

FILED
JUL 25 2008
KANSAS DENTAL BOARD

BEFORE THE KANSAS DENTAL BOARD

In The Matter Of)
)
RAYMOND A. MATTHEW, D.D.S.)
LICENSE NO. 3871)

Case No. 07-98

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorneys, Randall J. Forbes and B. Lane Hemsley of Frieden & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Knute Fraser of Fraser and Sublett, River Park Place Building, 727 N. Waco, Suite 275, Wichita, Kansas 67203.

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 (Kansas License Number 3871) is not presently entitled to engage in the practice of dentistry in the State of Kansas by reason of the Board having issued an Emergency Agency Order suspending the Respondent's license to practice dentistry in the State of Kansas until further order of the Board. (A true and correct copy of the Emergency Agency Order is attached hereto and incorporated herein as Exhibit A).

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. In or around November 2007, the Board received a complaint regarding the Respondent's treatment of Patient R.R. As a result, the Board began an investigation into the complaint. The investigation revealed that in or around December 2006, the Respondent treated Patient R.R. approximately 2.5 hours for the attempted extraction of tooth #17. On or about December 4, 2006, Patient R.R. was treated by an oral surgeon for the completed extraction of tooth #17. The oral surgeon concluded that Patient R.R.'s lip and cheek were excoriated, the tissues of the operative field were extremely masserated, the flap made for the extraction appeared torn rather than intentionally created by surgical incision, the elevation of the periosteum was excessive and extended to the inferior border of the mandible, and the entire flap had been replaced with a single silk suture. The oral surgeon then removed the residual tooth, essentially half of the entire root structure, in approximately 5 to 10 minutes. Under the circumstances of this case, the Respondent's treatment of Patient R.R. was below the standard of care.

B. In or around November 2007, the oral surgeon who treated Patient R.R. reviewed clinical records of patients referred to his office by the Respondent. The oral surgeon found that treatment was rendered to a different patient in 2006 – 2007 after the Respondent perforated the patient's sinus during the attempted extraction of a maxillary tooth. The oral

surgeon, along with two other oral surgeons in his office, concluded that the Respondent should not be performing surgical extractions. Under the circumstances of this case, the Respondent's treatment was below the standard of care.

C. On or about December 20, 2007, a psychiatric and diagnostic evaluation of the Respondent was performed at the request of the Board. The initial evaluation revealed that the Respondent was disoriented, his memory was a problem, and further psychological testing was necessary.

D. As a result, on or about January 24, 2008, a psychological and diagnostic evaluation of the Respondent was performed. The evaluation revealed that the Respondent is not able to continue his practice of dentistry, even with reduced demands and supervision.

E. On or about March 11, 2008, the Board issued an Emergency Agency Order immediately suspending the Respondent's license to practice dentistry in the State of Kansas until further order of the Board.

F. On or about April 30, 2008, a psychiatric and diagnostic evaluation report was submitted to the Board regarding the Respondent's inability to practice dentistry safely. The evaluation revealed that the Respondent is suffering from dementia from multiple etiologies and, therefore, the Respondent should not be allowed to practice dentistry due to his dementia.

G. Since March 11, 2008, an insurance provider received eight payment claims from the Respondent for his treatment of six different patients. The dates of service are as follows: March 10, 14, 28, April 1, 3, 17, 18, and 21, 2008. The Respondent's services and claims for payment upon the insurance provider include examinations, prophylaxis, scaling and root planing, x-rays, and amalgams.

H. Notwithstanding the Emergency Agency Order suspending his license and the psychiatric and psychological evaluations regarding his inability to practice dentistry safely, the Respondent has failed and refused to cease the practice of dentistry.

I. Notwithstanding the Emergency Agency Order suspending his license and the psychiatric and psychological evaluations regarding his inability to practice dentistry safely, the Respondent has continued to submit claims to, and receive payments from, an insurance provider for his treatment of various patients.

The Board further finds and concludes that the aforesaid conduct is grounds for disciplinary action in the State of Kansas pursuant to the following: K.S.A. 65-1436(b) and K.S.A. 65-1436(a)(1); K.S.A. 65-1436(a)(3), as further defined in K.S.A. 65-1436(c)(2); K.S.A. 65-1436(a)(3), as further defined in K.S.A. 65-1436(c)(3); K.S.A. 65-1436(a)(15); and K.S.A. 65-1436(a)(16).

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

A. VOLUNTARY SURRENDER OF LICENSE. On or before the effective date of the Final Agency Order contemplated hereby, Respondent hereby agrees and consents to the voluntary surrender of his license to practice dentistry in the State of Kansas, License Number 3871.

B. 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: "1145 Voluntary Surrender of License."

B. Basis For Action: "F3 Unable to Practice Safely by Reason of Physical Illness or Impairment."

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 25th day of JULY, 2008.

KANSAS DENTAL BOARD

By:



RICHARD DARNALL, D.D.S.

President

AGREED AND APPROVED BY:

Raymond A. Matthew
RAYMOND A. MATTHEW, D.D.S.

July 9th, 2008
Date

BRAD HIGGERSON, D.D.S.
Investigation Member

Date

Knute Fraser
Knute Fraser # 6834
Fraser and Sublett
River Park Place Building
727 N. Waco
Suite 275
Wichita, Kansas 67203

July 9th, 2008
Date

B. Lane Hemsley
Randall J. Forbes #09089
B. Lane Hemsley #21957
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, Kansas 66603
TEL: (785) 232-7266
FAX: (785) 232-7266
Attorneys for the Kansas Dental Board

July 10, 2008
Date

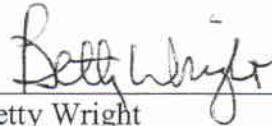
CERTIFICATE OF SERVICE

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 28th day of July, 2008, addressed to:

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

Knute Fraser
Fraser and Sublett
River Park Place Building
727 N. Waco
Suite 275
Wichita, Kansas 67203

Raymond A. Matthew, DDS
3108 W. 13th Street
Wichita, Kansas 67203



Betty Wright
Executive Director
KANSAS DENTAL BOARD

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MAR 11 2008
KANSAS DENTAL BOARD

BEFORE THE KANSAS DENTAL BOARD

In The Matter Of)
)
RAYMOND A. MATTHEW, DDS)
LICENSE NO. 3871)

Case No. 07-119

EMERGENCY AGENCY ORDER

Raymond A. Matthew, DDS (the "Respondent") is currently authorized to practice dentistry in the State of Kansas by reason of the Kansas Dental Board (the "Board") having issued him License No. 3871.

Information came to the attention of the Board's Investigation Member that indicated Respondent's condition was such that a statutory basis existed that would justify taking action against the Respondent's license pursuant to K.S.A. 65-1436 (a)(3). The Board's Investigation Member has conducted an investigation, including the review of the opinions of experts.

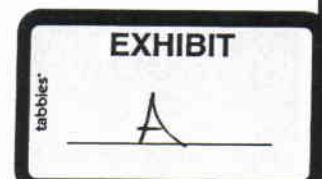
I FINDINGS OF FACT

For purposes of this order, the Board's Investigation Member finds that the Respondent's condition is such that a statutory basis exists justifying an action against the Respondent's license pursuant to K.S.A. 65-1436 (a)(3).

II CONCLUSIONS OF LAW AND FACT

For purposes of this order, the Board's Investigation Member makes the following conclusions of law and fact:

1. Respondent's continuation in the practice of dentistry would constitute an immediate danger to the public health and safety or welfare.



2. The least restrictive way to prevent or avoid the immediate danger Respondent poses to the public health, safety and welfare is to suspend Respondent's License.

III. EMERGENCY ORDER

Pursuant to K.S.A. 77-536 and K.S.A. 65-1449, and based upon the foregoing findings and conclusions, Respondent's License is hereby suspended until further order of the Board, effective immediately.

Within fifteen (15) days after service of this Emergency Agency Order, either party may file a petition for reconsideration pursuant to K.S.A. 77-529.

Within the time limits established in K.S.A. 77-613, either party may seek judicial review of this Emergency Agency Order, pursuant to said statute. The agency officer designated to receive service of a petition for judicial review is:

Betty Wright
Executive Director
Kansas Dental Board
900 SW Jackson, Room 564-S
Topeka, KS 66612

IT IS SO ORDERED.

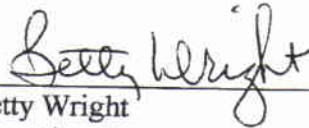
3-10-8
Date

Brad A. Higginson
Brad Higginson, DMD
Investigation Member
Kansas Dental Board

CERTIFICATE OF SERVICE

I hereby certify that I did, on the 11th day of March, 2008, deposit in the United States mail, postage prepaid, a copy of the foregoing EMERGENCY AGENCY ORDER, properly addressed to the following:

Raymond A. Matthew, DDS
3108 W 13th St.
Wichita, KS 67203



Betty Wright
Executive Director
Kansas Dental Board