

BEFORE THE KANSAS DENTAL BOARD

FILED

AUG 23 2013

KANSAS DENTAL BOARD

In the Matter of )  
 )  
Brian H. Jenkins, D.D.S. )  
Kansas License No. 7100 )  
\_\_\_\_\_ )

Case No. 1567-01

OAH No. 13DB0001

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Brian H. Jenkins, D.D.S. (the "Respondent") as follows:

1. The Board is represented herein by its attorney, Kevin M. Fowler of Frieden, Unrein & Forbes, LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Richard Merker of Wallace, Saunders, Austin, Brown & Enochs, 10111 W. 87<sup>th</sup> Street, Overland Park, KS 66212.

2. The Board is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Kansas Dental Practices Act, which is codified in article 14 of chapter 65 and article 14 of chapter 74 of the Kansas Statutes Annotated and amendments or supplements thereto ("KDPA" or "Act"). Pursuant to applicable provisions of the KDPA and the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* ("KAPA"), whenever it is established that a licensee has committed any of the acts described in K.S.A. 65-

1436(a), the Board may revoke, suspend and/or limit the licensee's Kansas License and/or assess a fine against the licensee in an amount not in excess of \$10,000.00.

3. The Respondent is presently entitled to engage in the practice of dentistry in the State of Kansas by reason of the Board having issued him Kansas License Number 7100 ("Kansas License"). At all times relevant hereto, the Respondent has held a current license to engage in the practice of dentistry in the State of Kansas.

4. The Board has received certain information, investigated and determined that there are reasonable grounds to believe that the Respondent has committed an act or acts in violation of the KDPA. In relevant part, the Board alleges that the Respondent has engaged in the unauthorized practice of dentistry since mid to late 2011 by violating restrictions on his Kansas License which prohibit the Respondent from practicing dentistry except to the extent that he is employed by another dentist licensed in Kansas and he is paid a salary which is not based on his production. The Respondent denies that his Kansas License prohibits him from practicing dentistry except as an employee of another licensed dentist in Kansas; that he has received any compensation other than a salary; and that he has violated any provision of the KDPA.

5. In the interest of avoiding the inconvenience, expense, uncertainty and delay associated with this contested disciplinary proceeding and resolving all disputes between the parties without any adjudication of the allegations set forth in the Board's Disciplinary Petition (filed August 12, 2012), the Respondent hereby expressly stipulates and agrees, and the Board finds and concludes, that the following disposition of the above-styled disciplinary proceeding is fair, just and appropriate under the circumstances:

A. SURRENDER AND CANCELLATION OF KANSAS LICENSE. The Respondent shall voluntarily surrender his Kansas License Number 7100 to the Board no later

than December 31, 2013 and shall personally deliver or otherwise transmit such Kansas License so that it is received by the Board's Executive Director, B. Lane Hemsley, at the Landon State Office Building, 900 SW Jackson, Room 564-S, Topeka, Kansas 66612-1230, no later than December 31, 2013. The Respondent shall not practice dentistry in the State of Kansas after December 31, 2013 and the Respondent's Kansas License Number 7100 shall be cancelled effective January 1, 2014.

B. DISMISSAL OF DISCIPLINARY PROCEEDING. Immediately upon the approval and entry of this Stipulation and Final Agency Order by the Board, the Disciplinary Petition in Case No. 1567-01 and all allegations against the Respondent therein shall be automatically dismissed without further notice or action by the Board.

C. OTHER REQUIREMENTS. As an express condition of this Stipulation and Final Agency Order, the Respondent further stipulates and agrees, and the Board also orders, that he shall comply fully with this Stipulation and Final Agency Order, the Kansas Dental Practices Act, the Board's rules and regulations, and all federal and state laws applicable to dentists in the State of Kansas.

6. The Respondent agrees that all information in the possession of the Board's Investigation Committee, its staff, investigators and attorney regarding the subject matter of this disciplinary action may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Final Agency Order, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order is not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Final Agency Order or the information mentioned in the preceding sentence and further agrees to

waive any claim of due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

7. The stipulations and orders contained herein shall not become binding until this Stipulation and Final Agency Order is approved and entered by the Board in the manner specified herein. The Respondent acknowledges that the approval of the Board's attorney shall neither constitute the approval of the Board nor bind the Board to approve this Stipulation and Final Agency Order.

8. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it. The Respondent further agrees that the Kansas Dental Practices Act is constitutional on its face and as applied in this case.

9. This Stipulation and Final Agency Order shall be governed by and interpreted in accordance with the laws of the State of Kansas. This Stipulation and Final Agency Order also constitutes the entire agreement of the parties in Case No. 1567-01 and it may only be modified by a subsequent writing signed by the parties or their authorized representatives.

10. The Respondent acknowledges that he has the following rights:

- A. To have formal notice of charges served upon him;
- B. To file a response to the charges;
- C. To have notice of and participate in a formal adjudicative hearing with the Board making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and

AD

D. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The Respondent freely waives all of these rights and acknowledges that said waiver is knowingly, intelligently and voluntarily made as part of this Stipulation and Final Agency Order. This waiver specifically includes, without limitation, any right to a formal adjudicative hearing on the Disciplinary Petition, any right to seek administrative review or reconsideration of this Stipulation and Final Agency Order, any right to appeal from or to petition for judicial review of this Stipulation and Final Agency Order, and any right to otherwise challenge or contest the validity of this Stipulation and Final Agency Order.

11. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order knowingly, intelligently and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Final Agency Order in its entirety, that he understands its legal consequences and that he agrees that none of its terms are unconscionable, arbitrary or capricious.

12. Time is of the essence to this Stipulation and Final Agency Order. The Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency Order shall constitute a willful violation of a lawful Board order and shall constitute grounds for further disciplinary action against him. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Final Agency Order shall not affect the obligation of the Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

13. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed

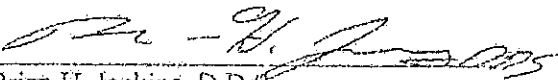
invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

14. Upon execution by all parties and entry as an order by the Board, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

15. This Stipulation and Final Agency Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's President or the President's authorized representative on the Final Agency Order which appears at Page 8 below.

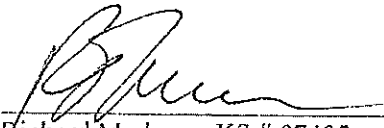
16. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of this Stipulation and Final Agency Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Stipulation and Final Agency Order to file a petition for judicial review in accordance with the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*, and to serve any such petition for judicial review on the Kansas Dental Board by serving D. Lane Hemsley, its Executive Director, at 900 SW Jackson, Room 564-S, Topeka, KS 66612. The Respondent hereby knowingly, intelligently and voluntarily waives all such rights.

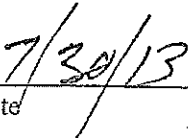
AGREED TO AND APPROVED BY:


  
Brian H. Jenkins, D.D.S.  
708 N. Diane Drive  
Olathe, KS 66061  
*Respondent*

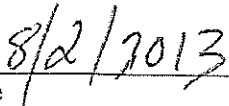
7-29-13  
Date

AGREED TO AND APPROVED BY:

  
Richard Merker KS # 07405  
Wallace Saunders Austin Brown Enochs  
10111 West 87th Street  
Overland Park, KS 66282  
Tel: (913) 888-1000  
Fax (913) 888-1065  
*Counsel for Respondent Brian H. Jenkins,  
D.D.S.*

  
Date

  
Kevin M. Fowler KS #11227  
Frieden, Unrein & Forbes, LLP  
555 S. Kansas Avenue, Suite 303  
Topeka, Kansas 66603  
Tel: (785) 354-1100  
Fax: (785) 354-1113  
*Disciplinary Counsel for the Kansas  
Dental Board*

  
Date





CERTIFICATE OF SERVICE

The undersigned hereby certifies that a genuine copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was deposited in the United States mail, first class postage prepaid, on this 23 day of August, 2013, properly addressed as follows:

Brian H. Jenkins, D.D.S.  
708 N. Diane Drive  
Olathe, KS 66061  
*Respondent*

Richard Merker  
Wallace, Saunders, Austin, Brown & Enochs  
10111 W. 87<sup>th</sup> Street  
Overland Park, KS 66212  
*Counsel for Respondent*

Kevin M. Fowler  
Frieden, Unrein & Forbes, LLP  
555 S. Kansas Avenue, Suite 303  
Topeka, KS 66603  
*Counsel for Kansas Dental Board*

  
\_\_\_\_\_  
B. Lane Hemsley  
Executive Director  
KANSAS DENTAL BOARD