

BEFORE THE KANSAS DENTAL BOARD

In the Matter of )  
 )  
BRIAN H. JENKINS, D.D.S. )  
Kansas License No. 7100 )

File No. 1567-01

STIPULATION AND FINAL AGENCY ORDER

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

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Haynes & Forbes, 555 South Kansas Avenue, Suite 303, Topeka, Kansas 66603. The Respondent is represented herein by his attorney, Jason P. Hoffman, Hoffman & Hoffman, 112 West Seventh Street, Garden Suite, 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 7100. 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. It is specifically agreed and understood by the Board and Respondent that, by entering into this Stipulation and Final Agency Order, Respondent is not admitting to any violation of the laws of the State of Kansas including, but not limited to, the Kansas Dental Practice Act, K.S.A. 65-1421, et seq. Respondent hereby waives any further proof regarding the allegations contained in the Board's First Amended Petition to Revoke, Suspend or Otherwise Limit Licensure, in this, or any other proceeding before or initiated by the Board. After accepting Respondent's waiver, the Board finds:

A. On multiple occasions, the Licensee has filed or caused to be filed insurance claims containing false and misleading information, including, but not limited to, claims for treatment that were not performed;

B. On multiple occasions, the Licensee has filed or caused to be filed insurance claims for treatment that was not necessary and/or where a condition requiring treatment or presence of disease that had not been diagnosed and charted before treatment was rendered;

C. On multiple occasions, the Licensee engaged in a misleading, deceptive, untrue or fraudulent misrepresentation in the practice of dentistry by systematically waiving patient co-payment or co-insurance;

D. On multiple occasions, the Licensee failed to keep adequate records of his patients' treatment, including, but not limited to, charting that would indicate the need for treatment that was performed;

E. On multiple occasions, the licensee performed treatment that was not necessary and/or treatment on teeth that were so near to exfoliation as to make the treatment unnecessary or unreasonable under the circumstances;

F. On multiple occasions, the Licensee directed and allowed assistants to perform coronal scaling when he was not providing direct supervision and when the assistant was not properly certified to do so;

G. The Licensee directed dental hygienists to begin treatment procedures in his absence, which treatment procedures could be performed only while he was present supervising in the dental office;

H. The Licensee failed to treat Class II lesions that were obvious from the patient's records;

I. On or about March 31, 2002 the Licensee offered to sell steroids to off duty police officers and when the officers refused, the Licensee got into a verbal altercation with them. When the officers left, the Licensee followed them. When the officers stopped and exited their vehicle, the Licensee struck one of them with his vehicle and crashed his vehicle into theirs. The Licensee was intoxicated at the time. The Licensee had previously been arrested for driving under the influence of alcohol.

The Board finds and concludes that Respondent's conduct, as described above, is violative of the Kansas Dental Act and 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), (5), (12), (16) and (17).

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

INDEFINITE SUSPENSION. Respondent hereby agrees and consents to the Board's entry of an order whereby his license to practice dentistry in the State of Kansas is indefinitely suspended. No sooner than 12 months from the effective date of the final Agency Order contemplated hereby, Respondent shall have the right to petition the Board to terminate

the suspension. In seeking termination of the suspension, 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. It is further agreed that in considering whether Respondent has met his burden of proof, the Board may consider any relevant factors, including the following:

- 1) the moral fitness of the Respondent at the time of the application to terminate the suspension;
- 2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession;
- 3) the extent of Respondent's rehabilitation;
- 4) the seriousness of the original misconduct;
- 5) conduct subsequent to the indefinite suspension;
- 6) the time which has elapsed since the original indefinite suspension;
- 7) the Respondent's character, maturity, and experience at the time of the original indefinite suspension ; and
- 8) the Respondent's competence to practice dentistry as of the time of the application to terminate the suspension.

As part of any application to terminate the suspension, the Board shall have the right to require Respondent to submit to physical and /or ~~mental~~<sup>mental</sup> tests or examinations with providers of the Board's choice and totally at Respondent's expense. Should the Board elect to do so, the Respondent must authorize the release of all information related to such tests or examinations to the Board or its representative. Should the Board determine to terminate the suspension it

may place such conditions on the termination and Respondent's right to practice dentistry, as the Board may deem, in its discretion, necessary.

7. Respondent agrees that all information in the possession of the Board or 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 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.

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. 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.

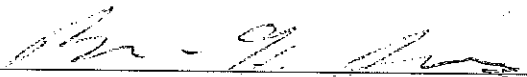
17. For purposes of reporting to the National Practitioner's Data Bank, this matter shall be categorized as follows:

- A. Adverse Action Classification: "1135 Suspension of License"
- B. Basis For Action: "10 Unprofessional Conduct"

18. The following statement will be made in the Board's newsletter: "The license of Brian H. Jenkins, DDS, currently residing in Kansas City, Missouri was indefinitely suspended by order of the Board."

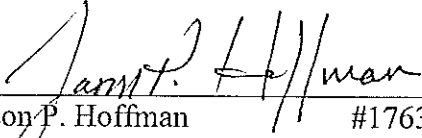
19. The Respondent acknowledges that he has been advised by the Board that he would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein 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 Jerri Freed, its Executive Director. The Respondent hereby waives those rights.

AGREED AND ACCEPTED BY:

  
BRIAN H. JENKINS, D.D.S.

12-03-02  
Date

APPROVED BY:



Jason P. Hoffman #17637  
Hoffman & Hoffman  
112 West Seventh Street  
Garden Suite  
Topeka, KS 66603  
(785) 233-5887

12-9-02  
Date



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

12/10/02  
Date

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In the Matter of )  
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BRIAN H. JENKINS, D.D.S. )  
Kansas License No. 7100 )

File No. 1567-01

**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.

ENTERED AND EFFECTIVE this 18<sup>th</sup> day of January, ~~2002~~ 2003.

KANSAS DENTAL BOARD

By:

Robert B. Henson D.D.S.  
Robert B. Henson, D.D.S.  
President

Kansas Dental Board

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 30<sup>th</sup> day of January, ~~2002~~, 2003, addressed to:

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

Brian H. Jenkins, D.D.S.  
5934 N. Chathan  
Kansas City, MO 64151

Jason P. Hoffman  
Hoffman & Hoffman  
112 West Seventh Street  
Garden Suite  
Topeka, KS 66603

Jeri Freed  
Jeri Freed  
Executive Director  
KANSAS DENTAL BOARD