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BEFORE THE KANSAS DENTAL BOARD

In the Matter of the Licensure of:)
IRWIN BOE, D.D.S.)
Kansas License No. 6303)
_____)

Case Nos. 15-14, 15-35 & 16-49

KANSAS DENTAL BOARD

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorneys, Randall J. Forbes and Brenda L. Head of Frieden, Unrein & Forbes, LLP, 1414 SW Ashworth Pl., Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by his attorneys, Mark Stafford of Simpson Logback Lynch Norris P.A., 107 SW 6th Ave., Suite 210, Topeka, Kansas 66603 and Jody R. Gondring of Hennessy, Boe & Gondring, P.A., 5940 Lamar, Mission, Kansas 66202.

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 6303. 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

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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. Respondent's billing records for patient SJ include charges for a crown build-up and crown lengthening on tooth #10 performed on June 6, 2014. Respondent has no treatment of progress records regarding dental services or treatment provided to Patient SJ on June 6, 2014.

B. Respondent's billing records for patient SJ include charges for a core build-up and a post and core to tooth #10 on November 19, 2014. The procedures are mutually exclusive and were not both performed on Patient SJ's tooth #10 on November 19, 2014.

C. A review of the records of nine (9) patients treated with implants by Respondent from January 1, 2015 through February 19, 2016 revealed the following:

i. For seven of the patients the Respondent failed to record in the patient's record the type, size or method of placement of the implant;

ii. Two implants showed a clear failure of the implant to integrate;

iii. One implant had failed, had been removed and relocated slightly from its original position;

iv. One implant had been removed due to its close proximity to the inferior alveolar nerve canal; and

v. One of the implant/crown systems had a very poor fitting implant to crown ratio.

D. On one or more occasions, Respondent has allowed an unlicensed dental assistant to perform the final cementation of a crown and on one or more occasions Respondent has allowed an unlicensed dental assistant to perform scaling.

E. Respondent has simultaneously operated three (3) dental offices in the State of Kansas without being personally present in each office operating as a dentist or personally overseeing such operations as are performed in each office at least 20% of the time patients are being treated in each of the offices, as required by K.S.A. 65-1435(d).

F. Respondent practices dentistry in the State of Kansas using the trade name "Advanced Dental", which was approved in error and by mistake. Respondent advertises his Kansas dental practice using the term "Advanced Dental". The use of the name "Advanced Dental" implies professional superiority or the performance of professional services in a superior manner. Respondent has failed to comply with the requirement of K.A.R. 71-7-1 by submitting evidence of the truthfulness of the claim implied by the use of the name "Advanced Dental" prior to using it in advertising.

G. Respondent's treatment of patient BC on July 6, 2016 failed to meet the standard of care in the following respects:

i. Failed to meet the standard of care in performing prophylaxis when intending to charge for prophylaxis although polishing was only performed; and

ii. Failed to meet the standard of care by having inadequate recordkeeping by failing to include periodontal comments or periodontal pocket charting during the comprehensive new patient exam.

6. Upon motion duly made, seconded and passed, the Board finds that Respondent's conduct, as detailed in paragraph 5 above, violates the Act, that such conduct warrants imposition of appropriate disciplinary action against his Kansas License under the provisions of K.S.A. 65-1436 (a)(3) as defined at K.S.A. 65-1436 (c)(2); K.S.A. 65-1436(a)(5); K.S.A. 65-1436(a) (6); K.S.A. 65-1436(a)(17); 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 Five Thousand Dollars (\$5,000.00), within twenty (20) days of the entry of this Consent Order.

B. PRACTICE RESTRICTION AND CONTINUING EDUCATION. Respondent shall not place any dental implants until he has successfully completed a root form implant course preapproved by a representative of the Board. Each entity that administers the 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. Within 30 days of the course required by this Consent Order, Respondent shall deliver to the Board's Executive Secretary a short written summary of the Course and a brief description of how the Course has affected changes to Respondent's implant therapy to the benefit of his patients. Respondent agrees and consents that within 4 months of the effective date of this Consent Order he shall obtain a minimum of 10 hours of continuing dental education in the area of dental implant treatment planning, placement and restoration using both mini implants and

root form implants. The course(s) must be pre-approved by a Board representative and not any course the Respondent has previously taken. The education must include a hands-on course to be approved in advance by the Board. Each entity that administers the 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.

C. PRACTICE RESTRICTION. All current and future dental assistants employed by Respondent or one of his practices, shall execute a written statement within 10 days of the effective date of the Consent Order contemplated hereby or within 10 days of employment, whichever is later, acknowledging that the assistant is aware, that among the procedures, "Kansas law prohibits a unlicensed dental assistant from performing the final cementation of a crown, final placement of an implant abutment in anticipation of a crown and the scaling of teeth, unless authorized to perform superingival scaling in accordance with K.S.A. 65-1423(a)(E)(ii)." The Respondent shall maintain the written statements and make them available to the Board's Inspector immediately upon request.

D. USE OF ADVANCED DENTAL. Within 30 days of the effective date of the Consent Order contemplated hereby, Respondent shall cease all use of the name "Advanced Dental" in conjunction with any dental practice in the State of Kansas, except for its use in publications such as a phone book that were published prior to the effective date of the Consent Order contemplated hereby.

E. COMPLIANCE WITH K.S.A. 65-1435(d). Respondent shall be personally present in each dental office owned or operated by him operating as a dentist or

personally overseeing such operations as are performed in each office at least 20% of the time patients are being treated in each of the offices.

F. 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 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 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.

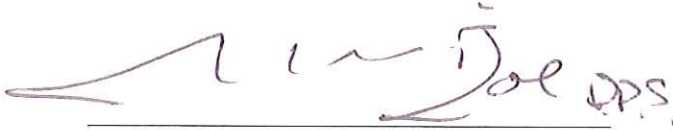
The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 21st day of April, ~~2016~~²⁰¹⁷, (RLH)

KANSAS DENTAL BOARD

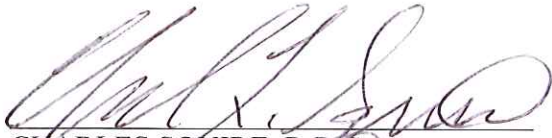
By: Donna K. Thomas, DDS
for GLENN HEMBERGER, DDS
President

AGREED AND APPROVED BY:



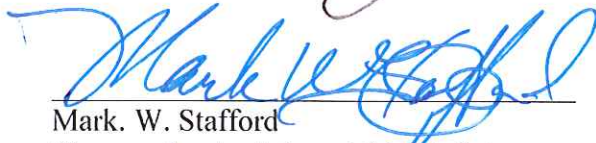
IRWIN BOE, D.D.S.

02/06/2017
Date



CHARLES SQUIRE, D.D.S.
Investigation Member

04/21/2017
Date



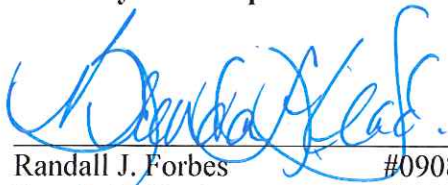
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Disciplinary Counsel for the Kansas Dental Board

4-21-17
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 25th day of April, 2017, addressed to:

Randall J. Forbes
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PERSONAL AND CONFIDENTIAL

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Representative of the Executive Director
KANSAS DENTAL BOARD