or dispensed multiple benzodiazepines at once:

Patient	Drug Prescribed and Strength	Date	Rx #	# Dispensed
J.C.	lorazepam 2mg, diazepam 5mg	6/12 <sup>4</sup> /06	4198679	2
			4198980	2
S.R.	lorazepam 2mg, diazepam 5mg	6/21/06	4199030	2
			4199031	2

E. Application

10. On November 21, 2006, Rainey filed his renewal application with the Board.

Question 13 asked:

Since the preceding renewal period, have you been convicted of, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not sentence was imposed, or are such actions currently pending (excluding traffic violations?) **If yes, attach a full explanation and provide certified court documents (i.e. Docket Sheet, Information or Indictment, and Final Disposition).**

Rainey left Question 13 unanswered, so the Board returned the application to him without deciding it.

11. Rainey’s license expired November 30, 2006. On December 20, 2006, Rainey resubmitted his renewal application. This time he answered “NO” to Question 13.

12. Above the application’s signature line was the following language:

I declare that all statements or representations contained in or attached to this application are made under oath or affirmation and are true and correct to the best of my knowledge under penalty of section 575.060 RSMo which specifies that anyone who makes a false statement in writing with intent to mislead a public official in

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<sup>4</sup>Alleged as 6/7/07 in the motion, as 6/12/07 in the second amended complaint. The allegations of the drug prescribed, strength, prescription number, and number dispensed give more than adequate notice as to which prescription is at issue.

the performance of his official duties is guilty of a class B misdemeanor.

Rainey signed the application. In reliance on that answer, the Board renewed Rainey's license.

### **Conclusions of Law**

We have jurisdiction to hear the Board's complaint.<sup>5</sup> The Board has the burden to prove facts on which it may discipline Rainey under the law.<sup>6</sup>

#### I. Criminal Conviction

The Board cites § 332.321.2(2), which allows discipline if Rainey has:

been finally adjudicated and found guilty . . . in a criminal prosecution pursuant to the laws of any state . . . for any offense reasonably related to the qualifications, functions or duties of [a dentist], for any offense an essential element of which is . . . an act of violence, or any offense involving moral turpitude, whether or not sentence is imposed[.]

The offense was third degree battery under Arkansas law:

(a) A person commits battery in the third degree if:

(1) With the purpose of causing physical injury to another person, the person causes physical injury to any person;

(2) The person recklessly causes physical injury to another person;

(3) The person negligently causes physical injury to another person by means of a deadly weapon; or

(4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance.

(b) Battery in the third degree is a Class A misdemeanor.[<sup>7</sup>]

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<sup>5</sup>Section 332.321.2. Statutory references are to RSMo 2000 unless otherwise noted.

<sup>6</sup>*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

<sup>7</sup>A.S.A § 5-13-203.

Those courses of conduct offer a range of culpability from purposely injuring or drugging someone to mere negligence.

Showing that an offense is reasonably related to a dentist's qualifications, functions or duties is a low threshold. To relate is merely to have a logical connection.<sup>8</sup> The qualifications of a dentist include good moral character.<sup>9</sup> Good moral character is honesty, fairness, and respect for the law and the rights of others.<sup>10</sup> Those have a logical connection to the offense, so we conclude that it relates to the qualifications of a dentist.

Showing that an offense has an essential element requires a more specific demonstration. An essential element of a statute is one that must be present to prove every case.<sup>11</sup> Therefore, the more alternative courses of conduct an offense includes, the fewer essential elements that offense has. The offense's statutory definition includes mere negligence, which includes the mere failure to act,<sup>12</sup> without the exertion of physical force. The exertion of physical force, so as to injure or abuse, defines violence.<sup>13</sup> Because violence need not be present to prove the offense, the offense does not have the essential element of violence.

Showing that an offense involves moral turpitude is also a higher threshold than a mere reasonable relation. In contrast to immoral conduct, which does not even require a culpable mental state, moral turpitude requires:

as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man; everything done contrary to justice, honesty, modesty, and good morals.<sup>[14]</sup>

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<sup>8</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1050 (11th ed. 2004).

<sup>9</sup>Section 332.151.1.

<sup>10</sup>*State ex rel. McAvoy v. Louisiana Bd. of Med. Examiners*, 115 So.2d 833, 839 n.2 (La. 1959), and *Florida Bd. of Bar Examiners Re: G.W.L.*, 364 So.2d 454, 458 (Fla. 1978).

<sup>11</sup>*State ex rel. Atkins v. State Bd. of Accountancy*, 351 S.W.2d 483, 485 (Mo. App., K.C.D. 1961).

<sup>12</sup>A.S.A. §§ 5-1-201 and 5-2-202.

<sup>13</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1396 (11th ed. 2004).

<sup>14</sup>*Brehe v. Mo. Dep't of Elem. & Secondary Educ.*, 213 S.W.3d 720, 725 (Mo. App., W.D. 2007) (citations and quote marks omitted).

Whether the offense involves moral turpitude depends, at least in part, on the offense's statutory definition.<sup>15</sup> The definition may describe conduct that involves moral turpitude always, never, or depending on the specific conduct committed. Third degree battery under Arkansas law requires at least injury with a deadly weapon by negligence. Negligence under Arkansas criminal law has a specific definition:

(A) A person acts negligently with respect to attendant circumstances or a result of his or her conduct when the person should be aware of a substantial and unjustifiable risk that the attendant circumstances exist or the result will occur.

(B) The risk must be of such a nature and degree that the actor's failure to perceive the risk involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation considering the nature and purpose of the actor's conduct and the circumstances known to the actor.<sup>[16]</sup>

A gross deviation away from the standard of care, and toward a substantial and unjustifiable risk, with a deadly weapon involves baseness, vileness, or depravity. Therefore, the offense involves moral turpitude.

We conclude that Rainey is subject to discipline because he has been finally adjudicated and found guilty in a criminal prosecution pursuant to the laws of Arkansas for an offense reasonably related to the qualifications of a dentist and involving moral turpitude.

## II. Fraudulent Application

The Board cites § 332.321.2(3), which allows discipline for:

[u]se of fraud, deception [or] misrepresentation . . . in securing [a dentist] license[.]

Fraud is an intentional perversion of truth to induce another to act in reliance upon it.<sup>17</sup>

Misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent

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<sup>15</sup>*Brehe*, 213 S.W.3d at 725.

<sup>16</sup>A.S.A. §§ 5-1-102(11) and 5-2-202(4).

<sup>17</sup>*Hernandez v. State Bd. of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997).

mistake.<sup>18</sup> Deception is the act of causing someone to accept as true what is not true.<sup>19</sup> We may infer deceitful intent from the facts.<sup>20</sup> The facts are that Rainey denied the offense on his renewal application, and we infer that he did so to obtain renewal. We conclude that Rainey is subject to discipline because he used fraud, deception, and misrepresentation in securing a dentist license.

### III. Sedation Regulations

The Board cites § 332.321.2(6), which allows discipline for:

[v]iolation of . . . any lawful . . . regulation adopted pursuant to this chapter[.]

Section 332.031.1 allows regulations for the effective administration of the statutes authorizing a dentist's administration of drugs. The Board cites the provisions of Regulation 4 CSR 110-4.020 that state:<sup>21</sup>

(1) No dentist shall administer [ECS] unless the dentist possesses a conscious sedation permit issued by the Missouri Dental Board.

(2) No dentist shall prescribe sedative agents for [ECS] unless the dentist possesses an [ECS] permit issued by the Missouri Dental Board.

By administering ECS and prescribed sedative agents without an ECS permit, Rainey violated Regulation 4 CSR 110-4.020(1) and (2). We conclude that Rainey is subject to discipline because he violated a regulation adopted pursuant to Chapter 332, RSMo.

### IV. Drug Laws

The Board cites § 332.321.2(15), which allows discipline for:

[v]iolation of the drug laws or . . . regulations of this state[.]

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<sup>18</sup>*Hernandez*, 936 S.W.2d at 899 n.3.

<sup>19</sup>MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 322 (11th ed. 2004).

<sup>20</sup>*Essex v. Getty Oil Co.*, 661 S.W.2d 544, 551 (Mo. App., W.D. 1983).

<sup>21</sup>Now renumbered 20 CSR 2110-4.020.

The Board cites Rainey's storage and record keeping for drugs including the controlled substances triazolam<sup>22</sup> and hydrocodone.<sup>23</sup>

The Board cites Department of Health Regulation 19 CSR 30-1.042(3):

After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least once a year. . . .

Rainey violated that provision by failing to maintain an annual inventory for the controlled substances in his possession.

The Board cites Department of Health Regulation 19 CSR 30-1.048(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;

\* \* \*

(C) The number of commercial containers of each finished form received from other persons, including the date of and number of containers in each receipt and the name, address and registration number of the person from whom the containers were received[.]

Rainey violated those provisions by failing to maintain controlled substance receipt records for hydrocodone and triazolam.

The Board cites § 195.050.6:

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 record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health.

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<sup>22</sup>Section 195.017.8(2)(vv).

<sup>23</sup>Section 195.017.6(4)(d).

Rainey violated that provision by failing to maintain an annual inventory for the controlled substances in his possession, and controlled substance receipt records for hydrocodone and triazolam.

The Board argues that by storing controlled substances at Rainey's home, he violated Department of Health Regulation 19 CSR 30-1.017(2)(A):

No person required to be registered shall engage in any activity for which registration is required until the application for registration is processed and the registration is issued.

It argues that Rainey engaged in the activities described at § 195.030.6:

A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

We disagree because the Board has not shown that Rainey manufactured, distributed, or dispensed controlled substances at his home address without BNDD authority. The Board cites no provision addressing storage at Rainey's home.

We conclude<sup>24</sup> that Rainey is subject to discipline because he violated the drug laws and regulations of this state.

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<sup>24</sup>The Board also cites its Regulation 19 CSR 30-1.031(1):

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 30-1.032-19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

The second amended complaint alleges that Rainey "did not have adequate security and controls in place to detect and prevent the diversion of controlled substances[.]" (Second Am. Compl. ¶ 21.) The Board cites no physical security controls or operating procedures security set forth in 19 CSR 30-1.032 through 19 CSR 30-1.034. Such pleading does not give Rainey sufficient notice of the course of conduct at issue for him to prepare a defense. *Duncan*, 744 S.W.2d at 538-39. Therefore, we do not make any conclusions of law on that charge.

## V. Incompetency, Misconduct, Gross Negligence

The Board cites the provisions of § 332.321.2(5) allowing discipline for:

[i]ncompetency, misconduct, [or] gross negligence . . . in the performance of, or relating to one's ability to perform, the functions or duties of [a dentist.]

Incompetency is a general lack of professional ability or a lack of disposition to use an otherwise sufficient professional ability.<sup>25</sup> Misconduct is the willful doing of a wrongful act.<sup>26</sup> Gross negligence is a deviation from the standard of care so great that it demonstrates a conscious indifference to a professional duty.<sup>27</sup> The mental states for misconduct and gross negligence – intent and indifference, respectively – are mutually exclusive. We may infer the requisite mental state from the conduct of the licensee “in light of all surrounding circumstances.”<sup>28</sup>

Each of those terms relates to professional practice. The professional functions and duties that the Board cites are ECS,<sup>29</sup> drug storage and record keeping,<sup>30</sup> and implant installation.<sup>31</sup> Rainey’s unlicensed ECS constitutes misconduct and incompetency because he knew that he was violating the regulations and did not care. His drug storage and record keeping in violation of statutes and regulations was so pervasive that we conclude it constitutes misconduct and not gross negligence. As to S.N., we find no conscious indifference to professional duty, but Rainey’s inability to perceive his own limitations in treating S.N. demonstrates the general lack of professional ability that constitutes incompetency.

We conclude that Rainey is subject to discipline for incompetency, misconduct, and gross negligence in the performance of a dentist’s functions or duties.

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<sup>25</sup>Section 1.020(8); *Johnson v. Mo. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).

<sup>26</sup>*Grace v. Missouri Gaming Comm'n*, 51 S.W.3d 891, 900-01 (Mo. App., W.D. 2001).

<sup>27</sup>*Tendai v. Missouri Bd. of Regis'n for the Healing Arts*, 161 S.W.3d 358, 367 (Mo. banc 2005).

<sup>28</sup>*State v. Jensen*, 184 S.W.3d 586, 589 (Mo. App., S.D. 2006).

<sup>29</sup>Section 332.361.1 and .2 (4).

<sup>30</sup>*Id.*

<sup>31</sup>Section 332.071.

## VI. Professional Trust

The Board cites the provisions of § 332.321.2(13) allowing discipline for:

[v]iolation of any professional trust or confidence[.]

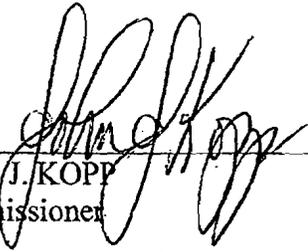
Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.<sup>32</sup> Violation of a professional trust includes an abuse of the power imbalance on matters within the knowledge of the licensed profession between the professional and client.<sup>33</sup>

But Missouri courts do not limit professional trust to clients. The Board cites Rainey's unlicensed ECS, substandard drug storage and record keeping, and substandard implant installation. The record shows that implant patients rely on their dentist's professional skills. We infer that Rainey's ECS clients relied on his license to follow licensing standards. We also infer that every member of the public relies on Rainey to keep track of, and protect, his supply of controlled substances and other drugs. We conclude that Rainey is subject to discipline for violation of professional trust.

### **Summary**

We grant the motion in part. Rainey is subject to discipline under § 332.321.2(2), (3), (5), (6), (13), and (15). The Board shall inform us by January 15, 2008, whether it intends to proceed to hearing on the remainder of the complaint.

SO ORDERED on January 8, 2008.

  
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JOHN J. KOPP  
Commissioner

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<sup>32</sup>*State v. Pappas*, 337 N.W.2d 490, 495 (Iowa 1983).

<sup>33</sup>*Siegel v. Kranis*, 288 N.Y.S.2d 831, 835 (N.Y. App. Div. 1968).

BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

**MAY 01 2006**

ADMINISTRATIVE HEARING  
COMMISSION

MISSOURI DENTAL BOARD, )  
P.O. BOX 1357 )  
3605 Missouri Blvd. )  
Jefferson City, Missouri 65102 )  
Petitioner, )

v. )

VERNON C. RAINEY, D.M.D. )  
1018 Kingshighway )  
Rolla, MO 65401 )  
Respondent. )

CAUSE No.: \_\_\_\_\_ **RECEIVED**

**NOV 07 '06 10:00**

MISSOURI DENTAL BOARD

COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney Nanci R. Wisdom and for its Complaint in the above-referenced matter states and alleges as follows:

1. The Petitioner 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 Vernon C. Rainey, D.M.D. is and at all times herein relevant, has been a licensed and certified dentist in the State of Missouri.
3. This Commission has jurisdiction to hear this Complaint pursuant to the provision in the Missouri Revised Statute section 621.045.

4. That at all times relevant herein, Respondent, Vernon C. Rainey, D.M.D., possessed a valid registration issued by the Drug Enforcement Agency and the Bureau of Narcotics and Dangerous Drugs.

### COUNT I

5. Petitioner Missouri Dental Board incorporates by reference and realleges as though set forth fully herein the statements and allegations contained in Petitioner's Allegations Common to All Counts.

6. Respondent Vernon C. Rainey, D.M.D. is registered by the Bureau of Narcotics and Dangerous Drugs to stock, prescribe, dispense and administer controlled substances under Missouri Controlled Substances Registration number 1100095 from October 12, 2004 to November 30, 2007.

7. On or about October 11, 2005, Respondent Vernon C. Rainey, D.M.D. stocked hydrocodone/APAP and Halcion.

8. Hydrocodone/APAP is combination drug product containing hydrocodone, which is codified as a Schedule III controlled substance pursuant to Section 195.017.6(4)(d), RSMo.

9. Halcion is a brand name for a drug product containing triazolam, which is codified as a Schedule IV controlled substance pursuant to Section 195.017.8(2)(vv), RSMo.

10. On or about October 11, 2005, Respondent Vernon C. Rainey, D.M.D. did not maintain annual inventory for the controlled substances in his possession in violation of Section 195.050.6 RSMo and 19 CSR 30-1.042(3).

11. On or about October 11, 2005, Respondent Vernon C. Rainey, D.M.D. did not maintain controlled substance receipt records for hydrocodone and Halcion in violation of Section 195.050.6 RSMo and 19 CSR 30-1.048(1).

12. On or about October 11, 2005, an investigation by the Bureau of Narcotics and Dangerous Drugs (hereinafter referred to as "BNDD") revealed Respondent Vernon C. Rainey, D.M.D. dispensed two to four hydrocodone/APAP tablets at a time and noted these dispensings in his patients' charts but not a separate dispensing log in violation of Section 195.050.6 RSMo and 19 CSR 30-1048(1) and (3).

13. On or about October 11, 2005, an investigation by BNDD revealed Respondent Vernon C. Rainey, D.M.D. did not maintain controlled substance dispensing records separate from the patient charts in violation of Section 195.050.6 RSMo and 19 CSR 30-1048(1) and (3).

14. On or about October 11, 2005, a BNDD investigation revealed Respondent Vernon C. Rainey, D.M.D. dispensed controlled substances in white paper envelopes and not FDA approved containers in violation of 19 CSR 30-1.066(1)(B).

15. On or about October 11, 2005, a BNDD investigation revealed Respondent Vernon C. Rainey, D.M.D. did not label packages of dispensed controlled substances with his name and address, name of the patient, directions for use and the exact name and strength of the drug dispensed in violation of Section 195.100.5 RSMo and 19 CSR 30-1.066(1)(c).

16. On or about October 11, 2005, a BNDD investigation revealed Respondent Vernon C. Rainey, D.M.D. did not apply a label warning against the illegal

transfer of controlled substances on packages of dispensed controlled substances in violation of Section 195.100.3 RSMo.

17. On or about October 11, 2005, Respondent Vernon C. Rainey, D.M.D. stored controlled substances at his home address. Respondent Vernon C. Rainey, D.M.D. does not have a current BNDD controlled substance registration to stock or to receive controlled substances at this location in violation of Section 195.030.6 RSMo and 19 CSR 30-1.017(2)(A).

18. On or about October 11, 2005, a Bureau of Narcotics and Dangerous Drugs investigation revealed that Respondent Vernon C. Rainey's, D.M.D. staff received patient's private medications of Halcion 0.25 mg in violation of Section 195.050.3 RSMo.

19. On or about October 11, 2005, a Bureau of Narcotics and Dangerous Drugs investigation revealed that Respondent Vernon C. Rainey, D.M.D. destroyed Halcion that he had purchased himself in the office incinerator, an improper manner of destruction in violation of 19 CSR 30-1.078(1).

20. On or about October 11, 2005, a Bureau of Narcotics and Dangerous Drugs investigation revealed that Respondent Vernon C. Rainey, D.M.D. did not maintain receipt records, an annual inventory, dispensing records or records of disposal of controlled substances he received in violation of Section 195.050.6 RSMo and 19 CSR 30-1.044(1).

21. On or about October 11, 2005, Respondent Vernon C. Rainey, D.M.D. did not have adequate security and controls in place to detect and prevent the diversion of controlled substances in violation of 19 CSR 30-1.031(1).

22. 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, any other state or the federal government.

23. That as a result of the foregoing, Respondent Vernon C. Rainey, D.M.D. has failed to comply with Missouri Revised Statute section 332.321.2.

24. That Missouri Revised Statute section 332.321.3 gives Petitioner Missouri Dental Board 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 cause to take disciplinary action against Respondent Vernon C. Rainey, D.M.D. in Count I or, in the alternative, this matter be set for an evidentiary hearing.

## COUNT II

25. Petitioner Missouri Dental Board incorporates by reference and realleges as though set forth fully herein the statements and allegations contained in Petitioner's Allegations Common to All Counts.

26. On or about March 24, 2004, Respondent Vernon C. Rainey, D.M.D. placed five small screw type mini implants in the maxilla and four lower mandibular implants in patient S.N.

27. Respondent Vernon C. Rainey, D.M.D. provided no follow-up care for patient S.N.

28. On or about August 13, 2004, patient S.N. presented to a subsequent treating dentist unable to wear dentures, with two mobile maxillary implants and in much pain.

29. Patient S.N.'s implants failed resulting in the removal of implants located at #6, #7, #8, #9, #11, #24, and #25.

30. Patient S.N. was Respondent Vernon C. Rainey's, D.M.D. first implant patient.

31. Respondent Vernon C. Rainey's, D.M.D. only training in placing implants was a few hours of continuing education.

32. Patient S.N. presented with a complex case especially for a dentist who had never performed implants.

33. Respondent Vernon C. Rainey, D.M.D. did not inform patient S.N. of his lack of experience.

34. Respondent Vernon C. Rainey, D.M.D. did not adjust the implants of patient S.N.

35. 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;

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

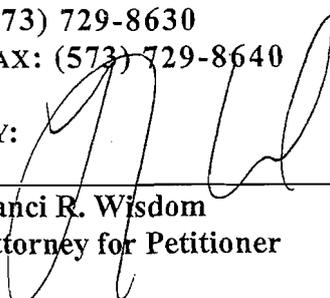
... (15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

36. That as a result of the foregoing, Respondent Ronald L. Shuler, D.D.S. has failed to comply with Missouri Revised Statute section 332.321.2.

37. That Missouri Revised Statute section 332.321.3 gives Petitioner Missouri Dental Board 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 cause to take disciplinary action against Respondent Vernon C. Rainey, D.M.D. in Count II or, in the alternative, this matter be set for an evidentiary hearing.

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