

BEFORE THE KANSAS DENTAL BOARD

FILED  
AUG 07 2015

In the Matter of the Licensure of: )  
ERIC C. JOHNSON, D.D.S. )  
Kansas License No. 60471 )  
\_\_\_\_\_ )

Case No. 11-16

KANSAS DENTAL BOARD

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorney, Brennan Fagan of Fagan, Emert & Davis, LLC, 730 New Hampshire, Suite 210, Lawrence, KS 66044.

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 his Kansas license number 60471. 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 claim that the Respondent has committed an act or acts in violation of the Kansas Dental Act, K.S.A. §§ 65-1401 *et seq.* The investigation was not the result of any patient complaint.

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 April 22, 2011, the Board received a complaint alleging that Respondent had engaged in certain practices that may violate the Act. Subsequent to the complaint, the Board investigated the allegations made in the complaint, including but not limited to all documents and information transmitted by the complainants, patient records, an interview with Respondent, an interview with the complainants, and consideration of all documents and information communicated by Respondent.

B. The investigation by the Board shows that for the year 2010, Respondent's records show four instances of discrepancies between the charting and billing of periodontal treatments, *i.e.*, deep scaling and root planing procedures, versus prophylactic services. In these four instances Respondent's clinical notes indicated that the hygienist(s) performed a prophylactic cleaning, and/or Respondent's clinical notes contained insufficient information to support the provision of deep scaling and root planing but bills were submitted for scaling and root planing.

C. Additionally, the Board's investigation shows that hygienists under Respondent's supervision provided periodontal therapeutic services to patients where no prior diagnosis of periodontal disease had been provided by Respondent, prior to the provision of such services by the hygienist(s).

D. The investigation by the Board also shows Respondent improperly waived the insurance co-payment of four patients' periodontal procedures.

E. The investigation by the Board also shows that Respondent failed to maintain and keep adequate diagnostic dental records within the meaning of K.S.A. § 65-1436(a)(17) and K.A.R. § 71-1-15(i), by failing to ensure that patient records contained pertinent and significant information concerning the patient's condition, Respondent's diagnosis and sufficient information supporting said diagnosis, adequate information regarding treatment performed or recommended, and the patient's progress during the course of treatment.

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), K.S.A. § 65-1436(a)(1), K.S.A. § 65-1436(a)(5), K.S.A. § 65-1436(a)(16), K.S.A. § 65-1436(a)(17) and K.A.R. § 71-1-15(i).

6. Respondent adamantly denies any wrongdoing or other conduct violative of the Kansas Dental Law with respect to any alleged violation of K.S.A. § 65-1436(a)(1) and K.S.A. § 65-1436(a)(16). Respondent states that any alleged violations of these sections were neither knowingly nor intentionally committed, that such coding was not committed with any intent to deceive for the purpose of obtaining the payment of money or anything of value to which the Respondent was not entitled and these alleged violations did not result in any overpayment to the Respondent as Respondent promptly refunded any payments received to the patients in question when this issue was brought to Respondent's attention. Respondent admits that co-pay was waived for a select number of patients, that hygienist(s) under Respondent's supervision provided periodontal therapeutic services to patients without obtaining a prior diagnosis of periodontal disease from Respondent, and that Respondent failed to maintain adequate records as required by the Kansas Dental Law. The Board finds that Respondent has made a good faith

effort to improve his record keeping and supervisory practices of his support staff and has fully complied with the Board's investigation.

7. The parties agree that this matter should be resolved informally and that any formal proceedings would involve considerable time and expense and the result of such proceeding is uncertain. Due to the uncertainty of an administrative hearing and due to Respondent's strong desire to end this matter and continue to pursue his chosen vocation of Dentistry without this distraction and the expenses associated with it, Respondent and the Board agree that the heretofore mentioned findings of the Board may be entered without objection.

8. Therefore, 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 of this Stipulation and Consent Order, an administrative fine of Two Thousand Dollars (\$2,000.00).

B. RECORD REVIEW. Respondent agrees and consents and the Board further orders that between six (6) months and one (1) year from the effective date of this Stipulation and Consent Order, the Board shall conduct a review of up to 30 of Respondent's charts and related billing records relating to periodontal treatments, chosen at random.

C. APPEARANCE: Respondent agrees, and the Board further orders that Respondent must attend, in person, the Board meeting during which this Stipulation and Consent Order is considered. Furthermore, Respondent acknowledges that it is his responsibility to determine the date, place and time of said Board meeting, and will not receive notice, in any way, from the Board of such meeting.

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:

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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

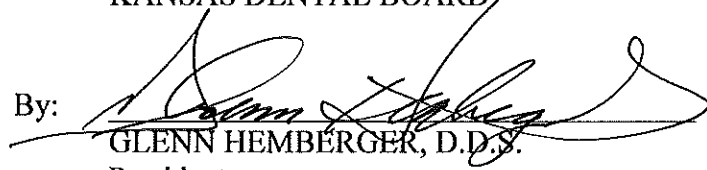
19. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of this Stipulation and Consent Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Stipulation and Consent Order to 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 B. Lane Hemsley, its Executive Director, at 900 SW Jackson, Room 564-S, Topeka, KS 66612. The Respondent hereby waives those rights.

**ENTERED AND EFFECTIVE** this 7 day of August, 2015.

KANSAS DENTAL BOARD

By:

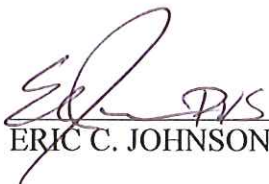
A handwritten signature in black ink, appearing to read "Glenn Hemberger", is written over a horizontal line. The signature is fluid and cursive.

GLENN HEMBERGER, D.D.S.

President



AGREED AND APPROVED BY:

  
ERIC C. JOHNSON, D.D.S.


7-10-15  
Date

  
GLENN HEMBERGER, D.D.S.  
Investigation Member

8/7/15  
Date

  
Brennan Fagan  
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(785)-331-0300  
(785)-331-0303  
**Attorneys for Respondent**

7/16/15  
Date

  
Randall J. Forbes, #09089  
Timothy D. Resner, #25064  
FRIEDEN, UNREIN & FORBES, LLP  
1414 SW Ashworth Place, Suite 201  
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**Attorneys for the Kansas Dental Board**

7/20/15  
Date

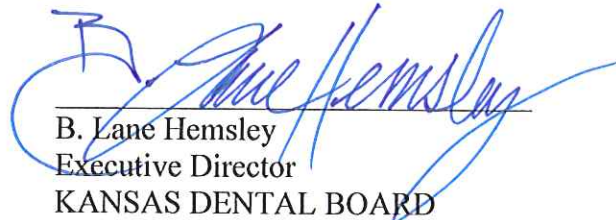
**CERTIFICATE OF SERVICE**

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 10<sup>th</sup> day of August, 2015, addressed to:

Randall J. Forbes  
Timothy D. Resner  
FRIEDEN, UNREIN & FORBES, L.L.P.  
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B. Lane Hemsley  
Executive Director  
KANSAS DENTAL BOARD