

FILED

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BEFORE THE KANSAS DENTAL BOARD

In the Matter of the Licensure of:)
)
ROGER NOLTE, D.D.S.)
Kansas License No. 5457)
_____)

Case Nos. 13-27 and 13-39

KANSAS DENTAL BOARD

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, _____.

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 5457. 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's Investigation Member 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:

PATIENT RD:

A. On November 14, 2011 a treatment plan was identified for Patient RD, which included removal of the patient's remaining teeth. The treatment plan, which the patient's legal guardian consented to, noted that tooth #17 was horizontally impacted and the patient would be referred to an oral surgeon for removal of tooth #17.

B. On September 25, 2012 while sectioning tooth #18, Respondent damaged tooth #17. Although it was not necessary to proceed to extract tooth #17 and without first obtaining authorization to do so, Respondent, a general dentist, proceeded to extract tooth #17. In the course of doing do, Respondent fractured the patient's mandible in the area of tooth #17.

PATIENT LT:

A. On March 5, 2012 Respondent began endodontic treatment of Patient LT's tooth #2. Respondent's records show the endodontic treatment of tooth # 2 was completed on March 19, 2012.

B. During the course of Respondent's endodontic treatment of tooth #2 he was unable to access the MB canal and left it untreated. While treating another canal, Respondent broke a file and failed to remove it.

C. Respondent failed to advise Patient LT that he was unable to treat the MB canal and that he left a broken file in another canal.

D. With the patient continuing to have pain, without treating the MB canal and without removing the broken file, Respondent continued with a crown build up and a PFM crown on tooth #2.

E. The crown placed by Respondent had significantly open margins and the endodontic fill was incomplete. Both were below the standard of care for a Kansas dentist practicing under similar circumstances.

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

A. CONTINUING EDUCATION. Respondent agrees and consents that within 6 months of the effective date of this Stipulation and Consent Order he shall obtain a minimum of eight (8) hours of continuing dental education in endodontics. The education must include a hands-on course to be approved in advance by the Board. Each entity that administers the course must notify the Board Respondent has successfully completed the course. All continuing education required by this Stipulation and Consent Order shall be separate and in addition to any continuing education required for the renewal of Respondent's dental license.

B. LICENSE LIMITATION. Respondent agrees and consents that his Kansas dental license shall be limited such that he is prohibited from performing any further endodontic treatment until the Board has been advised that he has successfully completed the endodontic continuing education course referred to in paragraph A above. Respondent agrees and consents that his Kansas dental license shall be further limited such that he is prohibited from performing any extractions of a partial or full bony impacted third molar until further order of the Board.

B. ADMINISTRATIVE FINE. Respondent agrees, and the Board further orders the Respondent to pay an administrative fine in the amount of Five Thousand Dollars

(\$5,000.00), within twelve (12) months of the entry of this Order. Periodic payments over the twelve (12) month period are allowed.

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 Committee, its staff, its investigators and its attorney regarding the complaints which led to this disciplinary action, the investigation of the complaints 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 the opportunity for 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.

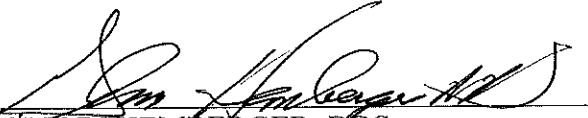
16. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's President or the President's authorized representative.

17. 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, or other court of competent jurisdiction, 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 8 day of November, ~~2012~~ ²⁰¹³

KANSAS DENTAL BOARD

By: 

GLENN HEMBERGER, DDS
President

AGREED AND APPROVED BY:



ROGER NOLTE, D.D.S.

09-03-13
Date

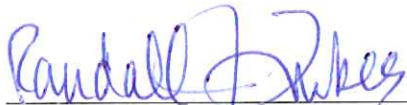


GLENN HEMBERGER, D.D.S.
Investigation Committee Chairman

11/8/2013
Date

Respondent's Attorney's Name & Address

Date



Randall J. Forbes #09089
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Disciplinary Counsel for the Kansas Dental Board

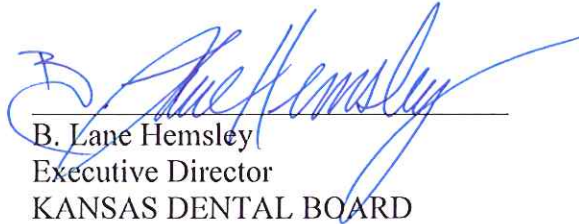
9.16.2013
Date

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 12th day of November, 2013 addressed to:

Randall J. Forbes
Timothy D. Resner
FRIEDEN, UNREIN & FORBES, LLP
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603

Roger Nolte, DDS
1541 N. Burns
Wichita, KS 67214


B. Lane Hemsley
Executive Director
KANSAS DENTAL BOARD