

BEFORE THE KANSAS DENTAL BOARD

FILED

APR 11 2016

In the Matter of)
)
ROBERT M. MOODY, D.D.S.,)
Kansas License No. 5279)
_____)

Case No. 15-83

KANSAS DENTAL BOARD

STIPULATION AND FINAL AGENCY ORDER

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

1. The Board is represented herein by its attorney, Kevin M. Fowler of Frieden, Unrein & Forbes, LLP, 1414 S.W. Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorney, Tracy A. Cole of Gilliland & Hayes, LLC, 20 West 2nd Avenue, 2nd Floor, P.O. Box 2977, Hutchinson, KS 67504-2977.

2. The Kansas Dental Board ("Board") is the duly constituted and acting agency of the State of Kansas authorized to administer and enforce the provisions of the Kansas Dental Practices Act, which is codified in article 14 of chapter 65 and article 14 of chapter 74 of the Kansas Statutes Annotated and amendments or supplements thereto ("KDPA" or "Act"). Pursuant to applicable provisions of the KDPA and the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.* ("KAPA"), whenever it is established that a licensee has committed any of the acts or omissions described in K.S.A. 65-1436(a), the Board may revoke, suspend and/or limit the licensee's Kansas License and/or assess a fine against the licensee in an amount not in excess of \$10,000.00.

3. At all times pertinent to this Stipulation and Final Agency Order, the Respondent has practiced and is currently authorized to practice dentistry in the State of Kansas under the authority of Kansas License Number 5279 (“Kansas License”) issued to him by the Board.

4. The Board has received certain information, investigated and determined that there are reasonable grounds to believe that the Respondent has engaged in conduct which violates one or more provisions of the Kansas Dental Act, K.S.A. 65-1401 *et seq.*

(a) The Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, the following matters:

(i) On November 4, 2015, the Respondent used excessive force and improper instrument placement when attempting to extract tooth number 15 from a patient. The procedure fractured a segment of the patient’s left posterior maxillary bone, approximately three (3) by six (6) centimeters in size, and damaged the patient’s alveolar bone, basilar bone, left maxillary tuberosity, left maxillary sinus floor, pterygoid plate and tooth number 15. The procedure also perforated the patient’s left maxillary sinus and created a left buccal fat pad rupture, with a small amount of visible fat extruding through the capsule. The patient required emergency surgery to remove the fractured segment of left posterior maxillary bone, which was not amenable to reduction or fixation.

(ii) Prior to attempting the above-referenced extraction, and despite prior disciplinary action in Case Nos. 1813-98-b, 07-64, 07-143, the Respondent failed to obtain from the patient any diagnostic radiographs or x-rays of the affected tooth and surrounding bone and did not prepare or maintain adequate records regarding this patient visit. The Respondent failed to document any reason for the extraction, any discussion

with the patient about radiographs or x-rays, or any statement of the patient's informed consent.

(b) The Board finds and concludes that the Respondent's conduct, as described above, is violative of the Kansas Dental Act and 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)(3), (a)(4) and (a)(17).

5. The Board finds and the Respondent understands, stipulates and agrees that the following disposition is just and appropriate under the circumstances:

(a) RESTRICTION OF KANSAS LICENSE TO PROHIBIT PERFORMANCE OF ANY AND ALL DENTAL EXTRACTIONS OR EXODONTIAS.

(i) The Respondent expressly agrees and consents to the Board's entry of an order which removes from his Kansas License all authorization to perform any and all dental extractions or exodontias and prohibits the Respondent from performing any and all dental extractions or exodontias. Such action shall restrict or limit the lawful scope of the Respondent's privilege to practice dentistry in the State of Kansas and it shall be regarded as a prohibitory "restriction" on the Respondent's Kansas License. The restriction shall be effective immediately upon the Board's approval of this stipulation and entry of the Final Agency Order contemplated herein. Any renewal of the Respondent's Kansas License No. 5279 shall include the restriction, which may not be terminated or removed except as provided in Section 5(a)(iii) below.

(ii) During the period of restriction, the Respondent shall conspicuously display in his place of practice written notice to the public reflecting that his practice of dentistry does not include any dental extractions or exodontias.

(iii) No sooner than 12 months from the effective date of the restriction, the Respondent may petition the Board to terminate or remove this prohibitory restriction on his Kansas License. Prior to seeking termination or removal of the restriction, however, the Respondent shall propose and successfully complete an appropriate program of continuing clinical education approved by the Board regarding the proper use and performance of dental extractions or exodontias and dental radiography. Any petition seeking to terminate or remove the restriction shall verify and document that the Respondent has successfully completed the program of continuing clinical education approved by the Board and include a narrative description of what he learned during the program and how this information will be incorporated into his practice related to dental extractions or exodontias. The Respondent shall also personally appear before the Board and he shall have the burden to prove, by clear and convincing evidence, that he is competent to perform dental extractions or exodontias based on all relevant facts and circumstances. If the Board determines to terminate or remove the restriction, it may impose such terms and conditions on the Respondent's privilege to perform dental extractions or exodontias as the Board may deem, in its discretion, necessary and appropriate to protect the public.

(b) OTHER REQUIREMENTS. The Respondent further understands, stipulates and agrees that as a condition of this Stipulation and Final Agency Order, he must:

(i) Fully comply with all terms of this Stipulation and Final Agency Order; and

(ii) Fully comply with the Kansas Dental Practices Act, the Board's rules and regulations, and all state and federal laws applicable to Kansas dentists.

6. The Respondent agrees that all information in the possession of the Board's Investigation Committee, its staff, its investigators and its attorneys 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.

7. 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.

8. 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.

9. 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.

10. 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, K.S.A. 77-501 *et seq.*, and the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

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 the terms and conditions 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.

11. 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.

12. 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.

13. 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.

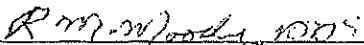
14. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

15. 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.

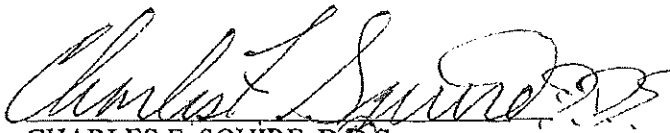
16. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein 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 B. Lane Hemsley, its Executive Director at 900 SW Jackson, Room 564-S, Topeka, Kansas 66612. The Respondent hereby waives those rights.

AGREED BY:

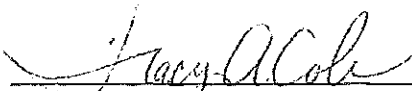

ROBERT M. MOODY, D.D.S.
RESPONDENT

29 Mar 16
Date

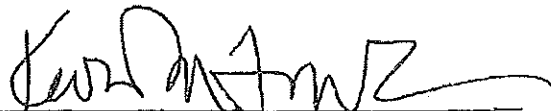

CHARLES F. SQUIRE, D.D.S.
CHAIRMAN, INVESTIGATION COMMITTEE

April 4, 2016
Date

APPROVED BY:


TRACY A. COLE
Gilliland & Hayes, LLC
20 West 2nd Avenue, 2nd Floor
P.O. Box 2977
Hutchinson, KS 67504-2977
ATTORNEY FOR RESPONDENT

3/31/16
Date


KEVIN M. FOWLER
Frieden, Unrein & Forbes, LLP
1414 S.W. Ashworth Place, Suite 201
Topeka, KS 66604
ATTORNEY FOR THE KANSAS DENTAL BOARD

4/4/2016
Date

BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
)
ROBERT M. MOODY, D.D.S.,)
Kansas License No. 5279)
_____)

Case No. 15-83

FINAL AGENCY 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 Agency Order of the Board. Specifically, the Board's Final Agency Order includes the following requirements:

A. Except as otherwise provided below, the Respondent's Kansas License No. 5279 and any renewal thereof is hereby modified to remove any lawful authority or privilege to perform any and all dental extractions or exodontias and the Respondent is hereby expressly prohibited from performing any and all dental extractions or exodontias. This action restricts and limits the lawful scope of the Respondent's privilege to practice dentistry in the State of Kansas and it shall operate as a prohibitory "restriction" on the Respondent's Kansas License No. 5279 and any renewal thereof until further order of the Board. The restriction is effective immediately.

B. During the period of restriction, the Respondent shall conspicuously display in his place of practice written notice to the public reflecting that his practice of dentistry does not include any dental extractions or exodontias.

C. No sooner than 12 months from the effective date of this Final Agency Order, the Respondent may petition the Board to terminate or remove this prohibitory restriction on his Kansas License. Prior to seeking termination or removal of the restriction, however, the

Respondent shall propose and successfully complete an appropriate program of continuing clinical education approved by the Board regarding the proper use and performance of dental extractions or exodontias and dental radiography. Any petition seeking to terminate or remove the restriction shall verify and document that the Respondent has successfully completed the program of continuing clinical education approved by the Board and include a detailed narrative description of what he learned during the program and how this information will be incorporated into his practice related to dental extractions or exodontias. The Respondent shall also personally appear before the Board and shall have the burden to prove, by clear and convincing evidence, that he is competent to perform dental extractions or exodontias based on all relevant facts and circumstances. If the Board determines to terminate or remove the restriction, it may impose such terms and conditions on the Respondent's privilege to perform dental extractions or exodontias as the Board may deem, in its discretion, necessary and appropriate to protect the public.

D. The Respondent shall fully comply with all terms and conditions of the foregoing Stipulation and Final Agency Order, the Kansas Dental Practices Act, the Board's rules and regulations, and all state and federal laws applicable to Kansas dentists.

IT IS SO ORDERED.

ENTERED AND EFFECTIVE this 8 day of April, 2016.

KANSAS DENTAL BOARD

By: 

GLENN HEMBERGER, D.D.S.
PRESIDENT

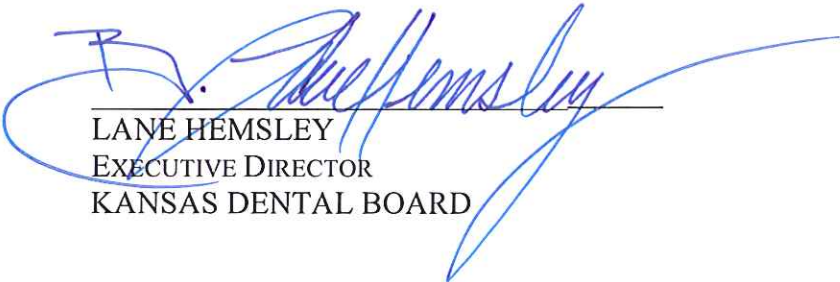
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing FINAL AGENCY ORDER was served upon the Respondent and counsel by depositing same in the United States mail, postage prepaid, this 11th day of April, 2016, properly addressed as follows:

Randall J. Forbes
FRIEDEN, UNREIN & FORBES, LLP
1414 S.W. Ashworth Place, Suite 201
Topeka, KS 66604

Robert M. Moody, D.D.S.
122 N. Taylor Street
El Dorado, KS 67042

Tracy A. Cole
GILLILAND & HAYES, LLC
20 W. 2nd Avenue, 2nd Floor
P.O. Box 2977
Hutchinson, KS 67504-2977



LANE HEMSLEY
EXECUTIVE DIRECTOR
KANSAS DENTAL BOARD