

BEFORE THE KANSAS DENTAL BOARD

FILED
JAN 3 '09 2009
KANSAS DENTAL BOARD

In the Matter of)
)
BRIAN D. AHERN, D.D.S.)
Kansas License No. 6277)

Case No. 08-51

STIPULATION AND CONSENT ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and Brian D. Ahern, 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 6277. 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. On or about October 1, 2007, Respondent entered into an informal consent agreement entitled "Settlement Agreement Between Missouri Dental Board And Brian David Ahern, D.D.S." (hereinafter "Missouri Settlement Agreement"), which agreement placed Respondent's Missouri license to practice dentistry on probation for a period of one year. (A true and correct copy of the Missouri Settlement Agreement is attached hereto and incorporated herein as Exhibit A).

B. The Missouri Settlement Agreement also requires the Respondent to do the following: (1) Make up thirty hours of approved continuing education hours that he was delinquent within the first nine months of the effective date of the agreement; (2) earn an additional thirty hours of approved continuing education within the first nine months of the effective date of the agreement; (3) ensure that the additional continuing education hours are not correspondence or internet courses; (4) take and pass the Missouri Dental Board's designated jurisprudence examination within the first nine months of the effective date of the agreement; and (5) provide the Missouri Dental Board with proof of attendance of the continuing education hours no later than thirty days after attending the course. (Exhibit A).

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) and K.S.A. 65-1436(a)(18).

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

A. PROBATION. Respondent hereby agrees and consents to the Board entering an order placing his license to practice dentistry in the State of Kansas, and the Board further orders that Respondent's license to practice dentistry in the State of Kansas shall be placed, on probation for a period of one (1) year from the effective date to the Stipulation and Consent Order contemplated hereby.

B. JURISPRUDENCE EXAMINATION. Respondent hereby agrees and consents to the Board entering an order requiring, and the Board further orders, that Respondent shall take and pass the Board's designated jurisprudence examination within nine (9) months from the effective date to the Stipulation and Consent Order contemplated hereby. Respondent shall be responsible to contact the Board office and make necessary arrangements so the examination may be taken and passed within the probationary period. Failure to take and pass the Board's designated jurisprudence examination within nine (9) months from the effective date to the Stipulation and Consent Order contemplated hereby shall constitute a violation of the terms of this Stipulation and Consent Order.

C. 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 attended at least an additional 41 hours of the continuing dental education listed on his 2006 Continuing Education Record (a true

and correct copy of which is attached hereto and incorporated herein as Exhibit B), or alternatively documentation of 41 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 attended at least an additional 41 hours of the continuing dental education listed on his 2006 Continuing Education Record, or alternatively documentation of 41 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 41 hours of approved continuing dental education taken after December 1, 2006, those hours shall not be used to meet the Respondent's continuing dental education requirement for the period from December 1, 2006, through November 30, 2008.

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:

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: "1125 Probation of License."

B. Basis For Action: "39 – License Revocation, Suspension or Other Disciplinary Action Taken by a Federal, State or Local Licensing Authority."

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.

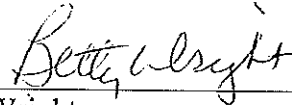
ENTERED AND EFFECTIVE this 30th day of November, 2008. January 2009

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 2nd day of February, 2009, addressed to:

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

Brian D. Ahern, D.D.S.
10508 Lee Blvd.
Leawood, KS 66206



Betty Wright
Executive Director
KANSAS DENTAL BOARD

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND BRIAN DAVID AHERN, D.D.S.**

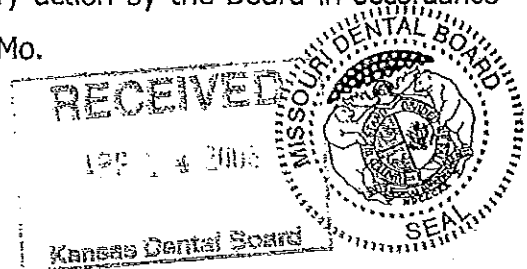
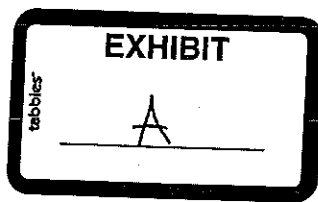
Come now Brian David Ahern, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, 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 2000.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his 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 him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him 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 him.

Licensee acknowledges that he has received a copy of the draft complaint, the investigative report, and other documents relied upon by the Board in determining there was cause to discipline his license.

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 2004000644, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 332, RSMo.



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 2000, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Brian David Ahern, D.D.S. is licensed by the Board as a Dentist, License No. 2004000644. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. Pursuant to § 332.181, RSMo 2000 and 20 CSR 2110-2.240 (2), every Board licensee is required to obtain fifty (50) hours of continuing educational programs during the two-year period immediately preceding the renewal period to renew his or her license.

4. On Licensee's 2006-2008 renewal application Licensee swore and affirmed under penalty of law that he completed fifty (50) hours of Board-approved continuing education during the period of December 1, 2004, through November 30, 2006.

5. The Board renewed Licensee's license based on Licensee's representations in paragraph 4 above.

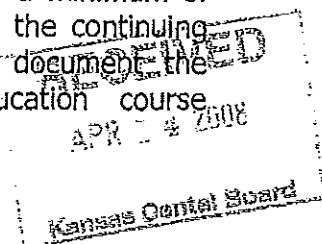
6. On or about March 13, 2007, the Board audited Licensee's continuing education hours pursuant to 20 CSR 2110-2.240 (2) (A), which states in pertinent part:

The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries.

7. Licensee failed to submit adequate documentation for fifty (50) hours of continuing education for the December 1, 2004 through November 30, 2006 period.

8. Licensee has a duty to maintain full and complete records of all approved continuing education credits earned pursuant to and as defined by 20 CSR 2110-2.240 (2) (A), which states in pertinent part:

Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document the licensee's attendance at the continuing education course.



including, but not limited to, retaining the titles of the courses taken, dates, locations, receipts, course sponsors, agendas and number of hours earned.

9. Licensee's failure to obtain the required fifty (50) continuing education credits is a violation of Section 332.181 and of Regulation 20 CSR 2110-2.240 (2).

10. Pursuant to Regulation 20 CSR 2110-2.240 (5), "a violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional, or any combination of these, in the performance of the functions, duties, or both, of a dentist or a dental hygienist, depending on the licensee's conduct."

11. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(3), (5), and (6), 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:

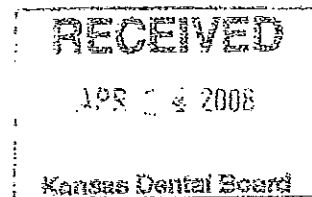
....

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

....

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

....



(6) Violation of, assisting, or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to 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 2000:

1. The terms of discipline shall include that the dental license be placed on PROBATION for a period of one (1) year ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

- A. Licensee shall make up the ~~thirty-four~~ ^{thirty (30)} (24) approved continuing education hours that he was delinquent within the first nine (9) months of the effective date of this Agreement.
- B. Licensee shall earn an additional ~~thirty-four~~ ^{thirty (30)} (24) hours of approved continuing education within the first nine (9) months of the effective date of this Agreement.
- C. These hours that need to be made up and the additional hours are in addition to those hours required by law for renewal and must be classroom/out of office hours (NO correspondence or internet courses). These additional continuing education hours cannot carry over into the next reporting period.
- D. Licensee shall take and pass the Board's jurisprudence examination within the first nine (9) months of the effective date of this Agreement.
- E. Licensee shall provide the Board with proof of attendance of the continuing education hours no later than thirty (30) days after attending the course. Failure to attend the required continuing education programs and/or submit the required documentation to the Board will result in a violation of the terms of discipline.

II. GENERAL REQUIREMENTS

- A. 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. Licensee shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during the year of the disciplinary period.
- C. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten (10) days of any change of home or work address and home or work telephone number.
- D. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug 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 his 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 the provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his 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 his 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.

- 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.

III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. The terms of discipline apply even if Licensee places his license on inactive status.
- C. Licensee shall notify, within fifteen (15) days of the effective date of this Settlement Agreement, all hospitals, nursing homes, outpatient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

2. 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, 620, RSMo.

3. 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.

4. Licensee, together with his heirs and assigns, and his 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 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.

LICENSEE AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE

_____ REQUESTS

RA _____ DOES NOT REQUEST

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING LICENSEE'S LICENSE AS A DENTIST.

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 has not requested review by the Administrative Hearing Commission, the agreement goes into effect fifteen (15) days after the document is signed by the Executive Director.

LICENSEE

Brian David Ahern
Brian David Ahern, D.D.S.

Date 10/1/07

BOARD

Sharlene Rimiller
Sharlene Rimiller
Executive Director
Missouri Dental Board

Date 1/23/08

Nanci R. Wisdom, L.C.
P.O. Box 983
107 West Fourth Street
Salem, MO 65560
(573) 729-8630
(573) 729-8640 fax

By: Brandi Baird
Brandi Baird #56257
Attorney for Missouri Dental Board

Date: August 6, 2007



KANSAS DENTAL BOARD CONTINUING EDUCATION RECORD

DENTIST OR HYGIENISTS

Continuing Education hours obtained from 05 to 06

Name Brian D Allen
 Address 1954 Mineral Ave Suite 1
 City, State, ZIP Kansas City Kansas 66102

License # 6277
 Office Phone 913 281 5538
 County Crawford

Please type or print. Illegible entries will not receive credit.

30 hrs needed for RDH & 60 for DDS/DMD

Date	Course Title	Clinician	Sponsoring Institution or Component	Credit Hours
Jan 05 - Dec 05	CRA Newsletter	Christensen	CRA	3
April 10 05	UMK Management		Medical Institute	8
Feb 16 05	CRA	R. Smith	CHS	3
Dec 5 05	OSHA '06	J. Brown	Cross Country	6
15 Mar 06	Resistance in HIV	Scheibel	ACTC	3
17 Mar 06	Adherence & Education	Hagman	UMKC	3
17 Mar 06	Medical Emergencies	Hawkins	UMKC	2
17 Mar 06	Table Clinics		UMKC	1
18 Mar 06	Positioning your practice	Blair	UMKC	3
18 Mar 06	Local Anesthesia	Hawkins	UMKC	3
19 Mar 06	Financial Independence	Brian	UMKC	3
Jan 06 - Dec 06	CRA Newsletter	Christensen	CRA	3
June 5	Metal Mouth	Brick	Endodontal Dentistry	3
June 5	Implants	Caputo	Endodontal Dentistry	3
June 6	Oral Surgery Overview	Ferguson	Endodontal Dentistry	3
June 6	Dentistry in the endo patient	Lawson	Endodontal Dentistry	3
Aug 14	CRA	R. Smith	CHS	3
Oct 14	OSHA 07	Anderson / Hill		6
Total Hours				63

Return to:
 Kansas Dental Board
 900 SW Jackson, Room 564-S
 Topeka, KS 66612-1230
 (785) 296-6400

SIGNATURE Brian D Allen DDS

K.A.R. 71-4-2(a) states "Only those courses which increase the dentist's clinical and theoretical dental knowledge or ability to provide care and treatment to patients shall qualify for credit in computing the required hours of continuing dental education."

DEADLINE FOR RETURN IS DECEMBER 1 OF THE CURRENT BIENNIAL LICENSE RENEWAL YEAR.

