

Commonwealth of Kentucky
Before the Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222

Agency Case Number 10-145

Kentucky Board of Dentistry

Complainant

v.

Settlement Agreement

Marshall J. Ney, Jr., D.M.D.
(License No. 4509)

Respondent

* * * * *

Whereas, the Kentucky Board of Dentistry (hereinafter "Board") having information upon investigation of an initiating complaint that Marshall J. Ney, Jr., D.M.D. (hereinafter "Respondent"), 527 West Main Street, Richmond, Kentucky 40475, has acted in violation of

KRS Chapter 313, for which disciplinary action may be taken pursuant to KRS 313.080 (2)(e);

Whereas, the Respondent admits for the purposes of this Settlement Agreement the Board would be able to prove as follows:

At least eight (8) counts of a violation of KRS 313.080 (2) (c), (d), (e) and (f) pertaining to negligence by acting in a manner inconsistent with the practice of the discipline for which he is licensed; prescribing controlled substances which were outside the scope of dentistry and/or standard of care; prescribing controlled substances for non-dental purposes or in amounts that exceeded that which is justified in the course of the practice of dentistry; and, failing to maintain a drug log for the prescribing of controlled substances. This violation involved an investigation conducted by the Drug Enforcement Administration and Kentucky Board of Dentistry; and,

Whereas, the Respondent was previously disciplined by the Board in May 2002 for Failing to keep written dental records and medical history records to justify the course of treatment; and,

Whereas, the parties mutually desire to settle the issue in an expeditious manner, without the need for a formal hearing;

It is hereby stipulated and agreed between the undersigned parties that this matter shall be settled and resolved upon the following terms:

Voluntary Waiver of Rights

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this agreement. The Respondent has freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms and in consultation with his attorney.

The Respondent is fully aware of the Respondent's rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges or allegations filed, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the charges, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Circuit Court of the county in which the Board met as otherwise allowed by KRS 313.150(3). All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Settlement Agreement.

Jurisdiction

The Respondent acknowledges that the Board has jurisdiction over the Respondent and the conduct which has precipitated this settlement. The Respondent also acknowledges that the Board has the legal power to take disciplinary action up to and including revocation of the

Respondent's license to practice dentistry upon proof of the allegations in the Formal Complaint pending against the Respondent.

The Respondent acknowledges that the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board.

Publication of Settlement

The Respondent acknowledges that, once adopted by the Board, this Settlement Agreement may be considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands that the Board is free to make any use it deems appropriate of the contents of this agreement which shall include the Board's ability to share the content of this Settlement Agreement with any governmental or professional Board or organization and Board newsletter and availability via the Board website.

Effect Upon Licensure Status: Reprimand; Probation; Fine/Costs

It is stipulated as the agreed upon disciplinary action that:

- 1) Respondent's license to practice dentistry in Kentucky shall be suspended for a period of six (6) months, all but two (2) weeks of which suspension shall be probated for the period of probation, which shall be five (5) years from the date of this agreement, so long as Respondent complies with this agreement and commits no further violations of the Dental Practice Act. The remaining twenty-two (22) weeks of suspension shall be served if, and only if, Respondent commits further violations of the Dental Practice Act within the period of probation or fails to comply with the terms of this agreement. Respondent shall serve his two weeks suspension in two (2) consecutive calendar weeks to begin on or before May 7, 2012, and Respondent shall notify the Board in writing of the starting and ending dates of the suspension; and,
- 2) Pay a fine of \$16,000 (\$2,000 per count) and pay the costs of this investigation in the amount of \$4,000 which sums shall be paid within thirty (30) days of signing this agreement; and,

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- 3) Respondent shall voluntarily surrender the Respondent's Drug Enforcement Administration (DEA) Certificate in writing to the DEA within ^{twenty} ~~ten~~ (20) days of the Respondent's signing this Settlement Agreement with a copy of such surrender filed simultaneously with the Board and not re-apply for this privilege for a period of five (5) years from the date of this agreement; and,
 - 4) During the period for which Respondent's DEA Certificate is surrendered, Respondent shall not collaborate with any other dental or medical healthcare provider to have scheduled controlled substances prescribed for Respondent's patients. Respondent shall refer to another healthcare provider any patient who requires scheduled controlled substances prescribed to them for any reason.

The Respondent expressly understands that the Respondent, upon surrender of the Respondent's DEA Certificate, may not write scripts for, dispense, or call in to any pharmacy, any scheduled drugs so long as the Respondent does not hold a D.E.A. Certificate.

Enforcement of Settlement Agreement and Immediate, Temporary Suspension of License

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement constitutes misconduct for which the Board, its Law Enforcement Committee, or its Executive Director, shall issue an immediate, temporary suspension of the Respondent's dental license, and a fine of not less than \$1,000.00 as administrative costs of the Board, prior to a hearing with the right to appeal such action as provided under KRS 13B.125.

The Respondent agrees to indemnify the Board for any costs, including reasonable attorney's fees, if the Board finds, after notice and opportunity to be heard, that the Respondent has failed to comply with any provision of this Settlement Agreement.

Release of Liability

In consideration of execution of this Settlement Agreement, the Respondent for the Respondent personally, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Kentucky Board of Dentistry, and the Kentucky Attorney General and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of

action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration.

Cooperation with the Board


The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees to monitor the Respondent's compliance with the terms and conditions of this Settlement Agreement.

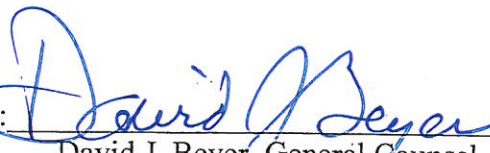
Complete Agreement

This Settlement Agreement consists of five (5) pages, and embodies the entire agreement between the Board and the Respondent. This Settlement Agreement shall constitute a binding contract between the Respondent and the Board, subject only to approval by the Board as set forth above. The Respondent shall not rescind, revoke, or withdraw this Settlement Agreement prior to its presentation to the Board at a regularly scheduled meeting of the Board. It may not be altered, amended or modified without the express written consent of both parties.

Have Seen, Understood, and Approved:

Kentucky Board of Dentistry


Marshall J. Ney, Jr, D.M.D.
527 West Main Street
Richmond, Kentucky 40475
Respondent

By: 
David J. Beyer, General Counsel
Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222

Date: 3/21/12

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