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APR 25 2014

BEFORE THE KANSAS DENTAL BOARD

KANSAS DENTAL BOARD

In The Matter Of)
)
Brian G. Davis, D.D.S.)
License No. 60231)
_____)

Case No. 13-119

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, LLP, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorney, Matthew M. Merrill of Brown & Ruprecht, P.C., 911 Main Street, Suite 2300, Kansas City, Missouri 64105-5319.

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 refusing to issue a license to practice dentistry, or conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas license to practice dentistry.

3. The Respondent was previously entitled to engage in the practice of dentistry in the State of Kansas by reason of the Board having issued him Kansas license number 60231; however, Respondent allowed his Kansas license to expire in the year 2007. At all times relevant hereto, Respondent did not hold 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.*, and therefore, deny Respondent's application for reinstatement of a license to practice dentistry in the state of Kansas.

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. Respondent applied for reinstatement of his Kansas license with the Board on or about October 11, 2013.

B. In Respondent's application for reinstatement, in response to the question: "[d]o you have an investigation pending with any state licensing board?", Respondent stated that he entered into a settlement agreement with the Missouri Dental Board, on or about August 9, 2013 ("Missouri Settlement Agreement"), a true and correct copy of which is attached hereto as Exhibit "A."

C. Pursuant to the Missouri Settlement Agreement, Respondent stipulated that the factual allegations contained in the Missouri Settlement Agreement are true, and that the Missouri Dental Board had cause to discipline Respondent's license under the provisions of § 332.321.2(5) and (13), R.S.Mo.

D. Specifically, pursuant to the Missouri Settlement Agreement, Respondent agreed to the following discipline of his license to engage in the practice of dentistry in the State of Missouri, #2004033307, and corresponding requirements to the discipline of his Missouri License:

10. The terms of discipline shall include that the dental license, license number 2004033307, be placed on **PROBATION** for a period of two (2) years ("disciplinary period"). During [Respondent's] probation, [Respondent] shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

A. [Respondent] shall take and pass the Board's jurisprudence examination within twelve (12) months of this Agreement becoming effective. [Respondent] shall contact the Board office to request a current law packet and permission to sit for the jurisprudence examination no less than thirty (30) days prior to the date [Respondent] desires to take the examination. [Respondent] shall submit the required re-examination fee to the Board prior to taking the examination. Failure to take and pass the examination during the first twelve (12) months of the disciplinary period shall constitute a violation of this Agreement.

B. Education. [Respondent] shall successfully complete fifty (50) hours of continuing education in the area of Endodontics through Oral Health Enrichment in Cleveland, Ohio within the first one hundred eighty (180) days of the beginning of [Respondent's] period of probation. Following completion of the 50 hours of education as detailed above from Oral Health Enrichment, [Respondent] shall take and pass a written outcome assessment test on the education with a score of at least 80%. Failure to complete the education and pass the written outcome assessment test on the education within 180 days shall constitute a violation of the Board Settlement Agreement.

C. Skills Assessment. Immediately after completing the education and written outcome assessment outlined in paragraph B above and within the first one hundred eighty (180) days of the beginning of the period of probation [Respondent] shall successfully complete a clinical skills assessment at Oral Health Enrichment in Cleveland, Ohio. Failure to successfully complete the clinical skills assessment within 180 days shall constitute a violation of the Board Settlement Agreement.

II. GENERAL REQUIREMENTS

A. [Respondent] shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. [Respondent] shall keep the Board apprised of his current home and work addresses and telephone numbers. [Respondent] shall inform the Board within ten days of any change of home or work address and home or work telephone number.

C. [Respondent] shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMO; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

D. During the disciplinary period, [Respondent] shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain [Respondent's] license in a current and active state.

E. If at any time during the disciplinary period, [Respondent] removes himself from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.

F. During the disciplinary period, [Respondent] shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.

G. If [Respondent] fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (Including imposition of the revocation).

H. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by [Respondent] not specifically mentioned in this document.

III. ADDITIONAL REQUIREMENTS

A. [Respondent] shall not allow his license to lapse.

B. [Respondent] shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where [Respondent] practices or has privileges of [Respondent's] disciplinary status. Notification shall be in writing and [Respondent] shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

E. The Board entered an “Agency Order,” (filed with the Board on December 2, 2013), finding that “Davis’ application to the Board to reinstate his Kansas license to practice dentistry should be denied because disciplinary action was taken against his Missouri license to practice dentistry ...”

F. Respondent, through counsel, requested a hearing pursuant to the Kansas Administrative Procedures Act on the Agency Order, on or about December 5, 2013.

6. The Board finds and concludes that the disciplinary action taken by the Missouri Dental Board in the Missouri Settlement Agreement 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)(18).

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

A. REINSTATEMENT. Respondent agrees and consents and the Board further orders that Respondent’s license to practice dentistry in the state of Kansas will be reinstated by the Board, subject to the limitations contained in this Stipulation and Consent Order, effective on the date this Stipulation and Consent Order is entered with the Board.

B. RESTRICTION. Respondent agrees and consents and the Board further orders that upon the reinstatement of Respondent’s license to practice dentistry in the state of Kansas, Respondent’s Kansas license will be restricted pursuant to K.S.A. § 65-1436(b)(3), in that Respondent shall be restricted or otherwise prohibited from performing any endodontic procedure in the state of Kansas. Such period of restriction shall continue until the following conditions are satisfied by Respondent:

1. Respondent fully completes all EDUCATIONAL REQUIREMENTS listed in paragraph 10(I)(A) – (C) of the Missouri Settlement Agreement, and the Board receives written verification thereof from the administering entities; and

2. Respondent provides the Board with sufficient records, including but not limited to post-operative radiographs, which demonstrate that Respondent has successfully completed five (5) successful endodontic cases subsequent to the date of the Missouri Settlement Agreement.

C. COMPLIANCE WITH MISSOURI SETTLEMENT AGREEMENT.

Respondent agrees and consents and the Board further orders that Respondent shall fully comply with all terms, conditions, limitations and other requirements of the Missouri Settlement Agreement.

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.

8. 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.

9. 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.

10. 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.

11. 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.

12. The Respondent acknowledges that he has the following rights:

- A. To have formal notice of the grounds for denial;
- B. To file a response to the denial;
- 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.

13. 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.

14. 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.

15. 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.

16. 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.

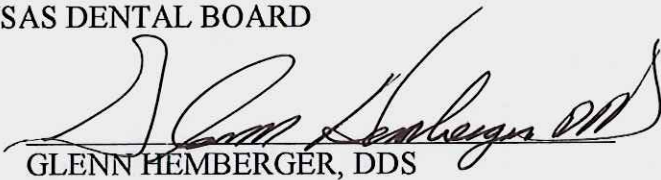
17. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's President or the President's authorized representative.

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 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 25 day of April, 2014.

KANSAS DENTAL BOARD

By:

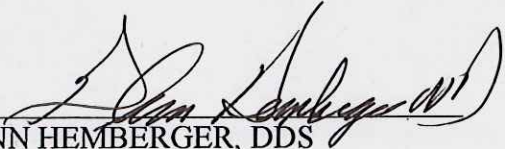


GLENN HEMBERGER, DDS
President

AGREED AND APPROVED BY:

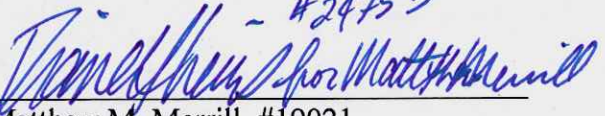

BRIAN G. DAVIS, D.D.S.

4/1/2014
Date




GLENN HEMBERGER, DDS
Investigation Member

4/25/2014
Date

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Date

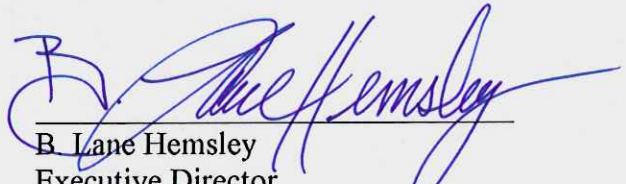
CERTIFICATE OF SERVICE

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 April, 2014, addressed to:

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B. Lane Hemsley
Executive Director
KANSAS DENTAL BOARD