BEFORE THE KANSAS DENTAL BOARD

FILED
APR 08 2022
Kansas Dental Board

In the Matter of the Licensure of:	)	
	)	**Case No. 20-66**
DAVID LEE EWING, D.D.S.	)	
Kansas License No. 60768,	)	
Respondent	)	
	)	

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorney, Brenda L. Head of Frieden & Forbes, LLP, 1414 SW Ashworth Pl., Suite 201, Topeka, Kansas 66604. 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 his Kansas license number 60768. 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. On March 8, 2020, Respondent and the Missouri Dental Board entered into a document styled *Settlement Agreement Between Missouri Dental Board In Addition, David Lee Ewing, D.D.S.* ("Missouri Settlement Agreement"). A true and correct copy of the Missouri Settlement Agreement is marked Exhibit A, attached hereto, and incorporated herein by reference. The Joint Stipulations of Fact and Conclusions of Law appearing in paragraphs numbered 1 through 16 of the Missouri Settlement Agreement are specifically incorporated herein as findings of the Board.

B. As part of the Missouri Settlement Agreement Respondent agreed and stipulated that he had violated various provisions of the Missouri Dental Law and agreed to a period of five (5) years PROBATION of his Missouri license to practice dentistry and mandatory advanced training.

6. Upon motion duly made, seconded and passed, the Board finds that Respondent's conduct as described in the Missouri Settlement Agreement and the Missouri Settlement Agreement itself subjects his Kansas license to discipline pursuant to K.S.A. 65-1436(a)(3) as defined at K.S.A. 65-1436(c)(2) and K.S.A 65-1436(a)(18).

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

A. PROBATION AND ADVANCED TRAINING. Respondent agrees, and the Board further orders that Respondent's License is hereby placed on PROBATION for a period of five (5) years ("disciplinary period"), or until such time as Respondent completes fifteen (15) hours of advanced training in fixed prosthodontics and complete the prosthodontist section of an entry-level clinical competency exam approved by the Missouri Dental Board and completes all requirements set forth in the Missouri Settlement Agreement.

B. 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; and

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 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 455-S, Topeka, KS 66612. The Respondent hereby waives those rights.

ENTERED AND EFFECTIVE this 8th day of April, ~~2021~~ 2022.

KANSAS DENTAL BOARD

By: _____
MARK HERZOG, DDS
President

AGREED AND APPROVED BY:

DAVID LEE EWING, D.D.S.

4 November 2021
Date

MARK HERZOG, D.D.S.
Investigation Member

4.8.2022
Date

Scott Kumpf
9565 S Kingston Court, Suite 100
Englewood CO 80112 720-473-8000
Respondent's Attorney's Name & Address

Date

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

11-09-2021
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 14th day of April, ~~2021~~ 2022, addressed to:

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

David Lee Ewing, D.D.S.
19215 E. Ponca Terrace
Independence, MO 64056

Representative of the
KANSAS DENTAL BOARD

SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD IN ADDITION, DAVID LEE EWING, D.D.S.

Come now David Lee Ewing, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to Licensee.

Licensee acknowledges that Licensee has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 2008002034 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

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[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee is licensed by the Board as a dentist, license number 2008002034. Licensee's Missouri license has an expiration date of November 30, 2020. Licensee's licensee is current and active.

3. On or about February 27, 2019, the Board received a closed claim report from the National Practitioner Data Bank (NPDB) regarding Licensee.

4. Licensee worked at Swope Health Services (Swope) where he treated patient M.G. Licensee fabricated a fixed partial denture (FPD), numbers 6 – 13, with pontics, numbers 7 – 10 and 12. The bridge was redone at least two times due to esthetic concerns, open margin and hyperocclusion. Eventually the number 6 tooth root fractured and the tooth was lost.

5. According to the NPDB report reviewed by the Board, Licensee's quality of care incidents resulted in the revocation of Licensee's clinical privileges with Swope Health Services and Licensee's subsequent termination due to a lack of active clinical privileges.

6. During the Board's April 2019 meeting, it was the decision of the Board to open a complaint against the Licensee, and Licensee was invited to appear before the Board.

7. On January 23, 2020, Licensee appeared before the Board. Licensee stated that he was terminated from Swope Health Services because he "displayed very poor judgment on a couple of cases that had adverse outcomes". Licensee related the incidents:

a. Licensee placed an eight-unit bridge for patient M.G. He related that he felt uncomfortable with placing a bridge of that span, but allowed the patient to talk him into doing so. During the post-placement exam a marginal defect was discovered on the distal of tooth number 13 and the bridge needed to be replaced. There was a delay of approximately six months before the patient presented again with a broken bridge. Licensee noted that he had to extract one of the abutments, tooth number six.

b. Licensee seated a patient, anesthetized the patient, and began to drill into tooth number 29. Licensee noted that there were no carries and consulted the patient's chart realizing the

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dentition did not match. Licensee advised the patient that he was working off another patient's chart. He "conservatively" completed the restoration and the patient was dismissed for the day.

8. During the January 23, 2020 appearance, Licensee related a third patient incident where he attempted an extraction on a patient's tooth, number seventeen. Licensee stated that he made a "bad pass" with the surgical bur and damaged tooth number eighteen which then had to also be extracted.

9. The Board determined that Licensee's actions as described above in paragraphs 3 and 8 constitute a violation for which the Board has authority to discipline Licensee's license.

10. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), RSMo, which states in pertinent part:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:
>
> (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

11. The terms of discipline shall include that Licensee's dental license, number 2008002034, be placed on **PROBATION** for a period of five (5) years ("disciplinary period"), or until such time as Licensee completes fifteen (15) hours of advanced training in fixed prosthodontics and completes the prosthodontic section of an entry-level clinical competency exam approved by the Board. Advanced training must be approved by the Board prior to Licensee taking the training.

I. GENERAL REQUIREMENTS

A. During the disciplinary period, Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. During the disciplinary period, Licensee shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether Licensee has

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complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.

C. During the disciplinary period, Licensee shall keep the Board apprised of Licensee's current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

D. During the disciplinary period, Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

E. During the disciplinary period, Licensee shall timely renew Licensee's license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.

F. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor Licensee's compliance with the terms and conditions of this Settlement Agreement.

H. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

12. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 332, 610 and 324, RSMo.

13. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

14. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any

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claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

15. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

16. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

David Lee Ewing, D.D.S.

Date 8 March 2020

BOARD

Brian Barnett,
Executive Director
Missouri Dental Board

Date 3/12/2020

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