

Commonwealth of Kentucky
Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222

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JAN 09 2010
KBD

Agency Case Numbers 08-123 and 08-149
Administrative Action No. 09-KBD-_____

Kentucky Board of Dentistry

Complainant

v.

Order

Rodney B. Whitaker, Jr., D.M.D.
(License No. 4034)

Respondent

* * * * *

The Kentucky Board of Dentistry, having met on January 9, 2010, and having voted upon the above-styled case, hereby adopts and incorporates the attached Settlement Agreement.

It is so ordered.

Dated this 9th day of January, 2010.

Kentucky Board of Dentistry

By: William Boggess

William Boggess, D.M.D., President

Certificate of Service

I hereby certify a true and accurate copy of the foregoing Order and Settlement Agreement was mailed, first-class postage prepaid, this 9th day of January, 2010, to:

Rodney B. Whitaker, Jr., D.M.D.
2 Skyview Drive
Frankfort, Kentucky 40601
Respondent

Mark Brengelman, Assistant Attorney
Office of the Attorney General
700 Capitol Avenue, Room 118
Frankfort, Kentucky 40601-3449
Counsel for Board

William A. Bausch, Attorney
Kentucky Law Group, PLLC
1795 Alysheba Way, Suite 2101
Lexington, Kentucky 40509-2286
Hearing Officer

John B. Baughman, Attorney at Law
Hazelrig & Cox, LLP
Post Office Box 0676
Frankfort, Kentucky 40602-0676
Attorney for the Respondent

Brian K. Bishop
Brian K. Bishop, Executive Director

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Commonwealth of Kentucky
Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222

Agency Case Numbers 08-1323 and 08-149

Kentucky Board of Dentistry

Complainant

v.

Settlement Agreement

Rodney B. Whitaker, Jr., D.M.D.
(License No. 4034)

Respondent

* * * * *

Whereas, the Kentucky Board of Dentistry (hereafter "Board") having filed an Order and Notice of Immediate, Temporary Suspension dated March 18, 2009, and a Notice of Administrative Hearing and Order dated August 11, 2009, against Rodney B. Whitaker, Jr. D.M.D., 603 Kentucky Avenue and 2 Skyview Drive, Frankfort, Kentucky 40601 (hereafter "Respondent"), has acted in violation of KRS Chapter 313, and for which disciplinary action may be taken pursuant to KRS 313.130(3) and (4);

Whereas, for the purposes of this Settlement Agreement, the Respondent admits the Board would be able to prove by a preponderance of the evidence at an administrative hearing:

1) More than one (1) count of a violation of KRS 313.130(3) and (4) for by violating 201 KAR 8:430 § 2(16)(b) for prescribing, procuring, dispensing, administering, mixing, or otherwise preparing a legend drug, including a controlled substance, in inappropriate amounts or quantities not in the best interest of the patient, and;

2) One (1) count of a violation of KRS 313.130(3) and (4) by violating 201 KAR 8:430 §2(16)(a) for prescribing, procuring, dispensing, administering, mixing, or otherwise preparing a legend drug, including a controlled substance, other than in the course of the professional practice of the dentist, and;

3) More than one (1) count of a violation of KRS 313.130(3) and (4) by violating 201 KAR 8:430 § 2(4) by failing to keep written dental records and medical history records which justify the course of treatment of the patient.

Whereas, the Respondent has raised the Respondent's current mental status, namely a tentative diagnosis of early on-set Alzheimer's disease, as an issue regarding the above, and;

Whereas, the parties mutually desire to settle the issue in an expeditious manner, without the need for a formal hearing;

It is hereby stipulated and agreed between the undersigned parties that this matter shall be settled and resolved upon the following terms:

Voluntary Waiver of Rights

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this agreement. The Respondent has freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms. The Respondent waives the right to challenge any agreed upon term or condition of this Settlement Agreement notwithstanding any other statutory provision of KRS Chapter 313, and the Respondent expressly agrees those agreed upon terms and conditions contained therein are exclusively a matter of private right.

The Respondent is fully aware of the Respondent's rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges or allegations filed, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to compulsory process to secure the attendance of such

witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the charges, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Circuit Court of the county in which the Board met as otherwise allowed by KRS 313.150(3). All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Settlement Agreement.

Jurisdiction

The Respondent acknowledges that the Board has jurisdiction over the Respondent and the conduct which has precipitated this Settlement Agreement. The Respondent also acknowledges that the Board has the legal power to take disciplinary action up to and including revocation of the Respondent's license to practice dentistry upon proof of any allegations pending against the Respondent.

The Respondent acknowledges that the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board.

Publication of Settlement

The Respondent acknowledges that, once adopted by the Board, this Settlement Agreement may be considered a public document, available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands that the Board is free to make any use it deems appropriate of the contents of this agreement which shall include the Board's ability to share the content of this Settlement Agreement with any governmental or professional Board or organization and Board newsletter under 201 KAR 8:400 § 5 or availability via the Board's website.

**Effect Upon Licensure Status:
Reprimand; Probation; Fine; Costs; Continuing Education**

It is stipulated as the agreed upon disciplinary action the Respondent's license to practice dentistry, which is currently actively suspended, shall be reinstated only upon the submission of a favorable fitness for duty and competency to practice/mental health status examination, with an initial focus on the issue of early on-set Alzheimer's disease, by a licensed psychologist agreed to by the Board, and at the cost of the Respondent.

If the Respondent's license is reinstated, the following terms and conditions shall apply:

1) the Respondent's license to practice dentistry in the Commonwealth of Kentucky shall be reprimanded, with this Settlement Agreement constituting the reprimand, and shall be placed on probation for a period of one (1) year from the date of entry of an Order of the Board adopting this Settlement Agreement, or one (1) year from the reinstatement of the license, whichever is later;

2) the Respondent shall pay a fine in the amount of \$500.00 and costs in the amount of \$500.00 (\$1,000.00) by certified check or money order made payable to the "Kentucky Board of Dentistry" on or before ninety (90) days from the date of entry of an Order of the Board adopting this Settlement Agreement, or ninety (90) days from the reinstatement of the license, whichever is later, and;

3) the Respondent shall successfully complete within 180 days of the date of entry of an order of the Board adopting this Settlement Agreement, or within 180 days from the reinstatement of the license, whichever is later, the following:

A) a Board-approved, continuing dental education course in medical record keeping and dental record keeping of at least three (3.0) clock hours, which may be provided by any Board-approved continuing education provider, such as the Oral Health Enrichment, LLC, Woodmere Village, Ohio, or a university's school or college of dental education accredited by the Council on Dental Education of the American Dental Association, and;

4) the Respondent shall also file written proof of the completion of A, above, to be filed with the Board within ten (10) days of completion of each single course, said continuing dental education courses are to be in addition to the hours otherwise required by 201 KAR 8:140 for the renewal of the Respondent's dental license for the current renewal cycle 2008-2009 or the next renewal cycle 2010-2011, and;

5) the Respondent shall comply with all requirements for the renewal of the Respondent's license pursuant to KRS Chapter 313 before the dental license is renewed and the suspension is lifted by the Board, specifically:

- A) file a completed application for renewal, and;
- B) pay the appropriate licensure and renewal fees, and;
- C) file proof of current certification by the American Heart Association in Basic Life Support ("BLS") or certification by the American Red Cross in cardiopulmonary resuscitation ("CPR"), and;
- D) file, proof of the appropriate number of continuing dental education taken in the previous twenty-four (24) months as required by 201 KAR 8:140 § 2, and;

6) the Respondent, if the Respondent has not already done so, shall permanently surrender to the Drug Enforcement Administration the Respondent's certificate to prescribe scheduled drugs issued by the Drug Enforcement Administration, and shall not petition for its reinstatement; the Respondent shall simultaneously file in writing with the Board proof of its surrender, and;

7) the Respondent shall not practice dentistry except in an appropriate medical or dental office/facility (a "brick and mortar," physical location) dedicated to the practice of dentistry for so long as the Respondent holds a license to practice dentistry from the Board.

Enforcement of Settlement Agreement

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement constitutes misconduct for which the Board may impose additional disciplinary action after notice and opportunity to be heard. The Respondent agrees to indemnify the Board for any costs, including reasonable attorney's fees, if the Board finds, after notice and opportunity to be heard, that the Respondent has failed to comply with any provision of this Settlement Agreement.

Release of Liability

In consideration of execution of this Settlement Agreement, the Respondent for the Respondent personally, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Kentucky Board of Dentistry, and the Kentucky Attorney General and each of their members, agents, and employees

in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration.

Acceptance by the Board

It is hereby agreed between the parties that this Settlement Agreement shall be presented to the Kentucky Board of Dentistry at the next regularly-scheduled meeting of the Board.

The Respondent understands that the Board is free to accept or reject this Settlement Agreement, and if rejected by the Board, a formal disciplinary hearing on the accusations against the Respondent may be scheduled. The Respondent hereby agrees to waive any right the Respondent might have to challenge the impartiality of the Board, based solely upon the presentation of this Settlement Agreement, to hear the disciplinary accusation if, after review by the Board, this Settlement Agreement is rejected.

If the Settlement Agreement is not accepted by the Board, it shall be regarded as null and void. Admissions by the Respondent in the Settlement Agreement will not be regarded as evidence against the Respondent at any subsequent disciplinary hearing. The Respondent will be free to defend and no inferences against the Respondent will be made from the Respondent's willingness to have entered into this Settlement Agreement.

The Settlement Agreement will not be submitted for Board consideration until after it has been agreed to and executed by the Respondent. The Settlement Agreement shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

Cooperation with the Board

The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees to monitor the Respondent's compliance with the terms and conditions of this Settlement Agreement. The Respondent has volunteered to, and shall make available to, any member or agent of the Board any document or information deemed reasonably necessary by the Board, its members or agents, to monitor compliance with all terms of this Settlement Agreement, including appropriate signed releases.

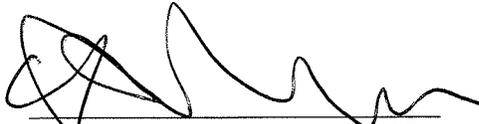
Complete Agreement

This Settlement Agreement consists of seven (7) pages and an eighth (8th) signature page and embodies the entire agreement between the Board and the Respondent. This Settlement Agreement shall constitute a binding contract between the Respondent and the Board, subject only to approval by the Board as set forth above. The Respondent shall not rescind, revoke, or withdraw this Settlement Agreement prior to its presentation to the Board at a regularly scheduled meeting of the Board. It may not be altered, amended or modified without the express written consent of both parties.

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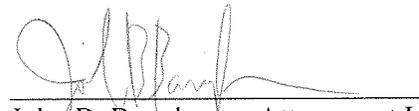
Have Seen, Understood, and Approved:

Kentucky Board of Dentistry


By: _____
Rodney B. Whitaker, Jr., D.M.D.
2 Skyview Drive
Frankfort, Kentucky 40601

Respondent

Date: 7 JAN 2007¹⁰



John B. Baughman, Attorney at Law
Hazellrig & Cox, LLP
Post Office Box 0676
Frankfort, Kentucky 40602-0676
Attorney for Respondent

Date: Jan 6, 2010



Mark Brengelman
Assistant Attorney General
Office of the Attorney General
Capitol Building, Room 118
700 Capitol Avenue
Frankfort, Kentucky 40601-3449
Counsel for the Board

Date: Jan. 9, 2010