

BEFORE THE KANSAS DENTAL BOARD



In the Matter of the Licensure of:)
)
ALBERT MENDEZ, D.D.S.)
Kansas License No. 6589)
_____)

Case No. 17-85

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the “Board”) and Albert Mendez, D.D.S. (the “Respondent”) as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden & Forbes, LLP, 1414 SW Ashworth Pl., Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorney, Brian J. Niceswanger, Evans & Dixon, LLC, 82 Corporate Woods, 10851 Mastin Blvd., Ste. 900, Overland Park, Kansas 66210.

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 his Kansas license number 6589. 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's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has committed one or more acts in violation of K.S.A. 65-1436(a) which would justify the revocation or imposition of other disciplinary action against his Kansas License under the provisions of K.S.A. 65-1436(b)

and the assessment of an appropriate fine against Respondent under the provisions of K.S.A. 65-1436(d).

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. Patient B.B. began seeing Respondent for dental treatment on April 2, 2007 and periodontal disease was diagnosed. Radiographs taken at this visit show chronic mild to moderate periodontal disease. She was given home care instructions and reappointed for a six-month hygiene recall.

B. The patient returned for exams and cleanings on 12/10/2007, 5/12/2008, 11/17/2008, 5/8/2009, 11/10/2009, 5/11/2010 and 11/16/2010. At each visit the patient was reappointed for a six-month hygiene recall.

C. On 5/16/11, the patient returned and comments were charted about red, inflamed tissue around the upper and lower cuspids.

D. On 11/17/2011, the patient returned and comments were charted indicating the red and inflamed areas had improved in appearance.

E. There is no record of periodontal examination or charting for either the 5/16/2011 or the 11/17/2011 visit. At the 11/17/2011 visit the patient was reappointed for a six-month hygiene recall.

F. During annual visits only bitewing x-rays of the posterior teeth (often only one for each side) were taken. A full mouth x-ray series was never taken. On multiple visits no periodontal examination or charting was performed. The patient's chart does not reflect that the patient was ever told that she had periodontal disease or that she needed more frequent visits.

G. On 5/18/2012 at a hygiene visit, the periodontal pocket readings showed severe bone loss around the cuspids with heavy calculus and bleeding gums. The patient was then referred to a periodontist.

H. The failure to take a full mouth x-ray series of this patient is a failure to adhere to the applicable standard of dental care to an extent that constitutes ordinary negligence.

I. The failure to offer and/or provide appropriate treatment for the patient's periodontal disease over the approximately five (5) year period Respondent treated the patient constitutes multiple instances of a failure to adhere to the applicable standard of dental care to an extent that constitutes ordinary negligence.

6. Upon motion duly made, seconded and passed, the Board finds that Respondent's conduct constitutes professional incompetence pursuant to K.S.A. 65-1436 (a)(3) as defined at K.S.A. 65-1436 (c)(2) and subjects his license to discipline pursuant to K.S.A. 65-1436(b) including the imposition of an appropriate fine pursuant to K.S.A. 65-1436(d).

7. 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 an administrative fine in the amount of One Thousand Dollars (\$1,000.00), within twenty (20) days of the entry of this Consent Order.

B. CONTINUING EDUCATION. Respondent agrees and the Board further orders that within six (6) months of the effective date of this Consent Order he shall obtain a minimum of 6 hours of continuing dental education in the area of recordkeeping and a minimum of 6 hours of continuing dental education in the area of periodontal disease, recognition, planning and treatment, which cannot be the same course. The courses must be pre-approved by a Board

representative and not any course the Respondent has previously taken. Each entity that administers a course must notify the Board that Respondent has successfully completed the course. All continuing education required by this Stipulation and Consent Order shall be separate and in addition to any continuing education required for the renewal of Respondent's dental license.

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:

- (i) Comply fully with this Stipulation and Consent Order; and
- (ii) 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 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 Procedure Act and the Kansas Judicial Review Act.

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 his 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 or an opportunity to consult 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 Judicial Review Act, 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 23 day of April, 2021.

KANSAS DENTAL BOARD

By: 
MARK HERZOG, D.D.S.
President

AGREED AND APPROVED BY:



ALBERT MENDEZ, D.D.S.

3/26/2021
Date

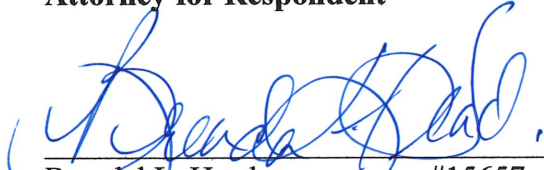


4/23/21
Date

Investigation Member


Brian J. Niceswanger #12531
EVANS & DIXON, LLC
82 Corporate Woods
10851 Mastin Blvd., Suite 900
Overland Park, KS 66210
Attorney for Respondent

3/31/2021
Date


Brendal L. Head #15657
FRIEDEN & FORBES, LLP
1414 SW Ashworth Pl., Suite 201
Topeka, Kansas 66604
TEL: (785) 354-1100
FAX: (785) 354-1113
Disciplinary Counsel for the Kansas Dental Board

4-2-2021
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 26 day of April, 2021, addressed to:

Brenda L. Head
FRIEDEN & FORBES, LLP
1414 SW Ashworth Place, Suite 201
Topeka, KS 66604

PERSONAL AND CONFIDENTIAL

Albert Mendez, DDS
1510 N. Broadway
Pittsburg, KS 66762

Brian J. Niceswanger
EVANS & DIXON, LLC
82 Corporate Woods
10851 Mastin Blvd., Suite 900
Overland Park, KS 66210


Representative of the Executive Director
KANSAS DENTAL BOARD