

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

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MAR 17 2010
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Agency Case Number 10-_____

Kentucky Board of Dentistry

Complainant

v.

Order

Carl E. Findley, Jr., D.M.D.
(License No. 4379)

Respondent

* * * * *

The Kentucky Board of Dentistry, having met on March 13, 2010, and having voted upon the above-styled case, hereby adopts and incorporates the attached Settlement Agreement.

It is so ordered.

Dated this 17th day of March, 2010.

Kentucky Board of Dentistry

By:


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 17th day of March, 2010, to:

Carl E. Findley, Jr., D.M.D.
2009 East Broad Avenue
Post Office 50187
Albany, Georgia 31705
Respondent

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

Melvin M. Goldstein, Attorney at Law
248 Roswell Street
Marietta, Georgia 30060
Local Georgia Counsel for Respondent


Brian K. Bishop, Executive Director

**Commonwealth of Kentucky
Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222-4925
Agency Case No. 10-_____**

Kentucky Board of Dentistry

Complainant

v.

Settlement Agreement

**Carl E. Findley, Jr., D.M.D.
(License No. 4379)**

Respondent

* * * * *

Whereas, the Kentucky Board of Dentistry (hereafter "Board") having authorized a Notice of Administrative Hearing and Show Cause Order (hereafter "Show Cause Order") pursuant to KRS 313.330(1) and KRS Chapter 13B charging Carl E. Findley, Jr., D.M.D., 2009 East Broad Avenue, Post Office Box 50187, Albany, Georgia 31705, (hereafter "Respondent"), with failing to comply with KRS 313.130(4) and 201 KAR 8:140 § 2(1)(a), by failing to return to the Board evidence satisfactory to the Board that the Respondent has taken an HIV/AIDs continuing education course mandated by KRS 214.610(1) every ten (10) years, and;

Whereas, the Respondent acknowledges that the Respondent has been charged with violating the above-referenced statutes under KRS Chapter 13B, and for purposes of this Settlement Agreement admits the Respondent's actions violated KRS 313.130(4) and 201 KAR 8:140 § 2(1)(a) as alleged above;

Whereas, the Respondent completed the required course on or about January 3, 2010, which was three (3) days late having been due by the end of 2009. As a mitigating circumstance, during the month of December, 2009, the Respondent suffered from advanced bronchitis and was medically treated for it. The Respondent was physically unable to complete the course by

the end of 2009. The parties agree the violation, now cured, was unintentional and without malice.

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 formally 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 Settlement Agreement. The Respondent has freely and voluntarily entered into this Settlement 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 conduct which has precipitated this Settlement Agreement. The Respondent also acknowledges that the Board has the legal power to take disciplinary action against the Respondent's license to practice dentistry upon proof of allegations in any Show Cause Order that the Board may file 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 is 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 Settlement 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 publication of a summary in the Board's newsletter per 201 KAR 8:400 § 5(2) and availability on the Board's web site.

**Effect Upon Licensure Status:
Fine; Costs, and; Proof of Make-Up Continuing Dental Education**

It is stipulated as the agreed upon disciplinary action:

1) The Respondent shall pay the amount of \$500.00 for reimbursement of Board costs, and \$100.00 as a fine per deficient hour (2.0 hours), for a total amount of \$700.00 by certified check/cashier's check or money order made payable to the "Kentucky Board of Dentistry," and mailed or delivered to the Board at 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222-4925, on or before March 10, 2010;

2) The Respondent has already fulfilled completely the continuing dental education courses by taking an HIV/AIDs course of at least two (2.0) hours approved by the Cabinet for Health and Family Services belatedly on January 3, 2010, necessary to satisfy the 2009 renewal requirement in 201 KAR 26:140 § 2(1)(a) and by having already submitted written proof to the Board. Any such courses taken or submitted pursuant to this Settlement Agreement shall not apply to any subsequent continuing dental education requirements;

3) The Respondent shall be subject to further continuing dental education audits in subsequent years.

Enforcement of Settlement Agreement – Late Penalty for Overdue Costs/Fines

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement constitutes misconduct for which the Board may take 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.

In addition to any of the remedies above, the Respondent agrees the Board shall assess a late penalty of \$100.00 for each month that the Respondent fails to pay in full the amount set forth in ¶ 1, above, beginning on March 11, 2010, and assessed on the first of each month thereafter until the full amount set forth in ¶ 1, above, and any late penalties, are paid in full.

Release of Liability

In consideration of execution of this Settlement Agreement, the Respondent individually, the Respondent's executor, 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 against the Respondent may be scheduled with notice under KRS Chapter 13B. 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 matter if, after review by the Board, this Settlement Agreement is rejected.

If the Settlement Agreement is rejected by the Respondent, or is accepted by the Respondent but 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 final until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

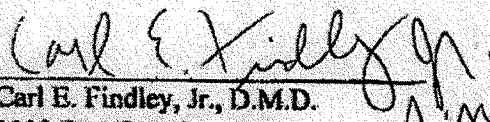
Cooperation with the Board

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.

Complete Agreement

This Settlement Agreement consists of six (6) pages and embodies the entire agreement between the Board and the Respondent. 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.

Have Seen, Understood, and Approved:


Carl E. Findley, Jr., D.M.D.
2009 East Broad Avenue
Post Office 50187
Albany, Georgia 31705
Respondent

Date: 3/4/10

Kentucky Board of Dentistry

By: 

Mark Brengelman, Assistant Attorney General
Office of the Attorney General
Capitol Building, Suite 118
700 Capital Avenue
Frankfort, Kentucky 40601-3449
Phone: (502) 696-5627; Fax: (502) 564-6801
Counsel for the Board

Date: March 13, 2010