

FILED
SEP 21 2007
KANSAS DENTAL BOARD

BEFORE THE KANSAS DENTAL BOARD

In the Matter of)
) Case No. 06-130
JAMES D. PINKERTON, D.D.S.)
Kansas License No. 60246)

STIPULATION AND FINAL AGENCY ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Dental Board (the "Board") and James D. Pinkerton, 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, Steve A. Schwarm, Polsinelli Shalton Flanigan Suelthaus PC, 555 South Kansas Avenue, Suite 301, Topeka, Kansas 66603.

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 60246. 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.*

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5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board that:

A. On or about May 14, 2005, Respondent, a contract civilian dentist for the Kansas Army National Guard, examined Patient K.H., a soldier in the Kansas Army National Guard. Patient K.H. was in a pre-mobilized status and his dental health assessment was required before deployment to Iraq.

B. Upon examination, Respondent noted multiple large cavities and determined that Patient K.H. needed extensive dental work, including, but not limited to, multiple root canals and restorations. Notwithstanding Patient K.H.'s need for endodontic care, Respondent did not refer Patient K.H. to an endodontist or notify the Kansas Army National Guard that Patient K.H. was unfit to be deployed due to his dental condition. Instead, on or about May 16, 2005, Respondent performed root canals and core build-ups for teeth #s 9, 10, 11, 19, 20, 21, 27, and 28. The Kansas Army National Guard paid for all of Respondent's work on Patient K.H.

C. Patient K.H. was subsequently mobilized at Fort Riley, Kansas, to prepare for deployment to Iraq. On or about June 20, 2005, Patient K.H. received an endodontic evaluation, which revealed that Respondent provided substandard endodontic treatment for teeth #s 9, 10, 11, 19, 20, 21, 27, and 28. All of the teeth were retreated due to short fills and/or voids, a separated instrument at tooth #19, and untreated canals at teeth #21 and #28.

D. Under the circumstances of this case, the Respondent's failures to make a referral to an endodontist and performance of the eight root canals and core build-ups constitute deviations from the applicable standard of care.

The Board 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)(3), as defined by K.S.A. 65-1436(c)(2).

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

A. ADMINISTRATIVE FINE. Respondent hereby agrees and consents to the Board entering an order requiring him to pay to the Board, within ten (10) days of the effective date to the Final Agency Order contemplated hereby, an administrative fine in the amount of Six Thousand Seven Hundred Dollars (\$6,700.00).

B. LICENSE LIMITATION. Respondent hereby agrees and consents to the Board entering an order limiting his license to practice dentistry in the State of Kansas by prohibiting him from performing any endodontic therapy until the completion of the Continuing Dental Education requirements contained in paragraph 6C below and further order of the Board. If and when Respondent fulfills the Continuing Dental Education requirements contained in paragraph 6C below, he may apply to the Board to lift the limitation on his Kansas license to practice dentistry. Upon application to the Board for a lifting of the license limitation, the Respondent shall have the burden to prove he has fulfilled the Continuing Dental Education requirements contained in paragraph 6C below.

C. CONTINUING DENTAL EDUCATION. Respondent hereby agrees and consents to the Board entering an order requiring him, within six (6) months of the effective date to the Final Agency Order contemplated hereby, to obtain thirty (30) hours of dental education on the topic of endodontic therapy, all in addition to any continuing education necessary to renew his Kansas dental license.

D. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Final Agency Order he must:

1. Comply fully with this Stipulation and Final Agency 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 investigation which led to this disciplinary action 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 Final Agency Order and the Final Order provided for herein, with or without the presence of the Respondent or his attorney. In the event that this Stipulation and Final Agency Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Final Agency 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 contained herein shall not become binding until this Stipulation and Final Agency Action is approved by the Board and the Final Order provided for herein is 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 Final Agency Action or the Final Order provided for herein.

9. The Respondent agrees that this Stipulation and Final Agency Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. 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 Final Agency Order and the Final Order provided for herein.

12. The Respondent acknowledges that he enters into this Stipulation and Final Agency Order freely and voluntarily after consultation with counsel of his choosing. The

Respondent further acknowledges that he has read this Stipulation and Final Agency 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 Final Agency Order. Respondent acknowledges and agrees that any violation of this Stipulation and Final Agency 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 Final Agency Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Final Agency Order.

14. This Stipulation and Final Agency Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Final Agency Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Final Agency Order shall be given full force and effect.

15. Upon execution by all parties, this Stipulation and Final Agency Order shall be a public record in the custody of the Board.

16. This Stipulation and Final Agency 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 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. Adverse Action Classification: "1147 Limitation or Restriction on License."

C. Adverse Action Classification: "1199 Other Licensure Action – Not Classified, Mandatory Continuing Education Courses."

D. Basis For Action: "13 Negligence."

18. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein 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.

AGREED AND ACCEPTED BY:



James D. Pinkerton, D.D.S.

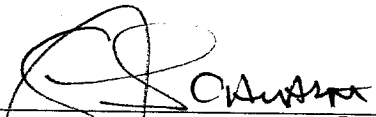
7-17-07

Date


Robert Henson, D.D.S.
Investigation Member

Date

APPROVED BY:


Steve A. Schwarm, #13232
POL SINELLI SHALTON WELTE ~~FLAUGAN~~ 8/2
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072307
Date


Randall J. Forbes, #09089
FRIEDEN & FORBES
555 S. Kansas Avenue, Suite 303
Topeka, KS 66603
(785) 232-7266

9.10.07
Date

BEFORE THE KANSAS DENTAL BOARD

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In the Matter of)
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JAMES D. PINKERTON, D.D.S.)
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Kansas License No. 60246)

Case No. 06-130

FINAL ORDER

Upon motion duly made, seconded and passed, the Kansas Dental Board (the "Board") approves and accepts the within Stipulation and Final Agency Order and incorporates the provisions thereof as the Final Order of the Board.

The Board finds that on or about May 14, 2005, Respondent, a contract civilian dentist for the Kansas Army National Guard, examined Patient K.H., a soldier in the Kansas Army National Guard. Patient K.H. was in a pre-mobilized status and his dental health assessment was required before deployment to Iraq. Upon examination, Respondent noted multiple large cavities and determined that Patient K.H. needed extensive dental work, including, but not limited to, multiple root canals and restorations. Notwithstanding Patient K.H.'s need for endodontic care, Respondent did not refer Patient K.H. to an endodontist or notify the Kansas Army National Guard that Patient K.H. was unfit to be deployed due to his dental condition. Instead, on or about May 16, 2005, Respondent performed root canals and core build-ups for teeth #s 9, 10, 11, 19, 20, 21, 27, and 28. The Kansas Army National Guard paid for all of Respondent's work on Patient K.H.

Patient K.H. was subsequently mobilized at Fort Riley, Kansas, to prepare for deployment to Iraq. On or about June 20, 2005, Patient K.H. received an endodontic evaluation, which revealed that Respondent provided substandard endodontic treatment for teeth #s 9, 10, 11, 19, 20, 21, 27, and 28. All of the teeth were retreated due to short fills and/or voids, a

separated instrument at tooth #19, and untreated canals at teeth #21 and #28. Under the circumstances of this case, the Respondent's failures to make a referral to an endodontist and performance of eight root canals and core build-ups constitute deviations from the applicable standard of care.

The Board finds and concludes that the aforesaid conduct justifies disciplinary action against Respondent's Kansas dental license pursuant to K.S.A. 65-1436(b) and K.S.A. 65-1436(a)(3), as defined by K.S.A. 65-1436(c)(2).

The Board further finds and concludes that the following disposition is just and appropriate under the circumstances:

A. **ADMINISTRATIVE FINE.** Within ten (10) days of the effective date to the Final Agency Order contemplated hereby, the Respondent shall pay to the Board an administrative fine in the amount of Six Thousand Seven Hundred Dollars (\$6,700.00).

B. **LICENSE LIMITATION.** The Board further orders that Respondent's license to practice dentistry in the State of Kansas is hereby limited and Respondent shall be prohibited from performing any endodontic therapy until the completion of the Continuing Dental Education requirements contained in paragraph C below and further order of the Board. If and when Respondent fulfills the Continuing Dental Education requirements contained in paragraph C below, he may apply to the Board to lift the limitation on his Kansas license to practice dentistry. Upon application to the Board for a lifting of the license limitation, the Respondent shall have the burden to prove he has fulfilled the Continuing Dental Education requirements contained in paragraph C below.

C. **CONTINUING DENTAL EDUCATION.** Respondent is hereby ordered, within six (6) months of the effective date to the Final Agency Order contemplated hereby, to

obtain thirty (30) hours of dental education on the topic of edodontic therapy, all in addition to any continuing education necessary to renew his Kansas dental license.

D. OTHER REQUIREMENTS. The Board further orders the Respondent to:

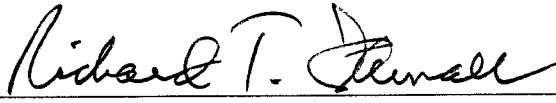
1. Comply fully with this Stipulation and Final Agency Order; and
2. Comply fully with the Kansas Dental Act, the Board's rules and

regulations and all state and federal laws relating to Kansas dentists.

ENTERED AND EFFECTIVE this 21st day of September, 2007.

KANSAS DENTAL BOARD

By:

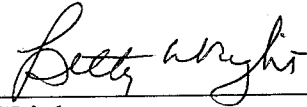

Richard Darnall, D.D.S.
President

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND FINAL AGENCY ORDER was served upon counsel by depositing same in the United States mail, postage prepaid, this 26th day of September, 2007, addressed to:

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

Steve A. Schwarm
POL SINELLI SHALTON FLANIGAN SUELTHAUS PC
555 S. Kansas Avenue, Suite 301
Topeka, KS 66603



Betty Wright
Executive Director
KANSAS DENTAL BOARD