

BEFORE THE KANSAS DENTAL BOARD

FILED  
JUL 25 2008  
KANSAS DENTAL BOARD

In the Matter of )  
 )  
MARK R. BAGBY, D.D.S. )  
Kansas License No. 60095 )

File No. 08-52

**STIPULATION AND CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Mark R. Bagby, 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 60095. 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 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. In 2006, Respondent submitted to the Board an application for renewal of his Kansas Dental License. As part of that application, Respondent submitted a document signed by him titled Continuing Education Record (the CE Record”) and indicating he had taken six different continuing dental education courses during 2005 and 2006 totaling 101 hours of continuing education.

B. K.A.R. 71-4-1 makes completion of no less than 60 hours of continuing dental education a condition of license renewal for dentists.

C. On June 21, 2007, the Board’s Executive Director wrote Respondent requesting documentation to verify that Respondent had attended at least 60 hours of the continuing dental education listed on the CE Record.

D. When the Board’s Executive Director received no response to her June 21, 2007 request, she again wrote the Respondent on August 3, 2007 requesting documentation to verify that Respondent had attended at least 60 hours of continuing dental education listed on the CE Record.

E. On January 28, 2008, the Board’s Executive Director again wrote the Respondent requesting documentation to verify that Respondent had attended at least 60 hours of continuing dental education listed on the CE Record.

F. The Respondent has never provided to the Board’s Executive Director documentation to verify that Respondent had attended at least 60 hours of continuing dental education listed on the CE Record.

The Board further finds and concludes that the aforesaid conduct is grounds for disciplinary action in the State of Kansas pursuant to K.S.A. 65-1436(b), K.S.A. 65-1436(a)(1) and K.S.A. 65-1436(a)(19).

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 an administrative fine in the amount of Five Thousand Dollars (\$5,000), subject to the terms hereof. One Thousand Dollars (\$1,000) of the fine shall be payable within ten (10) days of the effective date to the Stipulation and Consent Order contemplated hereby. Four Thousand Dollars (\$4,000) of the fine shall be probated for a period of 60 days from the effective date to the Stipulation and Consent Order contemplated hereby. If during the 60-day period, Respondent provides documentation that the Board's Executive Director finds satisfactory to verify that Respondent had attended at least 60 hours of the continuing dental education listed on the CE Record, or alternatively documentation of 60 hours of approved continuing dental education taken after December 1, 2006, the Four Thousand Dollars (\$4,000) of the fine shall not be payable. If during the 60-day period, Respondent does not provide documentation that the Board's Executive Director finds satisfactory to verify that Respondent had attended at least 60 hours of the continuing dental education listed on the CE Record, or alternatively documentation of 60 hours of approved continuing dental education taken after December 1, 2006, the Four Thousand Dollars (\$4,000) of the fine shall be due and payable on the first Monday after the end of the 60-day period. Should the Respondent choose to submit to the Board's Executive Director 60 hours of approved continuing dental education

taken after December 1, 2006, those hours shall not be used to meet the Respondent's continuing education requirement for the period from December 1, 2006 through November 30, 2008.

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.

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: "99 - Other - Not Classified, Failure to provide information legally requested."

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 25<sup>th</sup> day of JULY, 2008.

KANSAS DENTAL BOARD

By: Richard T. Darnall  
RICHARD DARNALL, D.D.S.  
President

AGREED AND APPROVED BY:

Mark R. Bagby DDS  
MARK R. BAGBY, D.D.S.

5/19/08  
Date


**Mark R. Bagby DDS**  
**7501 Mission Rd.**  
**Prairie Village, KS 66206**  
**913-642-1888**

BRAD HIGGERSON, D.D.S.  
Investigation Member

Date

Respondent's Attorney's Name & Address

Date

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

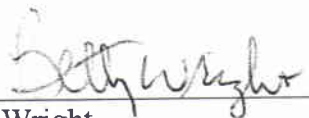
6.7.08  
Date

**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 28<sup>th</sup> day of July, 2008, addressed to:

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

Mark R. Bagby, D.D.S.  
7501 Mission, Suite W-1  
Prairie Village, Kansas 66208

  
Betty Wright  
Executive Director  
KANSAS DENTAL BOARD