

BEFORE THE KANSAS DENTAL BOARD

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APR 23 2010
KANSAS DENTAL BOARD

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

Case Nos. 09-144 and 09-156

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Richard Merker of Wallace, Saunders, Austin, Brown & Enochs, 10111 W. 87th Street, Overland Park, KS 66212.

2. The Board is the Kansas agency vested with the authority, pursuant to K.S.A. 74-1404 and K.S.A. 74-1406, to carry out and enforce the provisions of the Kansas Dental Law, K.S.A. 65-1401 *et seq.*, including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice dentistry.

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

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5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board finds:

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A. On or about April 25, 2007, Licensee diagnosed the need for a bridge to be place for patient K.S. After completion of root canal treatment, the bridge was place on July 21, 2008.

B. On June 1, 2009, Patient K.S. reports back to Licensee, who notes a large open margin on the distal aspect of the bridge abutment tooth #29. Licensee recommends the bridge be replaced, with post and core build-ups on tooth #29 and #31. There are no post-op x-rays in the patient's chart.

C. X-rays taken January 28, 2008 and June 6, 2008 indicate that the decay and resulting filling on tooth #29 already extended to the crestal bone.

D. Under the circumstances of this case, Respondent's failure to place posts in teeth #'s 29 and #31, his failure to provide crown lengthening before the bridge was started, and the apparent short margin were below the applicable standard of care.

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E. Patient J.M. was originally seen at the GraceMed dental clinic in Wichita by Dr. Nolte. Dr. Nolte referred Patient J.M. to an oral surgeon because the extractions needed to be performed on Patient J.M. were difficult.

F. On August 26, 2009, Licensee extracted teeth #16 and #17. The record of treatment does not note anything remarkable for the treatment of tooth #17, but does note that Licensee advised patient that she would be sore. Patient J.M. left the office in severe pain.

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G. During the week following the extraction, Patient's lip and chin were still numb, and her teeth no longer matched up or came together when she bit down.

H. On September 2, 2009, Patient J.M. returned to Licensee to have her stitches removed and to let Licensee know of her pain, swelling, and difficulty opening her mouth. Licensee removed the sutures he had placed. Licensee noted in the record of treatment that the patient has slight parasthesia from midline to pre-molar area. Licensee also advised the patient that her nerve was probably bruised and could take months to heal completely.

I. Over the next several weeks, Patient was still in severe pain. Patient J.M.'s teeth were still misaligned. Patient J.M. had trouble eating and couldn't open her mouth much more than a half of an inch.

J. On September 22, 2009, Patient J.M. returned to Licensee to have her severe pain in her lower jaw and inner ear evaluated. Patient J.M. reported to Licensee that she was having sharp pain shooting into her inner ear and up to her temple, causing her to have headaches. She also told Licensee she was still having problems chewing and was not able to open her mouth very far and that she was still in a lot of pain. She also reported numbness in her chin and lower lip. Licensee told Patient J.M that the numb chin was due to the trauma that her nerve had been through during the difficult extraction of tooth #17. Licensee told Patient J.M. that she would be lucky if she was feeling normal by Christmas, as the nerve needed time to heal. Patient J.M. again left Licensee in a severe amount of pain.

K. For the next week, the pain in Patient J.M.'s lower jaw never changed and was still very painful. She decided to seek a second opinion from an oral surgeon in Wichita. On September 29, 2009, Patient J.M. pulled a bone fragment out of the side of her lower socket, relieving the pain.

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L. The next day, Patient J.M. went to the oral surgeon for the second opinion. The surgeon examined her mouth, and ordered an x-ray. In the x-ray it is clearly visible that Patient J.M.'s jaw was broken. The surgeon thereafter informed Patient J.M. that due to the fact her jaw had been left unattended for so long, part of it had shifted upward and there were numerous bone fragments that needed to be removed, which required major surgery.

M. Under the circumstances of this case, Licensee's breaking of patient's jaw, failure to evaluate the patient's complaints after surgery, and failure to take post-op x-rays was treatment below the applicable standard of care.

The Board further finds and concludes that the aforesaid conduct is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1436(b) and K.S.A. 65-1436(a)(4), as defined by K.S.A. 65-1436(c)(2).

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

A. ADMINISTRATIVE FINE. Respondent agrees to the Board entering, and the Board does hereby enter a final agency order requiring the Respondent to pay to the Board, within ten (10) days of the effective date of the Board's order, an administrative fine in the amount of Five Hundred Dollars (\$500.00).

B. LIMITATION ON PERFORMING EXTRACTIONS. Respondent agrees, and the Board further orders, that Respondent shall be prohibited from performing any bony impacted extractions until further order of the Board.

C. CONTINUING EDUCATION. Respondent hereby agrees and consents to the Board entering an order requiring him, within six (6) months of the effective date of this Stipulation and Consent Order, to obtain either: eight (8) hours of continuing education in crown

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and bridge, which course includes topics covering crown lengthening or four (4) hours of clinical continuing education in crown and bridge, all in addition to any continuing education necessary to renew his Kansas dental license.

All continuing education hours Ordered by the Board must be approved by the Board before being taken. Within 15 days of completion of any continuing education credits required by this Stipulation and Consent Order, Respondent will provide satisfactory evidence of completion to the Board.

D. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order he must, and the Board further orders the Respondent to:

- (i) Comply fully with this Stipulation and Consent Order; and
- (ii) Comply fully with the Kansas Dental Act, the Board's rules and regulations and all state and federal laws applicable to dentists in the State of Kansas.

7. 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 Consent Order, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Consent Order is not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Consent Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due

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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.

8. The stipulations and orders contained herein shall not become binding until this Stipulation and Consent Order is approved and entered by the Board. The Respondent acknowledges that the approval of the Board's attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order.

9. The Respondent agrees that this Stipulation and Consent Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it. The Respondent further agrees that the Kansas Dental Act, K.S.A. 65-1421 *et seq.*, is constitutional on its face and as applied in this case.

10. This stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

11. 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
- D. To take advantage of all applicable provisions of the Kansas Administrative Procedures Act and the Act For Judicial Review and Civil Enforcement of Agency Action.

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The Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's limiting the disciplinary action taken against him to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order.

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

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

14. This Stipulation and Consent Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Consent Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Consent Order shall be given full force and effect.

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

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16. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's President or the President's authorized representative.

17. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

A. Adverse Action Classification: "1147 Limitation or Restriction on License and 1173 Publicly Available Fine/Monetary Penalty."

B. Basis For Action: "F6 Substandard or Inadequate Care."

18. 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 Consent Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Stipulation and Consent Order to file a petition for judicial review in the District Court of Shawnee County, Kansas, in accordance with the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 *et seq.*, and to serve such a petition for judicial review on the Kansas Dental Board by serving Betty Wright, its Executive Director, at 900 SW Jackson, Room 564-S, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 23rd day of April, 2010.


KANSAS DENTAL BOARD

By: Denise C. Maus R.D.H.
DENISE MAUS, R.D.H.
President

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AGREED TO AND APPROVED BY:



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

3-31-10

Date

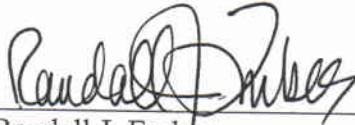
Signature of Respondent's Attorney

Date

(Name of Respondent's Attorney)

(Street Address or P.O. Box)

(City, State and Zip Code)



Randall J. Forbes #09089
Justin L. McFarland #24247
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Disciplinary Counsel for the
Kansas Dental Board

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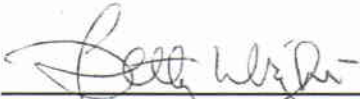
Date

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 27th day of April, 2010, deposit in the United States mail, postage prepaid, certified return receipt requested, a copy of the foregoing Stipulation and Consent Order properly addressed to the following:

Brian H. Jenkins, DDS
708 N. Diane Drive
Olathe, KS 66061

Randall J. Forbes
FRIEDEN & FORBES
555 South Kansas Ave, Suite 303
Topeka, KS 66601-0639



Betty Wright
Executive Director
Kansas Dental Board