

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

Agency Case Number 11-107

Kentucky Board of Dentistry

Complainant

v.

Settlement Agreement

Jack Mercke, D.M.D.
(License No. 9094)

Respondent

Whereas, the Kentucky Board of Dentistry (hereinafter "Board") having information upon investigation of an initiating complaint that Jack Mercke, D.M.D. (hereinafter "Respondent"), 1779 Patrick Drive, Burlington, Kentucky 41005, has acted in violation of KRS Chapter 313, for which disciplinary action may be taken pursuant to KRS 313.080 (2)(c);

Whereas, the Board conducted an investigation and reviewed the evidence collected during the investigation which included patients and determined Respondent:

- 1.) Failed to apply proper caries risk assessment to achieve a treatment plan relative to the oral health of his patients;
- 2.) Failed to implement proper sequencing of treatment relative to the oral health of his patients;
- 3.) Failed to correlate digitally collected data to clinically subjective and objective information in order to deliver treatment which contributes to the long-term oral health of patients;
- 4.) Failed to inform his patients of alternative treatment plans by recommending definitive invasive treatment when other treatment and/or observation were viable treatment options;

Whereas, Respondent agrees that based on the assessment of the complaint provided to him by the Board, the Board has reasonable cause to believe that Dr. Mercke acted in a manner inconsistent with the practice of dentistry as set forth under KRS 313.080 (2)(c);

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 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. 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 the allegations in the Formal Complaint 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 and available via the Board website under 201 KAR 8:400 § 5.

Effect Upon Licensure Status: Reprimand; Fine/Costs

It is stipulated as the agreed upon disciplinary action that:

- 1) Respondent shall be reprimanded with this Settlement Agreement;
- 2) Within three (3) months of signing this agreement, Respondent shall undergo twelve (12) hours of Remedial Education through a program approved by the Board and designed by Oral Health Enrichment, Cleveland, Ohio. Within nine (9) months of signing this agreement, the Respondent shall undergo an additional twelve (12) hours of Remedial Education Education through a program approved by the Board and designed by Oral Health Enrichment, Cleveland, Ohio. As to all twenty-four (24) hours, the topics shall include diagnosing and treatment sequencing of periodontal disease and caries management by caries risk

assessment; and, ethics in case diagnosis and treatment planning, over-treatment and patient well-being; and

3) Respondent shall pay a fine of \$5,000 within thirty (30) days of signing this agreement; and,

4) Respondent shall, prior to signing this agreement, identify a proctor for the Board's review and approval. Respondent and proctor shall meet face-to-face for eight (8) quarterly mentoring sessions in consecutive quarters beginning the first quarter of 2013. At least fifteen (15) days prior to each meeting, the proctor shall identify and receive from the Respondent copies of ten (10) patient records. The proctor will assess each record for compliance with clinical and ethical standards and thoroughly review his/her findings with the Respondent during the scheduled meeting. During this two-year period, at its sole discretion and upon providing reasonable notice, the Board may compel the proctor to provide an oral or written assessment of the Respondent's practice. Likewise, at its sole discretion and upon providing reasonable notice, the Board may compel Respondent to report to the Board either orally or in writing based on any concerns regarding the Respondent's practice that may be identified or reported to the Board by the proctor or on its own initiative.

Enforcement of Settlement Agreement and Immediate, Temporary Suspension of License

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement constitutes misconduct for which the Board, its Law Enforcement Committee, or its Executive Director, shall issue an immediate, temporary suspension of the Respondent's dental license for a period of not less than twelve (12) months, and a fine of not less than \$500.00 as administrative costs of the Board, prior to a hearing with the right to appeal such action as provided under KRS 13B.125.

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.


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 five (5) pages, 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. This Settlement Agreement may not be altered, amended or modified without the express written consent of both parties.


Have Seen, Understood, and Approved: **Kentucky Board of Dentistry**


Jack Mercke, D.M.D.
1779 Patrick Dr. Burlington, KY 41005
Burlington, Kentucky 41005
Respondent

Date: 12/10/12


Robert J. B. III,
Counsel for Respondent

12-11-2012

By: 
Adam K. Rich, President
Kentucky Board of Dentistry
312 Whittington Parkway, Suite 101
Louisville, Kentucky 40222
Counsel for the Board

Date: 12/19/12