BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
)
MICHAEL A. DEROSE, D.D.S.)
Kansas License No. 60184)

File No. 06-0379

STIPULATION AND FINAL AGENCY ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Haynes & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Brad Smoot, Attorney at Law, 800 SW Jackson, Ste. 808, Topeka, Kansas 66612.

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 60184. 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 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 that on December 12, 2005, Respondent and the North Carolina Board of Dental Examiners entered in to a Consent Order, whereby the Respondent's North Carolina license to practice dentistry was disciplined (the "North Carolina Consent Order"). A true and correct copy of which Consent Order is marked Exhibit A and attached hereto. The North Carolina Consent Order provided for the Respondent's dental license to be suspended for 6 months. The consent Order also provided that the Respondent's license was conditionally restored, with no active suspension, provided that for 3 years he complies with certain probationary terms and conditions as set forth in the Consent Order.

The Board finds and concludes that the North Carolina Consent Order 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).

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

A. SUSPENSION. Respondent hereby agrees and consents to the Board's entry of an order whereby his license to practice dentistry in the State of Kansas is suspended for a period of one hundred and eighty (180) days. The suspension shall not take effect if during a probation period beginning upon the entry of the final agency order contemplated hereby and ending on December 12, 2008, the Respondent complies with all of the "probationary terms and conditions" set forth in subparagraphs (a) through (k) on pages 4 and 5 of the North Carolina Consent Order. Should the North Carolina Board of Dental Examiners issue an order placing the Respondent's North Carolina license on active suspension, pursuant to the terms of the North Carolina Consent Order, the Respondent's Kansas dental license will

also be placed on active suspension for one hundred and eighty (180) days. Should the North Carolina Board of Dental Examiners not issue an order placing the Respondent's North Carolina license on active suspension, pursuant to the terms of the North Carolina Consent Order, the suspension provided for herein shall never become effective.

D. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he must:

1. Comply fully with this Stipulation and Final Agency Order;

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 Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Final Agency 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 contained herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is 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 Final Agency Action or the Final Order provided for herein.

10. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. 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 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.

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 Final Agency Order and the Final Order provided for herein.

13. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing. The Respondent further acknowledges that he has read this Stipulation and Final Agency 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 Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency 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 Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

15. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

16. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

17. This Stipulation and Final Agency 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 authorized representative.

18. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

A. Adverse Action Classification: "1125 Probation of License."

B. Basis For Action: " Other – Not Classified, Adverse action by another state licensing board."

19. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein 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.

AGREED AND ACCEPTED BY:

Michael A. DeRose

MICHAEL A. DEROSE, D.D.S.

8/24/06

Date

Robert Henson

ROBERT HENSON, D.D.S.
Investigation Member

9/15/06

Date

APPROVED BY:

Brad Smoot

Respondent's Attorney's Name & Address

Brad Smoot #09033
Attorney at Law
800 SW Jackson, Ste. 808; Topeka, KS 66612

9/6/06

Date

Randall J. Forbes

Randall J. Forbes, #09089
FRIEDEN, HAYNES & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 232-7266

9.8.06

Date

Exhibit A

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

MICHAEL A. DEROSE, D.D.S.)
(License No. 7272))

CONSENT ORDER

THIS MATTER is before the North Carolina State Board of Dental Examiners (Board) as authorized by G.S. 90-41.1(b) for consideration of a Consent Order in lieu of a formal administrative hearing.

Subsequent to an investigation conducted by the Board's Investigative Panel and allegations arising therefrom having been presented to Michael A. DeRose, D.D.S. (Respondent), at a settlement conference on February 11, 2005 and continued on May 7, 2005, the Respondent enters into this Consent Order. While Respondent does not admit for any purposes the allegations contained in this Consent Order, in order to avoid additional proceedings, the Respondent agrees not to contest the allegations set forth within this Consent Order and does furthermore agree to the provisions and sanctions contained herein. Respondent further agrees that any breach or violation of this Consent Order shall constitute an admission of the findings of facts and conclusions of law as it pertains to the allegations contained herein.

FINDINGS OF FACT

1. Respondent is licensed to practice dentistry in North Carolina and is the holder of License No. 7272 originally issued by the Board on June 15, 2001 and duly renewed through the current year.

2. The specific allegations are affixed hereto as Attachment 1.

CONCLUSIONS OF LAW

1. Respondent has stipulated that such allegations, if proven, are legally sufficient to support findings and conclusions that he/she has violated G.S. 90-41 as specified in the Findings of Fact. Furthermore, Respondent has stipulated that, solely for the purposes recited herein, Respondent will not contest the allegations set forth in this Order, which allegations are previously incorporated in this Order, as if fully set forth herein, as findings of fact.

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IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. License number 7272 issued to Respondent for the practice of dentistry in North Carolina is suspended for a period of one hundred eighty (180) days. Respondent shall surrender his license and current renewal certificate to the Board at its offices on or before December 9, 2005. During this term of suspension Respondent may, with the Board's prior written approval, lease his dental office and equipment. Any lease approved by the Board must be in writing and must disclose fully all material terms of the transaction. In no event shall any such lease allow operation of the dental practice on behalf of or for the benefit of Respondent.

2. With Respondent's consent, his license to practice dentistry shall be conditionally restored, with no active suspension, provided that for three (3) years he comply with the following probationary terms and conditions:

(a) Respondent shall violate no provision of the Dental Practice Act or the Board's Rules;

(b) Respondent shall neither direct nor permit any of his employees to violate any provision of the Dental Practice Act or the Board's Rules;

(c) Respondent shall allow the Board or its authorized agent to inspect and observe his office, conduct random patient chart review, and interview his employees and co-workers at any time during regular office hours;

(d) Respondent shall comply with all Medicaid regulations regarding the billing of dental services, including those regulations enacted in October of 2004. These regulations include, but are not limited to, a limit upon the billing for stainless steel crowns and/or pulpotomies to no more than six per patient on a given day and Respondent shall not perform more than six per patient on a given day;

(e) Medicaid Dental Center (MDC) has modified its consent forms since the underlying complaints were filed to make absolutely sure that the parent or his/her guardian fully comprehends the scope and nature of the work to be performed and gives consent to this work. The current consent form being used by MDC is

attached as Exhibit A, and includes explicit language that the parent/guardian must read and sign indicating consent. MDC shall use this form when explaining the scope of treatment to a parent/guardian and obtaining consent;

(f) If a papoose is to be used as an operative restraining device, the evaluating or treating dentist will show the parent/guardian a picture of the papoose (see Exhibit B), explain its use, and the parent/guardian will sign a form consenting to the use of this behavioral management device;

(g) If a parent does not speak English, an appropriate interpreter will be used to make sure the parent/guardian fully understands the relevant consent forms;

(h) The evaluating or treating dentist will document in the patient's file the surfaces where decay is clinically observed, either in the chart notes themselves or in pictorial representations. Digital photographs of decay shall be taken when radiographs are unavailable;

(i) MDC will provide any patient records requested by the Board or its investigators upon written or verbal request by a member of the Board or a Board representative;

(j) Within three (3) months of entering into this Order, MDC will sponsor an in-house seminar, featuring the use of an expert in the field who is not employed by MDC, to discuss the topic of current anesthesia practices as it relates to pediatric dentistry. A course description, number of hours, and the names and position of those employees in attendance at the course shall be submitted to the Board office immediately following the course;

(k) Respondent shall, within thirty (30) days from the date of this Order, reimburse the Board for the costs associated with this investigation and hearing in the amount of $ 5,850 .00.

3. If Respondent fails to comply with any provision of this Order or breaches any term or condition thereof, the Board shall promptly schedule a public Show Cause Hearing to allow Respondent an opportunity to show cause as to why Respondent's license should not be immediately suspended per the terms of this Order. If as a result of the Show Cause Hearing, the Board is satisfied that Respondent failed to comply or breached any term or condition of this Order, the provisional restoration of his license shall be rescinded and upon written demand, Respondent shall immediately surrender his license and current renewal certificate to the Board for one hundred eighty (180) days. This sanction shall be in addition to and not in lieu of any sanction the Board may impose as a result of future violations of the Dental Practice Act or of the Board's Rules.

This the 12 day of December, 2005.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

BY: Terry W. Friddle
Terry W. Friddle
Deputy Operations Officer

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STATEMENT OF CONSENT

I, MICHAEL A. DEROSE, D.D.S., do hereby certify that I have read the foregoing Consent Order in its entirety and that I do freely and voluntarily admit, exclusively for the purposes of this disciplinary proceeding and any other disciplinary or licensure proceedings before this Board, that there is a factual basis for the allegations set forth therein, that these factual allegations, if proven, are legally sufficient to support findings and conclusions that I have violated G.S. Section 90-41(a)(12), and I will not contest the factual allegations therein should further disciplinary action be warranted in this matter, and that I assent to the terms and conditions set forth therein. I hereby express my understanding that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order shall become a part of the permanent public record of the Board.

This the 8th day of December, 2005.

Michael A. DeRose

MICHAEL A. DEROSE, D.D.S.

Exhibit A

ATTACHMENT 1
FINDINGS OF FACT

1. Respondent is licensed to practice dentistry in North Carolina and is the holder of License Number 7272, originally issued by the Board on June 15, 2001 and duly renewed through the current year.

2. At all relevant times, Respondent was engaged in the practice of general dentistry in Charlotte, North Carolina and is part owner of the Medicaid Dental Center (MDC) facilities. Medicaid Dental Center is a general dental practice that treats pediatric patients only.

3. Brandon Dillbeck was a patient at the Charlotte Medicaid Dental Center on June 5, 2003. During this appointment dentists employed and trained by MDC formulated a treatment plan and subsequently performed pulpotomies and placed stainless steel crowns on Brandon's teeth numbers A, B, C, D, E, F, G, H, I, J, K, L, M, R, S and T.

4. Alexander Marlowe was a patient at the Charlotte Medicaid Dental Center on April 22, 2003. During this appointment dentists employed and trained by MDC formulated a treatment plan and subsequently extracted Alexander's tooth A, placed restorations in teeth numbers B and G and performed pulpotomies and placed stainless steel crowns on teeth numbers D, E, F, J, K, L, S and T.

5. Tacora Warren was a patient at the Winston-Salem Medicaid Dental Center on June 23, 2003. During this appointment dentists employed and trained by

MDC formulated a treatment plan and subsequently performed pulpotomies and placed stainless steel crowns on Tacora's teeth numbers A, B, I, J, K, L, S and T.

6. Jonathan Myers was a patient at the Winston-Salem Medicaid Dental Center on August 5, 2002. During this appointment dentists employed and trained by MDC formulated a treatment plan and subsequently performed pulpotomies and placed stainless steel crowns on Jonathan's teeth numbers A, B, C, D, E, F, G, H, I, J, K, L, N, Q, R, S and T.

7. Hunter Mungo was a patient at the Charlotte Medicaid Dental Center on April 25, 2003. During this appointment dentists employed and trained by MDC formulated a treatment plan and subsequently extracted Hunter's tooth E, placed a restoration in tooth number J and performed pulpotomies and placed stainless steel crowns on Hunter's teeth numbers A, B, C, D, F, G, H, K, L, M, N, O, Q, R, S and T.

8. Tyler Hatchel was a patient at the Charlotte Medicaid Dental Center on June 19, 2003. During this appointment dentists employed and trained by MDC formulated a treatment plan and subsequently placed a restoration in Tyler's tooth number K and performed pulpotomies and placed stainless steel crowns on teeth numbers A, B, E, F, G, I, J, L, M, O, P, Q, R, S and T.

9. Caitlin Barker was a patient at the Charlotte Medicaid Dental Center on July 18, 2003. During this appointment dentists employed and trained by MDC formulated a treatment plan and subsequently extracted teeth numbers N, O and P, placed restorations in teeth numbers M, K and T, and performed pulpotomies and

placed stainless steel crowns on Caitlin's teeth numbers A, B, C, H, I, J, L, Q, R and S.

10. Respondent, as part owner of Medicaid Dental Center, was responsible for determining office policies and implementing such policies. Respondent, as part owner of Medicaid Dental Center, was also responsible for training the staff or making arrangements for the staff to be trained and familiar with all office policies.

11. Medicaid Dental Center's standard operating policy was to perform as much treatment as possible in one appointment for each dental patient.

12. The standard of care for dentists licensed to practice dentistry in North Carolina at the time Respondent's dental practice treated Brandon Dillbeck, Alexander Marlowe, Tacora Warren, Jonathan Myers, Hunter Mungo, Tyler Hatchel and Caitlin Barker required that a dentist only perform pulpotomies and stainless steel crowns when such treatment is warranted and supported by radiographs and/or appropriate diagnostic documentation.

13. Respondent violated the standard of care because dentists employed and trained at MDC performed pulpotomies and stainless steel crowns when such treatment was not always warranted and supported by radiographs or appropriate diagnostic documentation

14. The standard of care for dentists licensed to practice dentistry in North Carolina at the time Respondent's dental practice treated Brandon Dillbeck, Alexander Marlowe, Tacora Warren, Jonathan Myers, Hunter Mungo, Tyler Hatchel and Caitlin

Barker required that a dentist not perform excessive dental treatment in a single appointment.

15. Respondent violated the standard by establishing office policies that resulted in dentists employed and trained by MDC performing excessive dental treatment in a single appointment.

BEFORE THE KANSAS DENTAL BOARD

In the Matter of	)	
	)	
MICHAEL A. DEROSE, D.D.S.	)	
Kansas License No. 60184	)	File No. 06-0379

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Dental Board (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

ENTERED AND EFFECTIVE this 15th day of September, 2006.

KANSAS DENTAL BOARD

By: Karen Callanan DDS
Karen Callanan, D.D.S., ~~M.S.~~
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served upon counsel by depositing same in the United States mail, postage prepaid, this 19 day of September, 2006, addressed to:

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

Michael A. DeRose, D.D.S.
1022 Liberty Lane
Pueblo, CO 81001

Brad Smoot
Attorney at Law
800 SW Jackson, Ste. 808
Topeka, KS 66612

Betty Wright
Executive Director
KANSAS DENTAL BOARD