

B. Lane Swartz

BEFORE THE KANSAS DENTAL BOARD
OF THE STATE OF KANSAS

FILED
APR - 4 2012
KANSAS DENTAL BOARD

In the Matter of)
)
Glenn R. Duckworth, DDS)
Kansas License Number 4324)
)

Case No.: 08-135
OAH No. 11DB0002

Pursuant to Chapter 77

INITIAL ORDER

Statement of Case

The Kansas Dental Board (Board) filed a Petition for Disciplinary Action in the above-captioned matter on or about February 5, 2011. On January 30, 2012, this matter proceeded to formal hearing. The Board alleges five violations of the Kansas Dental Practices Act.

Findings of Fact

1. In October of 2008, the Board received a complaint from Patient LD, an adult male. Patient LD was complaining about dental services provided by the Respondent (Glenn R. Duckworth) and questionable insurance billing by the Respondent.
2. On October 24, 2008, the complaint concerning the Respondent was forwarded to the Respondent along with a request for a response to the complaint and a copy of the complaining party's dental records.
3. Despite numerous attempts by the Board to obtain the records of Patient LD from the Respondent, the Respondent did not provide these records until approximately 13 months after they were first requested.
4. On or about February 4, 2009, as a result of the Respondent's failure to provide dental records and a response to the complaint of Patient LD, a Petition for Disciplinary Action was instituted against the Respondent. The Certificate of Service with a mailing to the Respondent is dated February 4, 2009.
5. The Petition for Disciplinary Action was set for prehearing conference on March 26, 2009.
6. The Certificate of Service is dated February 20, 2009 and was not returned as undeliverable. The Respondent failed to appear and thereafter, on March 26, 2009, a

Notice of Proposed Default Order and Proposed Default Order was issued against the Respondent. This notice was served on the Respondent on March 26, 2009 and was not returned as undeliverable.

7. No request was made to vacate the Proposed Default Order issued against the Respondent and on April 9, 2009 an Initial Order was entered suspending the Respondent's license to practice dentistry in Kansas. This order was served on the Respondent on April 9, 2009 and served again on the Respondent on June 24, 2009. Neither the April 9, 2009 Initial Order nor the June 24, 2009 Initial Order was returned as undeliverable.
8. Regarding the treatment of Patient LD, the Respondent submitted an insurance claim with Patient LD's insurance provider. The claim represented that the Respondent performed a root canal on Tooth #3 in February 2008. Patient LD's Tooth #3 was examined in September 2008 by a subsequent dentist and it was determined that the root canal on Tooth #3 had never been completed.
9. The Respondent filed an insurance claim representing that a gold crown was placed on Patient LD's Tooth #13 in October of 2007. It was later determined that Tooth #13 did not have a crown until sometime between February 1, 2008 and September 2008. Further, the crown on Tooth #13 was defective after less than one year and required replacement.
10. The Respondent's dental records for Patient LD indicate that a gold crown was placed on Tooth #14 in October of 2007. The Respondent represented to the Board that he had placed a gold crown on Patient LD's Tooth #14. An examination of Patient LD's Tooth #14 shows that there is not a gold crown present on Tooth #14. There was no prep work done on the tooth and no temporary crown.
11. X-rays taken by the Respondent of Patient LD's mouth reveal areas of infection and decay; however, the Respondent did not record this in his dental records.
12. A review of the dental records of Patient LD showed no detailed notes or records of treatment nor a plan of care for the patient. There was nothing in the patient file as to the material used and any anesthetic used. There was nothing in the chart concerning any examination of the soft tissue and no periodontal charting. Finally, the patient's x-rays were not completely dated showing exactly when they were taken.
13. Robert Edwards, DDS, reviewed the Respondent's records concerning sterilization and infection control and the performance of spore testing. This was done on February 23, 2010.
14. During the February 2010 inspection of the Respondent's facility, it was clear that the Respondent was not properly conducting biological spore testing. The requirement is

that the test be conducted at least once a month and a record of the testing must be maintained.

15. The Respondent was not conducting spore testing at least monthly and did not maintain a log of his spore testing.
16. From the effective date of the Initial Order, no later than July 24, 2009 through December 11, 2009, the Respondent practiced dentistry in the state of Kansas even though his license was suspended and he was not licensed to practice dentistry.
17. From July 24, 2009 through November 9, 2009, the Respondent submitted insurance claims for dental procedures he performed. These billings purported that the Respondent was licensed to practice dentistry in the state of Kansas even though his license had been suspended.

Applicable Law

1. Kansas Statutes Annotated (K.S.A.) 65-1421 provides as follows:

License required to practice dentistry or dental hygiene.

It shall be unlawful for any person to practice dentistry or dental hygiene in the state of Kansas, except:

- (a) Those who are now duly licensed dentists, pursuant to law;
- (b) those who are now duly licensed dental hygienists, pursuant to law;
- (c) those who may hereafter be duly licensed as dentists or dental hygienists, pursuant to the provisions of this act.

2. Kansas Administrative Regulation (K.A.R.) 71-1-15 provides as follows:

Dental recordkeeping requirements.

For the purposes of K.S.A. 65-1436 and amendments thereto, each licensee shall maintain for each patient an adequate dental record for 10 years after the date any professional service was provided. Each record shall disclose the justification for the course of treatment and shall meet all of the following minimum requirements:

- (a) It is legible.
- (b) It contains only those terms and abbreviations that are comprehensible to similar licensees.
- (c) It contains adequate identification of the patient.
- (d) It indicates the date any professional service was provided.
- (e) It contains pertinent and significant information concerning the patient's condition.

- (f) It reflects what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each.
- (g) It indicates the initial diagnosis and the patient's initial reason for seeking the licensee's services.
- (h) It indicates the medications prescribed, dispensed, or administered and the quantity and strength of each.
- (i) It reflects the treatment performed or recommended.
- (j) It documents the patient's progress during the course of treatment provided by the licensee.

3. K.A.R. 71-1-18 provides as follows:

Sterilization and infection control.

- (a) As used in this regulation, the following definitions shall apply:
 - (1) "Dental health care worker" means dentist, dental hygienist, dental assistant, or other employee of the dentist, or any other person who performs or participates in an invasive or exposure-prone procedure or functions ancillary to invasive procedures.
 - (2) "Exposure-prone procedure" means a procedure in which there is an increased risk of percutaneous injury to the dental health care worker by virtue of digital palpation of a needle tip or other sharp instrument in a body cavity or simultaneous presence of the dental health care worker's fingers and a needle or other sharp instruments in a poorly visualized or highly confined anatomic site, or any other circumstance in which there is a significant risk of contact between the blood or body fluids of the dental health care worker and the blood or body fluids of the patient.
 - (3) "HBeAg seropositive" means that the presence of the hepatitis B antigen has been confirmed by a test meeting the criteria of the federal centers for disease control.
 - (4) "HBV" means the hepatitis B virus.
 - (5) "HIV" means the human immunodeficiency virus.
 - (6) "HIV seropositive" means that the presence of HIV antibodies has been confirmed by a test meeting the criteria of the federal centers for disease control.
 - (7) "Invasive procedure" means any surgical or other diagnostic or therapeutic procedure involving manual or instrumental contact with or entry into any blood, body fluids, cavity, internal organ, subcutaneous tissue, mucous membrane, or percutaneous wound of the human body.
- (b) Each dental health care worker who performs or participates in an invasive or exposure-prone procedure shall observe and

adhere to infection control practices and universal blood and body fluid precautions. For the purpose of infection control, all dental staff members and all patients shall be considered potential carriers of communicable diseases. Infection control procedures shall be required to prevent disease transmission from patient to doctor and staff, doctor and staff to patient, and patient to patient. Each dentist shall be required to comply with the applicable standard of care in effect at the time of treatment. Precautions shall include the following minimum standards.

- (1) Each dental health care worker shall routinely use protective barriers and surface decontamination.
 - (A) Gloves shall be used by the dentist and direct care staff during any treatment involving procedures or contact with items potentially contaminated with the patient's bodily fluids or other dental debris. Fresh gloves shall be used for each patient. Gloves that have been used for dental treatment shall not be reused for any other purpose.
 - (B) Surgical masks and protective eyewear or chin-length plastic face shields shall be worn to protect the face, the oral mucosa, and the nasal mucosa when splashing or splattering of blood or other body fluids is likely.
 - (C) Reusable or disposable gowns, laboratory coats, or uniforms shall be worn when clothing is likely to be soiled with blood or other body fluids. If reusable gowns are worn, they may be washed, using a normal laundry cycle. Gowns shall be changed at least daily or when visibly soiled with blood.
 - (D) Surface decontamination and disinfection or protective barriers shall be used in areas of the dental operatory that may be contaminated by blood or saliva during treatment and are not removable to be sterilized. Contaminated surface coverings shall be removed, discarded, and then replaced with clean material between patients. Surfaces to be covered or decontaminated and disinfected shall include the following:
 - (i) The delivery unit;
 - (ii) chair controls;
 - (iii) light handles;
 - (iv) the high-volume evacuator handle;
 - (v) x-ray heads and controls;
 - (vi) headrests; and
 - (vii) instrument trays.

- (E) Dental health care workers shall wash their hands after glove removal if the hands have been contaminated by bodily fluids or other dental debris.
 - (F) Dental health care workers who have exudative lesions or weeping dermatitis shall refrain from all direct patient care and from handling patient care devices used in exposure-prone invasive procedures, unless covered by an effective barrier.
- (2) Dental health care workers shall take appropriate precautions to prevent injuries caused by needles, scalpels, and other sharp instruments during and after procedures. If during a single visit a patient needs multiple injections over time from a single syringe, the needle shall be recapped or placed in a sterile field between each use to avoid the possibility of needlestick injury or needle contamination. Used sharp items shall be placed in puncture-resistant containers for disposal.
- (3) Any heat-stable instrument or device that enters tissue or contacts the mucous membranes shall be sterilized. Dental health care workers shall comply with the following sterilization requirements:
- (A) Before sterilization, all instruments shall be decontaminated to remove all visible surface contamination, including blood, saliva, tooth and dental restorative material cuttings and debris, soft tissue debris, and bacterial plaque. Decontamination of instruments may be accomplished by a thorough scrubbing with soap and water or detergent, or by using a mechanical device, including an ultrasonic cleaner. Persons involved in cleaning instruments shall take reasonable precautions to prevent injuries.
 - (B) Heat-stable dental instruments shall be routinely sterilized between patient use by one of the following methods:
 - (i) Steam under pressure autoclaves;
 - (ii) heat plus pressurized chemical (unsaturated formaldehyde or alcohol);
 - (iii) vapor chemoclave;
 - (iv) prolonged dry heat exposure;
 - (v) dry heat convection sterilizers;
 - (vi) ethylene oxide sterilizers; or
 - (vii) other equivalent methods.
 - (C) Biological spore testing devices shall be used on each sterilization unit after each six days of use, but not less often than each month, to verify that all

pathogens have been killed. A log of spore testing shall be kept for three years for each sterilization unit.

- (D) Items to be sterilized shall include the following:
 - (i) Low-speed handpiece contra-angles and prophy-angles;
 - (ii) high-speed handpieces;
 - (iii) hand instruments;
 - (iv) burs;
 - (v) endodontic instruments;
 - (vi) air-water syringe tips;
 - (vii) high-volume evacuator tips;
 - (viii) surgical instruments; and
 - (ix) sonic or ultrasonic periodontal scalers.
- (E) When sterilizing the heat-stable instruments or devices listed in paragraphs (b)(3)(D)(i) through (ix), each instrument or device shall be placed in a closed bag or container for sterilization and thereafter maintained in that bag or container until immediately before use.
- (F) Following the sterilization of heat-stable instruments or devices not listed in paragraphs (b)(3)(D)(i) through (ix), each instrument or device shall be maintained in covered storage until immediately before use.
- (G) Nondisposable items used in noninvasive procedures that cannot be heat sterilized shall be decontaminated and disinfected with a chemical sterilant that has been registered by the U.S. Environmental Protection Agency and is tuberculocidal.
- (H) Materials, impressions, and intra-oral appliances shall be decontaminated and disinfected before being sent to and upon return from a commercial dental laboratory.
- (I) A dental health care worker who is HBeAg seropositive or HIV seropositive, or who otherwise knows or should know that the worker carries and is capable of transmitting HBV or HIV, shall not thereafter perform or participate directly in an exposure-prone procedure unless the worker has sought counsel from an expert review panel. The expert review panel shall be composed of these individuals:

- (i) The dental health care worker's personal physician;
 - (ii) an infectious disease specialist with expertise in HIV and HBV transmission;
 - (iii) a dentist licensed in the state of Kansas with expertise in procedures performed by the health care worker; and
 - (iv) a state of Kansas or local public health official.
- (c) Reports and information furnished to the Kansas dental board relative to the HBeAg or HIV status of a dental health care worker shall not be deemed to constitute a public record but shall be deemed and maintained by the board as confidential and privileged as a medical record. These reports and this information shall not be subject to disclosure by means of subpoena in any judicial, administrative, or investigative proceeding, if the dental health care worker adheres to the regulations of the board and is willing to participate in counseling and be reviewed and monitored by the board or its designated agent.
- (d) When the board learns that a dental health care worker is HBeAg or HIV seropositive, contact shall be made with that dental health care worker to review the regulations of the board and develop a process of monitoring that individual's practice.
- (e) The monitoring of a dental health care worker's HIV or HBV status and discipline of the dental health care worker shall be reported to the Kansas department of health and environment, but shall remain confidential.
- (f) During business hours, the office of a licensed dentist may be inspected by the Kansas dental board or its duly authorized agents and employees in order to evaluate compliance with this regulation. A written evaluation shall be given to the licensed person or office representative, and a copy shall be filed with the Kansas dental board.

4. K.S.A. 65-1436 provides as follows:

Grounds for refusal to issue license or for action against license of dentist or dental hygienist; disciplinary action by board; notice and hearing; professionally incompetent defined; physical or mental examination.

- (a) The Kansas dental board may refuse to issue the license under the dental practices act, or may take any of the actions with respect to any dental or dental hygiene license as set forth in subsection (b), whenever it is established, after notice and

opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that any applicant for a dental or dental hygiene license or any licensed dentist or dental hygienist practicing in the state of Kansas has:

- (1) Committed fraud, deceit or misrepresentation in obtaining any license, money or other thing of value;
- (2) habitually used intoxicants or drugs which have rendered such person unfit for the practice of dentistry or dental hygiene;
- (3) been determined by the board to be professionally incompetent;
- (4) committed gross, wanton or willful negligence in the practice of dentistry or dental hygiene;
- (5) employed, allowed or permitted any unlicensed person or persons to perform any work in the licensee's office which constitutes the practice of dentistry or dental hygiene under the provisions of the dental practices act;
- (6) willfully violated the laws of this state relating to the practice of dentistry or dental hygiene or the rules and regulations of the secretary of health and environment or of the board regarding sanitation;
- (7) engaged in the division of fees, or agreed to split or divide the fee received for dental service with any person for bringing or referring a patient without the knowledge of the patient or the patient's legal representative, except:
 - (A) The division of fees between dentists practicing in a partnership and sharing professional fees;
 - (B) the division of fees between one licensed dentist employing another; or
 - (C) the division of fees between a licensed dentist and a dental franchisor;
- (8) committed complicity in association with or allowed the use of the licensed dentist's name in conjunction with any person who is engaged in the illegal practice of dentistry;
- (9) been convicted of a felony or a misdemeanor involving moral turpitude in any jurisdiction and the licensee fails to show that the licensee has been sufficiently rehabilitated to warrant the public trust;
- (10) prescribed, dispensed, administered or distributed a prescription drug or substance, including a controlled substance, in an excessive, improper or inappropriate manner or quantity outside the scope of practice of dentistry or in a manner that impairs the health and safety of an individual;

- (11) prescribed, purchased, administered, sold or given away prescription drugs, including a controlled substance, for other than legal and legitimate purposes;
- (12) violated or been convicted of any federal or state law regulating possession, distribution or use of any controlled substance;
- (13) failed to pay license fees;
- (14) used the name "clinic," "institute" or other title that may suggest a public or semipublic activity except that the name "clinic" may be used as authorized in K.S.A. 65-1435, and amendments thereto;
- (15) committed, after becoming a licensee, any conduct which is detrimental to the public health, safety or welfare as defined by rules and regulations of the board;
- (16) engaged in a misleading, deceptive, untrue or fraudulent misrepresentation in the practice of dentistry or on any document connected with the practice of dentistry by knowingly submitting any misleading, deceptive, untrue or fraudulent misrepresentation on a claim form, bill or statement, including the systematic waiver of patient co-payment or co-insurance;
- (17) failed to keep adequate records;
- (18) the licensee has had a license to practice dentistry revoked, suspended or limited, has been censured or has had other disciplinary action taken, has had an application for license denied, or voluntarily surrendered the license after formal proceedings have been commenced by the proper licensing authority or another state, territory or the District of Columbia or other country, a certified copy of the record of the action of the other jurisdiction being conclusive evidence thereof;
- (19) failed to furnish the board, or its investigators or representatives any information legally requested by the board; or
- (20) assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 21-5407, and amendments thereto, as established by any of the following:
 - (A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 21-5407, and amendments thereto;
 - (B) a copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 60-4404, and amendments thereto; or

- (C) a copy of the record of a judgment assessing damages under K.S.A. 60-4405, and amendments thereto.
- (b) Whenever it is established, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, that a licensee is in any of the circumstances or has committed any of the acts described in subsection (a), the Kansas dental board may take one or any combination of the following actions with respect to the license of the licensee:
- (1) Revoke the license;
 - (2) suspend the license for such period of time as may be determined by the board;
 - (3) restrict the right of the licensee to practice by imposing limitations upon dental or dental hygiene procedures which may be performed, categories of dental disease which may be treated or types of patients which may be treated by the dentist or dental hygienist. Such restrictions shall continue for such period of time as may be determined by the board, and the board may require the licensee to provide additional evidence at hearing before lifting such restrictions; or
 - (4) grant a period of probation during which the imposition of one or more of the actions described in subsections (b)(1) through (b)(3) will be stayed subject to such conditions as may be imposed by the board including a requirement that the dentist or dental hygienist refrain from any course of conduct which may result in further violation of the dental practice act or the dentist or dental hygienist complete additional or remedial instruction. The violation of any provision of the dental practice act or failure to meet any condition imposed by the board as set forth in the order of the board will result in immediate termination of the period of probation and imposition of such other action as has been taken by the board.
- (c) As used in this section, "professionally incompetent" means:
- (1) One or more instances involving failure to adhere to the applicable standard of dental or dental hygienist care to a degree which constitutes gross negligence, as determined by the board;
 - (2) repeated instances involving failure to adhere to the applicable standard of dental or dental hygienist care to a degree which constitutes ordinary negligence, as determined by the board; or

- (3) a pattern of dental or dental hygienist practice or other behavior which demonstrates a manifest incapacity or incompetence to practice dentistry.
- (d) In addition to or in lieu of one or more of the actions described in subsections (b)(1) through (b)(4) or in subsection (c) of K.S.A. 65-1444, and amendments thereto, the board may assess a fine not in excess of \$10,000 against a licensee. All fines collected pursuant to this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury and of the amount so remitted, an amount equal to the board's actual costs related to fine assessment and enforcement under this subsection, as certified by the president of the board to the state treasurer, shall be credited to the dental board fee fund and the balance shall be credited to the state general fund.
- (e) The board, upon its own motion or upon the request of any licensee who is a party to a licensure action, may require a physical or mental examination, or both, of such licensee either prior to a hearing to be held as a part of a licensure action or prior to the termination of any period of suspension or the termination of any restrictions imposed upon the licensee as provided in subsection (b).

Conclusions of Law

Count I

1. Count I of the Board's Petition for Disciplinary Action alleges professional incompetency in the treatment of Patient LD, questionable insurance billings concerning Patient LD, and incompetence of the Respondent in so far as it relates to sanitation regulations.
2. The care provided by the Respondent to Patient LD falls below the applicable standard of care. The Respondent did not complete a root canal as he alleged in insurance billings. X-rays of Patient LD show infection and decay, but the Respondent's records did not contain any diagnosis of this. The Respondent alleges that he placed a gold crown on Patient LD's Tooth #14 and Patient LD's Tooth #14 does not have a gold crown. A crown on Patient LD's Tooth #13 was defective and had leaking margins less than one year after placement. This crown was required to be replaced. The Respondent billed for placing a gold crown on Patient LD's Tooth #14 when no crown was placed on the tooth.

3. In so far as sanitation is concerned, the Respondent's own records, as examined on February 23, 2010, clearly establish that he has failed to perform adequate spore testing and failed to maintain the proper logs. It is noted that this is not the first instance where the Respondent has failed to conduct proper spore testing.
4. The Respondent's repeated instances of professional incompetency constitute ordinary negligence as set forth at K.S.A. 65-1436.
5. The Respondent failed to comply with K.A.R. 71-1-18 and, therefore, has violated K.S.A. 65-1436(a)(6).
6. This further establishes the Respondent's incompetency to practice dentistry.

Count II

7. Count II of the Board's Petition for Disciplinary Action alleges that the Respondent failed to properly conduct spore testing in compliance with K.A.R. 71-1-18.
8. From the testimony presented as well as the records of the Respondent, it is clear that the Respondent did not properly conduct spore testing in that spore testing must be performed at a minimum of once every month. The Respondent did not do this nor did the Respondent allege that this was done.
9. The Respondent has failed to meet the requirements of K.A.R. 71-1-18 and, therefore, the Respondent is in violation of K.S.A. 65-1436(a)(6).

Count III

10. Count III of the Board's Petition for Disciplinary Action alleges that the Respondent's action, by submitting insurance billings concerning Patient LD and by submitting insurance billings from July 24, 2009 through November 9, 2009, constituted misleading, deceptive, untrue or fraudulent misrepresentation.
11. The Respondent billed Patient LD's insurance for allegedly placing a gold crown on Patient LD's Tooth #14. This was not done.
12. The billing for a gold crown on Patient LD's Tooth #14 was an untrue representation that the Respondent had placed a gold crown on Patient LD's Tooth #14.
13. The Respondent, by submitting bills to Dental Dental for the time period between July 24, 2009 and November 9, 2009, misrepresented the fact that he was a licensed dentist at that time.
14. Because the Respondent submitted misleading and deceptive billings to Delta Dental, the Respondent has violated K.S.A. 65-1436(a)(16).

Count IV

15. Count IV of the Board's Petition for Disciplinary Action alleges that the dental records of Patient LD did not meet the requirements of K.A.R. 71-1-15.
16. Patient LD's dental records do not contain any information concerning the type and amount of local anesthesia administered by the Respondent, a record of diagnosed problems, a plan of treatment, or any periodontal records or comments concerning Patient LD. The x-rays do not contain adequate references to the dates various x-rays were obtained.
17. K.A.R. 71-1-15 requires that the record indicate what medications were prescribed, the quantity and strength of any medications prescribed, the initial diagnosis and the patient's initial reason for seeking treatment, the treatments performed or recommended to the patient, and any other pertinent, significant information concerning the patient.
18. The records of Patient LD as maintained by the Respondent do not meet the requirements of K.A.R. 71-1-15. This constitutes a violation of K.S.A. 65-1436(a)(6).

Count V

19. Count V of the Board's Petition for Disciplinary Action alleges that the Respondent practiced dentistry while his license was suspended and that the Respondent submitted insurance claims for the practice of dentistry while his license was suspended.
20. The Respondent's license to practice dentistry was suspended through an Initial Order dated April 9, 2009 and re-mailed on June 24, 2009. The order was not appealed to the Board. The order then became final.
21. There is no dispute that the Respondent practiced dentistry between July 24, 2009 and December 11, 2009. Further, there is no dispute that the Respondent submitted insurance billings to Dental Dental while his license was suspended.
22. By practicing dentistry while his license was suspended, the Respondent has violated K.S.A. 65-1421 because he was not licensed to practice dentistry at that time.

Conclusion

1. The Board has established by clear and convincing evidence that the Respondent has violated provisions of the Kansas Dental Practices Act. On at least five occasions the

Respondent violated the act and the Respondent has treated this entire incident with what could only be described as a cavalier attitude.

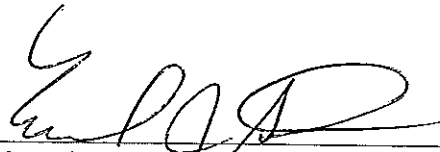
2. The Respondent was notified of this complaint on October 24, 2008 and records and a response were requested from him.
3. On November 17, 2008, the Board contacted the Respondent's office and was told that the records would be sent within a week.
4. The records were not received by the Board and so on December 10, 2008 the Board called the Respondent's office. The Board was advised that the Respondent had been sick for three weeks. The Board was further advised that the Respondent would call the Board back.
5. On December 11, 2008, the Respondent called the Board back and advised that his response to the complaint would be made "next week."
6. When the records had not been received by the Board by December 30, 2008, the Board again requested the records through a certified mailing. This certified mailing was signed for on January 5, 2009. The records were never willingly provided by the Respondent.
7. The Respondent was mailed a Petition for Disciplinary Action on February 4, 2009. The Respondent signed for this on February 5, 2009.
8. On February 20, 2009, the Respondent was notified of a prehearing conference scheduled for March 25, 2009. This notice was mailed to the Respondent and was not returned as undeliverable.
9. The Respondent did not appear at the prehearing conference scheduled on March 25, 2009. A Notice of Proposed Default Order and Proposed Default Order was mailed to the Respondent on March 26, 2009. This was not returned as undeliverable.
10. On April 9, 2009, an Initial Order was entered suspending the Respondent's license to practice dentistry. This order was mailed to the Respondent and was not returned as undeliverable.
11. On June 24, 2009, the same Initial Order was mailed to the Respondent. This order was not returned as undeliverable.
12. It is inconceivable that the Respondent was not aware that the Board had instituted proceedings concerning his license to practice dentistry. Further, it is not credible that the Respondent was unaware that his license was suspended by the Board.

13. The Respondent's failure to do spore testing poses a danger to patients. Failure to properly sanitize dental instruments places patients at risk.
14. The Respondent's history with the Board shows an unwillingness or an inability to comply with the requirements for licensure. As a result of this failure, the Respondent's license to practice dentistry is hereby revoked.

IT IS SO ORDERED.

NOTICE REGARDING REVIEW

Pursuant to K.S.A. 77-527, either party may appeal this Initial Order. A petition for review must be filed within 15 days from the date of this Initial Order. Failure to timely request review may preclude further judicial review. If neither party requests a review, this Initial Order becomes final and binding on the 30th day following its mailing. Petitions for review shall be mailed or personally delivered to: B. Lane Hemsley, Executive Director, Kansas Dental Board, 900 SW Jackson, Room 564-S, Topeka, Kansas 66612-1230.



Edward J. Gaschler
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612
Telephone: 785-296-2433

CERTIFICATE OF SERVICE

On Apr. 4, 2012, I mailed a copy of this document to:

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Staff Person
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