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MAY - 9 2008

BEFORE THE KANSAS DENTAL BOARD

KANSAS DENTAL BOARD

In the Matter of )  
 )  
DONALD I. PFUETZE, D.D.S. )  
Kansas License No. 4552 )

Case No. 06-150

**STIPULATION AND CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Donald I. Pfuetze, 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, Arthur A. Glassman, Sloan, Eisenbarth, Glassman, McEntire & Jarboe, LLC, 534 S. Kansas Avenue, Suite 1000, Topeka, KS 66603.

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 4552. 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.*

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, that:

A. On or about December 6, 2006, the Board received a 2006 Biennial Renewal Form from Respondent. In response to paragraph 16(a) on the 2006 Biennial Dentist Renewal Form, the Respondent answered "Yes" to the following questions: "Has any adverse judgement [sic], award or settlement been paid in which you were named resulting from a professional liability claim?"

B. As a result, the Board contacted the Respondent's office to obtain documents relative to the Respondent's affirmative response to paragraph 16(a) on the 2006 Biennial Dentist Renewal Form. A Board inspector subsequently received and reviewed documents from the Respondent regarding Patient D.L. The Respondent treated Patient D.L. between October 1979 and July 2001. In 1980, the Respondent constructed two three-unit bridges for Patient D.L. to replace missing teeth #7 and #10. In 2001, Patient D.L. informed the Respondent that an increasing gap had developed between teeth #8 and #9. The Respondent constructed a six-unit bridge rather than two three-unit bridges and chose the splinted six units to prevent the spreading between teeth #8 and #9. After various complaints to the Respondent regarding her displeasure with the appearance of the bridge, the new bite, and the soreness of her gums, Patient D.L. sought the services of another dentist for removal of the six-unit bridge and replacement restorations. The Respondent achieved a poor result on the crown and bridge for Patient D.L. Additionally, in the Respondent's patient record for Patient D.L. between October 1979 and July 2001, there was only one periodontal charting in January 2001.

C. After a Board inspector reviewed documents that the Respondent provided relative to his affirmative response to paragraph 16(a) on the 2006 Biennial Dentist Renewal Form, the Board's Investigative Member requested that a Board inspector perform a record review at the Respondent's office to determine the standard of care in the Respondent's practice with regard to periodontal disease diagnosis and recordkeeping of periodontal disease.

D. On or about September 14, 2007, a Board inspector arrived at the Respondent's office to perform a record review in order to determine the standard of care in Respondent's practice with regard to periodontal disease diagnosis and recordkeeping of periodontal disease. Before the record review commenced, the Respondent indicated that he does not keep periodontal records as a rule and that if he discovers periodontal problems with a patient, he refers the patient to a periodontist. The Respondent further indicated that his referral is noted in the patient's record and, in his opinion, is adequate to show that the patient had periodontal problems and was properly referred. In order to substantiate these claims, the Board inspector performed the record review.

E. During a review of 25 records, which were selected at random, the Board inspector evaluated each record for the presence of a periodontal chart and comments within the progress and treatment notes pertaining to periodontal problems. Of the 25 records, six patients were fourteen years old or younger and periodontal charting is not considered mandatory. Of the remaining 19 records, the Board inspector found the following deficiencies:

1. Only five of the 19 records have evidence of a periodontal chart. In each of those cases, the pocket depths are only recorded a single time. There is no evidence that the disease was followed and treated appropriately.

2. In a few cases in which the Respondent noted periodontal problems, the patient records do not contain follow-up information regarding the periodontal problems for several years following the initial notation of periodontal problems.

3. In a few cases in which the Respondent referred a patient with severe periodontal disease to a periodontist, the patient returned to the Respondent's office because the patient chose not to pursue treatment with a periodontist. At subsequent visits with the Respondent, the records have no evidence of the disease process, periodontal charting, or the prognosis of the disease.

F. Under the circumstances of this case, the Respondent failed to maintain adequate records.

G. Under the circumstances of this case, the Respondent's failure to maintain adequate records regarding periodontal charting constitutes deviations from 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)(17).

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, and the Board further orders the Respondent, to pay to the Board, within ten (10) days of the effective date to the Stipulation and Consent Order contemplated hereby, an administrative fine in the amount of One Thousand Dollars (\$1,000).

B. CONTINUING DENTAL EDUCATION. Respondent hereby agrees and consents to the Board entering an order requiring him, and the Board further orders the Respondent, to obtain sixteen (16) hours of dental education on the topic of crown and bridge and eight (8) hours of dental education on the topic of periodontics within six (6) months of the effective date to the Stipulation and Consent Order contemplated hereby, all in addition to any continuing education necessary to renew his Kansas dental license.

C. 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:

1. Comply fully with this Stipulation and Consent Order; and
2. Comply fully with the Kansas Dental Act, the Board's rules and

regulations and all state and federal laws relating to Kansas dentists.

7. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and its attorney regarding the complaint which led to this disciplinary action, the investigation of the complaint and all information discovered during the pendency of the 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 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.

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.

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: "1173 Publicly Available Fine/Monetary Penalty."

B. Basis For Action: "45 Failure to Maintain Records or Provide Medical, Financial or Other Required Information."

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 9<sup>th</sup> day of May, ~~2003~~

KANSAS DENTAL BOARD

By:



RICHARD DARNALL, D.D.S.  
President

AGREED AND APPROVED BY:

  
\_\_\_\_\_  
DONALD I. PFUETZE, D.D.S.

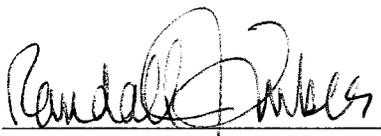
Jan 26, '08  
Date

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ROBERT HENSON, D.D.S.  
Investigation Member

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Respondent's Attorney's Name & Address  
Topeka, KS 66603

Jan 28, '08  
Date

  
\_\_\_\_\_  
Randall J. Forbes #09089  
FRIEDEN & FORBES  
555 S. Kansas Avenue, Suite 303  
Topeka, Kansas 66603  
TEL: (785) 232-7266  
FAX: (785) 232-7266  
Attorney for the Kansas Dental Board

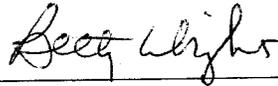
1.31.08  
Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **STIPULATION AND CONSENT ORDER** was served by depositing same in the United States mail, postage prepaid, this 12<sup>th</sup> day of May, 2007, addressed to:

Randall J. Forbes  
FRIEDEN & FORBES  
555 S. Kansas Avenue, Suite 303  
Topeka, KS 66603

Donald I. Pfuetze, D.D.S.  
2400 West 29<sup>th</sup> Street  
Topeka, KS 66611



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Betty Wright  
Executive Director  
KANSAS DENTAL BOARD