

BEFORE THE KANSAS DENTAL BOARD

FILED

NOV - 5 2010

In the Matter of the Licensure of:)
ANDRE K. KANDY, D.D.S.)
Kansas License No. 6997)
_____)

Case No. 09-109

KANSAS DENTAL BOARD

STIPULATION AND CONSENT ORDER

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

1. The Board is represented herein by its attorneys, Randall J. Forbes and Justin L. McFarland of Frieden, Unrein, Forbes & Biggs, LLP, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Todd Shadid of Klenda, Mitchell, Austerman, & Zuercher, LLC, 1600 Epic Center, 301 North Main, Wichita, Kansas 67202.

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 6997. 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:

A. From early July 2007 until late March 2008, Licensee was out of the State of Kansas, yet conducted a dental office in the name of the Licensee and or advertised the Licensee's name in connection with a dental office without Licensee being personally present in the office operating as a dentist or personally overseeing such operations as are performed in the office during a majority of the time the office was being operated.

B. On or about January 4, 2008, Respondent's office submitted a claim to Delta Dental of Kansas for a lower space maintainer that the patient had not and did not receive. On May 22, 2008, Delta Dental of Kansas paid Respondent's office \$245.00 for the space maintainer that ultimately was not provided to the patient.

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

A. VOLUNTARY SURRENDER. On or before the effective date of this Stipulation and Consent Order, Respondent hereby agrees and consents to the voluntary surrender of his license to practice dentistry in the State of Kansas, license number 6997. As a condition of the Board accepting the voluntary surrender of his license, in lieu of other disciplinary action, the Respondent further agrees to the Board entering an order that provides if Respondent should ever again apply for licensure as a dentist in Kansas, the Respondent shall

have the burden to prove, by clear and convincing evidence, that he is rehabilitated and competent to return to the practice of dentistry in the State of Kansas. As a part of that agreement, it is further agreed that in considering whether Respondent has met his burden of proof, the Board may consider any relevant factors, including, but not limited to, the following:

- a. the moral fitness of the Respondent at the time of the application to terminate the suspension;
- b. the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- c. the extent of Respondent's rehabilitation;
- d. the seriousness of the original misconduct;
- e. conduct subsequent to the indefinite suspension;
- f. the time which has elapsed since the surrender of his license;
- g. the Respondent's character, maturity, and experience at the time of the surrender of his license; and
- h. the Respondent's competence to practice pharmacy as of the time of the application for licensure.

As part of any future application for licensure, the Board shall have the right to require Respondent to submit to any physical and/or mental tests or examinations with providers of the Board's choice and totally at Respondent's expense. If the Board elects to have such testing performed, the Respondent shall authorize the release of all information related to such tests or examinations to the Board or its representative. Should the Board determine to relicense Respondent, the Board may place such conditions on the termination and Respondent's right to practice dentistry, as the Board may deem, in its discretion, necessary.

The Respondent further agrees not to seek relicensure in Kansas for a period of three years from the effective date of the stipulation and consent order contemplated hereby.

B. ADMINISTRATIVE FINE. Respondent agrees, and the Board further orders the Respondent, to pay to the Board, within ten (10) days of the effective date of this Stipulation and Consent Order, an administrative fine in the amount of Two Thousand Dollars (\$2,000).

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; 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.

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 opportunity for 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 and Healthcare Integrity and Protection Data Bank, this matter shall be categorized as Adverse Action Classification: "1145- Voluntary Surrender of License".

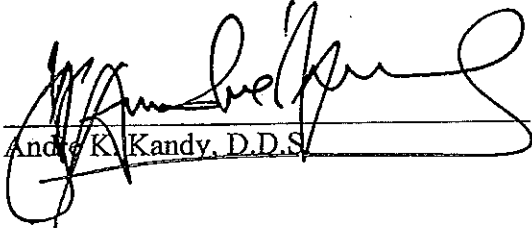
18. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of this Stipulation and Consent Order to file a petition for reconsideration with the Board and the right within 30 days after service of the Stipulation and Consent Order to 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 5th day of November, 2010.

KANSAS DENTAL BOARD

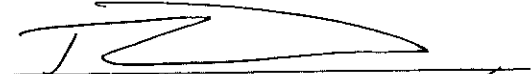
By: Denise A. Maus RDH
DENISE MAUS, R.D.H.
President

AGREED AND APPROVED BY:




Andy K. Kandy, D.D.S.

8/19/2010
Date



Todd Shadid #16615
KLENDIA, MITCHELL, AUSTERMAN
& ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas 67202

8/25/2010
Date



Randall J. Forbes #09089
FRIEDEN, UNREIN FORBES & BIGGS, LLP
555 S. Kansas Avenue, Suite 303
Topeka, Kansas 66603
TEL: (785) 354-1100
FAX: (785) 354-1113
Disciplinary Counsel for the
Kansas Dental Board

9.1.10
Date

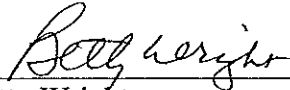
CERTIFICATE OF SERVICE

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 10th day of November, 2010, addressed to:

Randall J. Forbes
FRIEDEN, UNREIN, FORBES & BIGGS LLP
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603

Andre K. Kandy, D.D.S.
2007 Colt Ct.
Andover, KS 67002

Todd Shadid
KLEND, MITCHELL, AUSTERMAN
& ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas 67202



Betty Wright
Executive Director
KANSAS DENTAL BOARD