

Commonwealth of Kentucky
Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222-4925
Agency Case No. 10-047-5634

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Kentucky Board of Dentistry

Complainant

v.

Settlement Agreement

KENNETH W WHITTENBURG DMD
(License No. 5634)

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 KENNETH W WHITTENBURG DMD, 13808 LAKEPOINT CIRCLE SUITE #102, LOUISVILLE, KY 40223, (hereafter "Respondent"), with failing to comply with KRS 313.080(2) and 201 KAR 8:140 § 4, by failing to return to the Board evidence satisfactory to the Board that the Respondent has accumulated a sufficient number of points for continuing dental education for the 2008-2009 calendar years necessary to renew the Respondent's dental license for the 2010-2011 renewal cycle by being deficient, and;

Whereas, the Respondent acknowledges 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 313.080(2) and 201 KAR 8:140 § 4 as alleged above;

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 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 the Board has jurisdiction over the Respondent and conduct which has precipitated this Settlement Agreement. The Respondent also acknowledges 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 the Board may file against the Respondent.

The Respondent acknowledges 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 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 \$1,000.00 for reimbursement of Board costs, and \$200.00 as a fine per deficient hour (14 hours plus 2 hours for CPR), for a total amount of \$4,200.00. The Respondent shall make this payment by certified check/cashier's check or money order, which must contain the Respondent's license number, case number, and payment number if paying on installment, 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. The Respondent shall make this payment on or before August 1, 2010, or shall make three (3) equal monthly payments without interest with the first payment due on or before August 1, 2010, and the remaining payments due on the 1st of each month thereafter until paid.

2) The Respondent shall fulfill completely the continuing dental education courses for the 2008-2009 renewal cycle by taking appropriate courses at the Respondent's cost (specifically, 4 category B hours, 10 category C hours, and Cardiopulmonary Resuscitation), necessary to satisfy the 2010-2011 renewal requirement and by submitting written proof to the Board of the completion of such courses on or before August 1, 2010.

3) The Respondent may complete the following continuing dental education course(s) at the Respondent's cost as pre-approved by the Board to satisfy the deficiency from the following provider according to the following schedule -- Oral Health Enrichment, LLC, Woodmere Village, Ohio:

- A) 1-5 hours: dental jurisprudence, professional ethics, and dental record keeping, and;
- B) 6-10 hours: the courses listed in ¶ A, above, and oral diagnosis, and;
- C) 11-15 hours: the courses listed in ¶¶ A and B, above, and treatment of the medically compromised patient, and;
- D) 16-20 hours: the courses listed in ¶¶ A, B, and C, above, and restorative dentistry, and;
- E) 21-25 hours: the courses listed in ¶¶ A, B, C, and D, above, and periodontics, and;
- F) 26-30 hours: the courses listed in ¶¶ A, B, C, D, and E, above, and oral pathology.

4) Any such courses taken or submitted pursuant to this Settlement Agreement shall not apply to any subsequent continuing dental education requirements; 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, 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 the Respondent fails to pay in full the amount set forth in ¶ 1, above, beginning on August 2, 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, 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 this Settlement Agreement has been pre-approved for entry by the Kentucky Board of Dentistry. The parties understand the Respondent is free to accept or reject this Settlement Agreement, and if rejected, a formal disciplinary hearing against the Respondent may be scheduled with notice under KRS Chapter 13B. The parties hereby agree 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 this Settlement Agreement is rejected.


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 a seventh (7th) signature page 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:


KENNETH W WHITTENBURG DMD
13808 LAKEPOINT CIRCLE SUITE #102
LOUISVILLE, KY 40223
Respondent

Kentucky Board of Dentistry

By: 
~~Mark Engelman~~, Assistant Attorney General
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Counsel for the Board

Date: June 28, 2010

Date: July 9, 2010