BEFORE THE KANSAS DENTAL BOARD

In the Matter of)	
)	Case No. 07-64
ROBERT M. MOODY, D.D.S.)	Case No. 07-143
Kansas License No. 5279)	

STIPULATION AND CONSENT 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, Randall J. Forbes of Frieden & Forbes, 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 5279. 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, and upon motion duly made, seconded and passed, the Board finds, that:

CASE NO. 07-64

A. In or around April 2005, the Kansas Medical Assistance Program ("KMAP") performed a quality review for Respondent as a result of three grievances having been registered against him since October 2003. Two of the grievances related to Respondent's quality of care and one related to Respondent's billing practices. During the quality review, KMAP requested and received ten (10) medical records, which were selected at random, from Respondent. The time period reviewed was from January 1, 2006 to January 1, 2007. After KMAP reviewed the records, it provided its reviews and patient records to the Board. During a review of the patient records, the Board inspector found that six of the patient records had serious deficiencies.

B. A review of the record for Patient J.F. revealed that Respondent only saw the patient for one visit on or about March 23, 2006 and extracted teeth #'s 1, 5, 8, 9, 10, 11, 12, 15, and 16. There was no diagnosis written in the patient record other than the charting of the teeth to be extracted. The patient record had no indication that Respondent ever wrote the patient a prescription for Hydrocodone. However, pharmacy claims indicate that the patient had Hydrocodone filled from the Respondent's prescription on or about March 23, 2006. Pharmacy claims also show that on or about March 27, 2006, another prescription of Hydrocodone for the patient was prescribed by the Respondent and filled by the patient at a pharmacy.

C. A review of the record for Patient K.H. revealed that Respondent removed all of the patient's remaining teeth, a total of 31, during the course of four separate appointments.

Patient K.H. was a 25-year old male with relatively healthy teeth and average to above average bone support. There is no diagnosis or treatment plan in the record to explain the reason full mouth extractions were performed. Pharmacy claims show that at each of the four separate appointments for extractions, the Respondent wrote the patient a prescription for Hydrocodone. The prescription for Hydrocodone is written as an add-on in the margin of the patient's record for the first appointment of extractions. However, there are no other entries in the patient's record regarding Hydrocodone.

D. A review of the record for Patient L.W. revealed that the Respondent treated the patient at two separate appointments. However, there is no diagnosis written in the patient record. All of the patient's remaining upper teeth were removed at the first appointment and all of the remaining lower teeth were removed at the second appointment. Pharmacy claims show that the Respondent wrote and issued two prescriptions of Hydrocodone, but neither of these prescriptions is written in the patient's record.

E. A review of the record for Patient M.E. revealed that the Respondent performed a series of extractions on or about February 14, 2006, February 27, 2006, and March 22, 2006. There is no diagnosis or reason for the extractions written in the record. Pharmacy claims show that the Respondent wrote and issued a prescription for Lortab on or about February 14, 2006, but this was not recorded in the patient's record. Pharmacy claims also show that the Respondent wrote and issued a prescription for Lortab on or about February 27, 2006 and again on March 1, 2006, but neither of these prescriptions was recorded in the patient's record.

F. A review of the record for Patient M.B. revealed that a 28 year old patient had all remaining teeth, a total of 29, removed. There is no diagnosis written in the patient's record.

G. A review of the record for Patient S.W. revealed that on or about August 21, 2006, the Respondent extracted teeth #'s 2-5, 12-15, 19-21, and 28-30. Pharmacy claims show that the Respondent wrote and issued a prescription for forty tablets of Hydrocodone, but this was not recorded in the patient's record. On or about November 1, 2006, the Respondent extracted teeth #'s 6-11 and 22-27. While the record makes note of a prescription for Lortab, the record does not indicate the strength or the number prescribed. Additionally, there was no diagnosis or reason written in the record for the 25 extractions.

H. Under the circumstances of this case, the Respondent failed to maintain adequate records.

CASE NO. 07-143

I. On or about October 1, 2007, the Board received a report from the National Practitioner Data Bank concerning a settlement based on the Respondent's treatment of Patient A.B. As a result, the Board contacted the Respondent's office to obtain patient records and legal documents pertaining to the settlement. A Board inspector subsequently received and reviewed patient records and legal documents from the Respondent regarding Patient A.B.

J. A review of the Respondent's records for Patient A.B. revealed that during Respondent's treatment of Patient A.B., the Respondent left a root tip after extraction. The records do not include radiographs. Moreover, there is no mention in the records of local anesthetic or the root tip that was left after extraction.

K. Under the circumstances of this case, the Respondent failed to remove the entire tooth during extraction and maintain adequate records.

L. Under the circumstances of this case, the Respondent's failures to remove the entire tooth during extraction and maintain adequate records constitute deviations from the applicable standard of care.

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)(3), as further defined by K.S.A. 65-1436(c)(2); K.S.A. 65-1436(a)(17); and K.A.R. 71-1-15(e), (g), and (h).

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

A. ADMINISTRATIVE FINE. Respondent agrees, and the Board further orders the Respondent, to pay to the Board, within ten (10) days of the effective date to the Stipulation and Consent Order contemplated hereby, an administrative fine in the amount of Two Thousand Five Hundred Dollars ($2,500).

B. CONTINUING DENTAL EDUCATION. Respondent hereby agrees and consents to the Board entering an order requiring him, and the Board further orders the Respondent, to obtain twenty-four (24) hours of dental education on the topic of oral surgery and six (6) hours of dental education on the topic of recordkeeping and risk management (which six (6) hours of dental education on the topic of recordkeeping and risk management shall be approved by the Respondent's malpractice insurance carrier) within six (6) months of the effective date to the Stipulation and Consent Order contemplated hereby, all in addition to any continuing education necessary to renew his Kansas dental license.

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;

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: "1173 Publicly Available Fine/Monetary Penalty."

B. Basis For Action: "45 Failure to Maintain Records or Provide Medical, Financial or Other Required Information."

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 P. Darnall

RICHARD DARNALL, D.D.S.
President

AGREED AND APPROVED BY:

R M Moody DDS
ROBERT M. MOODY, D.D.S.

24 apr. 08
Date

BRAD HIGGERSON, D.M.D.
Investigation Member

Date

Respondent's Attorney's Name & Address

Date

Randall J. Forbes

5.9.08
Date

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

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

Robert M. Moody, D.D.S.
302 W. Third
Eureka, KS 67045

Betty Wright
Executive Director
KANSAS DENTAL BOARD