

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI DENTAL BOARD,

Petitioner,

vs.

BARRY D. BRACE, D.M.D.,

Respondent.

No. 07-1249 DB

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2007, gives us jurisdiction.

On November 26, 2008, the parties filed a "Waiver of Hearing, Joint Stipulation and Request for Consent Order." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 332.321.2(6), RSMo Supp. 2007. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo Supp. 2007.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo Supp. 2007.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. RSMo Supp. 2007. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on December 3, 2008.

NIMROD T. CHAPEL, JR.
Commissioner

FILED

NOV 26 2008

**ADMINISTRATIVE HEARING
COMMISSION**

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

MISSOURI DENTAL BOARD,)	
)	
Petitioner,)	
)	
v.)	CAUSE No: 07-1249DB
)	
BARRY D. BRACE, D.M.D.,)	
)	
Respondent.)	

**WAIVER OF HEARING, JOINT STIPULATION
AND REQUEST FOR CONSENT ORDER**

COMES NOW Petitioner, Missouri Dental Board, through counsel Nanci R. Wisdom, and Respondent Barry D. Brace, D.M.D., in person and through counsel Nicole Sublett, and enter this Waiver of Hearing, Joint Stipulation and Request for Consent Order ("Joint Stipulation") in lieu of a formal trial in this matter. The parties hereby jointly move this Commission to enter its Consent Order consistent with the contents of this Joint Stipulation.¹ In support of their Joint Stipulation Petitioner and Respondent agree and state:

1. Respondent, Barry D. Brace, D.M.D., acknowledges that he is familiar with the various rights and privileges afforded him by operation of law, including the right to a hearing on the charges against him; the right to appear and be

¹ The parties Joint Stipulation is made pursuant to the provisions of 4 CSR 20-2.130 and Missouri Revised Statutes Section 535.060 as applicable to this Commission by the provisions of Section 621.135, RSMo.



represented by counsel; the right to have all charges against him proved upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial Administrative Hearing Commissioner concerning the charges pending against him; and the right to appeal a decision in favor of the Petitioner, Missouri Dental Board, by the Administrative Hearing Commission on the basis that said decision is not supported by substantial and competent evidence. Being familiar with these rights provided Respondent by operation of law, he knowingly and voluntarily waives each and every one of these rights and fully and freely enters into this Joint Stipulation, and agrees to abide by the terms and conditions of this document.

2. Petitioner is an agency of the State of Missouri created and established pursuant to Missouri Revised Statutes Section 332.021 as applicable to this matter for the purpose of administering and enforcing the provisions of Chapter 332, Dentistry.

3. Respondent, Barry D. Brace, D.M.D., is, and at all times relevant to this cause was, the holder of a current and valid license to practice dentistry and certificate of registration issued by Petitioner.

4. Respondent, Barry D. Brace, D.M.D., admits the allegations contained in the First Amended Complaint for the purposes of settlement only and further stipulates that these admissions constitute grounds for discipline against his license and certificate of registration as alleged in said Complaint.

5. Based on the foregoing, the parties mutually agree and stipulate that the following terms shall constitute the disciplinary action taken by the Missouri Dental Board in this action pursuant to the provisions of Section 681.110 RSMo:

A. Respondent's license to practice dentistry shall be suspended for a period of ninety (90) days beginning March 7, 2009, followed by a term of probation for a period of five (5) years ("disciplinary period").

B. During the 90 day period of suspension, Respondent will not engage in the practice of dentistry and comply with the requirements of 4 CSR 2110-2.160. The parties further agree and stipulate that during the period of suspension Respondent will not serve as an employee, officer, director or shareholder of SMB Management, L.L.C., Respondent's wife's consulting business. Nothing herein, however, shall prohibit Respondent's wife from performing the normal business activities of SMB Management, L.L.C., or receiving payment for her services and ownership in SMB Management, L.L.C. The parties herein agree and stipulate that payment by SMB Management, L.L.C. to Respondent's wife shall not constitute payment to Respondent. Nothing in 4 CSR 2110-2.160, or other regulations and statutes applicable to the parties, shall be construed to automatically impute the income of Respondent's wife to Respondent even where Respondent and his wife file joint income tax returns. Respondent's filing of joint income tax returns with his wife for the time period covering Respondent's 90 day

suspension shall not be proof that Respondent received income from SMB Management, L.L.C. or from the practice of dentistry.

C. During Respondent's probation, Respondent shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Joint Stipulation. Respondent's disciplinary period shall be conditioned on the following terms:

a. Respondent shall meet with the Board or its representatives at such times and places as required by the Board after actual notification to Respondent, in writing, of a required meeting.

b. Respondent shall submit written reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Joint Stipulation by no later than January 1, April 1, July 1, and October 1 during each year of the disciplinary period.

c. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. Respondent shall inform the Board in writing within ten days of any change of home or work address and home or work telephone number.

d. Respondent shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and, if licensed or practicing in any other state, Respondent shall comply with the laws of those states as well.

e. During the disciplinary period, Respondent shall timely renew his license and timely pay all fees required for licensing and comply with all other Board requirements necessary to maintain Respondent's license in a current and active state.

f. If at any time during the disciplinary period Respondent ceases to be currently licensed under the provisions of Chapter 332, fails to advise the Board of his current place of business and residence or removes himself from the state without the intent to return within four (4) months, the period of time during Respondent's absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with Section 332.321.6, RSMo.

g. During the disciplinary period, Respondent shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Joint Stipulation.

h. If Respondent fails to comply with the terms of this agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate.

i. This Joint Stipulation does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Respondent not specifically mentioned in this document.

j. Respondent shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City. This continuing education shall be in addition to the continuing education required

by law for licensure renewal by the Board. This course must be taken within the first twelve (12) months of the effective date of this Joint Stipulation. Respondent shall provide the Board with proof of attendance from the sponsor of the program no later than thirty (30) days after attending the course. Failure to obtain the required additional continuing education hours and/or submit the required documentation to the Board will result in a violation of the terms of discipline.

k. Within the first 180 days of the disciplinary period, Respondent shall take and successfully complete the jurisprudence examination for dentists in the State of Missouri. Said examination shall occur at a place and time designated by the Board. Respondent shall contact the Board office in Jefferson City, Missouri to make arrangements to sit for this examination.

l. Respondent shall not possess a Missouri Department of Health and Human Services, Bureau of Narcotics and Dangerous Drugs ("BNDD") controlled substances registration during the period of discipline.

m. Respondent shall not possess an individual permit for performing sedation services including enteral, parenteral and/or general anesthesia/deep sedation during the period of discipline. Further, Respondent shall not perform enteral, parenteral and/or general anesthesia/deep sedation on any patient during the period of discipline.

6. The parties to this Joint Stipulation understand that the Board will maintain this Agreement as an open and public record of the Board as provided in Chapters 332, 610 and 620, RSMo.

7. Upon the expiration and successful completion of the disciplinary period, Respondent's license to practice dentistry in the State of Missouri, shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent.

8. If the Missouri Dental Board determines upon a proper showing that Respondent has violated a term or condition of the suspension of his license, the terms of his probation as set forth herein, or has otherwise failed to comply with the provisions of Chapter 332 RSMo, which violation would be actionable in a proceeding before the Administrative Hearing Commission, or in a Circuit Court, the Missouri Dental Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this "Waiver of Hearing, Joint Stipulation and Consent Order", in its selection of remedies concerning such violation.

9. It is specifically understood and agreed by the parties hereto that, in the event the Missouri Dental Board proceeds under paragraph eight (8) above, the Board shall have all the rights and powers granted to it by law with respect to disciplinary action to which Respondent may be subject.

10. It is specifically agreed and understood by the parties hereto that the dates of discipline contained in this document shall not commence until this document has been approved by the Administrative Hearing Commission.

WHEREFORE, based upon the foregoing, the parties mutually request the Administrative Hearing Commission to issue its Order based upon the consent of all parties finding that the allegations in the First Amended Complaint heretofore filed in the above styled cause by Petitioner are true and that as a result thereof, Petitioner has the right to subject the license of Respondent to discipline pursuant to the provisions of Section 332.321 as set forth herein, and that this cause be closed.

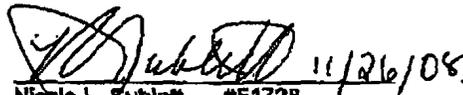
MISSOURI DENTAL BOARD:


Barry D. Brace, D.M.D.

11/25/08
Date

By: 
Brian Barnett
Executive Director

11/26/08
Date


Nicole L. Sublett #51728
Carson & Coil, P.C.
515 E. High St.
P.O. Box 28
Jefferson City, MO 65102
Phone: (573) 636-2177
Fax: (573) 636-7119

Attorney for Respondent


Nancy R. Wisdom #39359
Nanci R. Wisdom, L.C.
P.O. Box 883
107 W. Fourth Street
Salem, MO 65580
Phone: (573) 729-8630
Fax (573) 729-8640

Attorney for Petitioner

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

MISSOURI DENTAL BOARD,)
P.O. BOX 1357)
3605 Missouri Blvd.)
Jefferson City, Missouri 65102)
Petitioner,)
v.)
BARRY D. BRACE, D.M.D.)
469 S. Kirkwood Road)
Kirkwood, MO 63122)
Respondent.)

CAUSE NO. 07-1249 DB

RECEIVED
NOV 26 2008

Administrative Hearing Commission

FILED

NOV 26 2008

ADMINISTRATIVE HEARING
COMMISSION

FIRST AMENDED COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney and for the Allegations Common to All Counts states and alleges as follows:

1. The Missouri Dental Board is an agency of the State of Missouri, created and established pursuant to Missouri Revised Statute Sections 332.021 to 332.061 for the purpose of executing and enforcing the provisions of Chapter 332 Dentistry.

2. Respondent is and at all times herein relevant, has been a licensed and certified dentist in the State of Missouri.

3. At no time relevant herein did Respondent possess a license as a dental specialist in the State of Missouri.

4. At all times relevant herein, Respondent possessed a valid Missouri Bureau of Narcotics and Dangerous Drugs controlled substance registration.

5. This Commission has jurisdiction to hear this Complaint pursuant to the provisions in the Missouri Revised Statute section 621.045.

6. On or about November 15, 2005, Respondent advertised on the internet at a websites with the addresses of www.kirkwoodimplantdentist.com and

7. On November 15, 2005, on the websites whose addresses were www.kirkwoodimplantdentist.com and www.kirkwoodcosmeticdentist.com ("websites").

8. Respondent advertised dental implants, dentures, bridges, crowns, sedation dentistry, orthodontics, periodontal therapy and root canals on the websites.

9. On November 15, 2005, the websites did not use a disclaimer indicating that Respondent was a general dentist and not a specialist licensed in the State of Missouri.

10. As a result of the content on the websites on November 15, 2005, Respondent failed to comply with Section 332.321.2, RSMo.

11. On September 22, 2005, Respondent treated patient N.R. by placing four implants on teeth numbers 22, 24, 26 and 27; Respondent used methods for enteral conscious sedation during N.R.'s treatment.

12. Respondent did not record the following information in N.R.'s patient chart on the day her treatment was performed:

- a) Physician's name and phone number;
- b) physicians of record;
- c) hospitalizations or lack thereof;
- d) allergies;
- e) medications as of date of sedation;
- f) comprehensive list of major medical illnesses, disorders or abnormalities;

- g) breathing or respiratory difficulties;
- h) any indication of whether oral clarification of presence or lack thereof of medical conditions was obtained;
- i) observation of patients physical stature, posture and relative ambulatory ability;
- j) observation of patient's attentiveness, responsiveness and verbal ability;
- k) observation of potential air way problems or lack thereof;
- l) that Respondent reviewed patient's medical history, the physical examination or medications;
- m) that Respondent made a determination or documented the patient's ASA classification;
- n) that Respondent consulted with patient's physician.

13. With regard to the sedation procedure, Respondent did not document:

- a) the names of the sedation team members;
- b) indication of nothing by mouth;
- c) vital signs after delivery of initial medications;
- d) start and finish times of sedation and operative procedure;
- e) a copy of prescriptions or administered medication or instructions for victim.

14. Respondent's actions described in Paragraphs 10, 11 and 12 herein violate 4 CSR 011-4.030 which is pertinent part reads as follows:

(2) . . . Patient Records.

(a) The patient's records shall provide a legible database that aids in treatment planning and selection of the sedation technique and shall furnish the following:

1. . . Database:

H). . . Patient's physician's name and telephone number

2. Medical history:

(a). . . Past medical history and systems review including, but not limited to:

(I) Physician(s) of record;

(II) Hospitalizations within the last five (5) years;

(III) Allergies;

(IV) Present medications (prescription, nonprescription, homeopathic): dosages, intervals, and recent changes;

(V) Major medical illnesses, disorders or abnormalities;

(VI) Prior anesthetic complications;

(VII) Breathing or respiratory difficulties;

(VIII) Previous hospitalizations;

(IX) Review of the following with interrogative clarification of positive responses:

(a) Myocardial infarction;

(b) Hepatitis or liver disease;

- (c) Hypertension;
- (d) Renal disease;
- (e) Dysrhythmias;
- (f) Anemia;
- (g) Angina;
- (h) Bleeding dyscrasias;
- (i) Heart murmur;
- (j) Human immunodeficiency virus (HIV);
- (k) Congestive heart failure;
- (l) Mitral valve prolapse;
- (m) Rheumatic fever;
- (n) Artificial joint; and
- (o) Diabetes.

3. Core physical examination:

- A. Observation of patient's physical stature, posture, and relative ambulatory ability;
- B. Observation of patient's attentiveness, responsiveness, and verbal ability;
- C. Potential airway problems.

(3) . . . Pre-Operative Patient Evaluation and Selection.

(A) Patients who are administered enteral or parenteral conscious sedation must be suitably evaluated to include, but not be limited to the following:

3. An appropriate review of the core physical examination. The record must indicate the dentist reviewed the findings;
4. An appropriate review of all medications used by the patient, both prescription and non-prescription. The record must indicate the dentist reviewed the medication inventory;
5. Documented American Society of Anesthesiologists classification; and
6. Documented consultation with physicians of record when indicated:

(4) American Society of Anesthesiologists (ASA) classifications must be documented and substantiated.

(A) American Society of Anesthesiologists (ASA) classifications:

1. Class I – There is no organic, physiologic, biochemical, or psychiatric disturbance. The pathological process for which the operation is to be performed is localized and is not a systemic disturbance. The patient has not limits on his/her activity level, and in general is to be considered in good or excellent health.
2. Class II – Mild-to-Moderate systemic disturbance caused either by the condition to be treated surgically or by other pathophysiological processes. The disease processes are stable or medically controlled and they are not

functionally limiting. Examples: tightly controlled insulin or non-insulin dependent diabetes; stable asthma; symptomatic hypertension; controlled thyroid disease; smoker; obesity; or severe anxiety.

3. Class III – Severe systemic disturbance or disease from whatever cause, even though it may not be possible to define the degree disability with finality. Activity is significantly limited by the disease, but is not totally incapacitating. The patient may easily decompensate under stress. Examples: severe asthma; poorly controlled diabetes mellitus; angina, especially if unstable or frequent; status post (S/P) myocardial infarction of cerebral vascular accident (CVA) less than six (6) months ago.

4. Class IV – Indicative of the patient with severe systemic disorder that is a constant threat to life and always correctable by the operative procedure. Functionally incapacitating; a totally unstable patient who is in and out of lethal states. Examples: unstable angina; congestive heart failure/chronic obstructive pulmonary disease (CHF/COPD) requiring supplemental oxygen (O₂) or wheel-chair confinement, uncontrolled systemic disease (diabetes mellitus); or symptomatic dysrhythmias.

5. Class V – The moribund patient who has little chance of survival but is submitted to operation in desperation. A

hospitalized patient of the expectant category.

(B) Healthy or medically stable individuals (ASA Class I or II) require a review of the patient's current medical history and medications.

(C) Patients who may not be medically stable or who have a significant health disability (ASA III) require a medical consultation from a physician. ASA III patients who are treated in the office setting must have evidence of the dentist's consultation with the treating physician (written or oral) in the record.

Such consultation should elicit the physician's concurrence with decision to utilize the proposed office sedative technique.

(D) ASA III, IV, and V patients are not candidates for enteral sedation.

(E) ASA IV and V patients are not candidates for parenteral sedation outside a hospital setting.

15. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

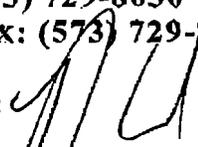
. . . (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

47. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332.321.2.

48. That Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has cause to take disciplinary action against Respondent or, alternatively, that this matter be set for an evidentiary hearing and for such other relief as the Commission deems just and proper.

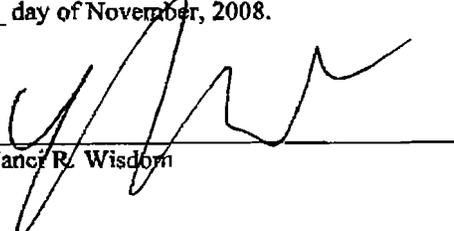
**NANCI R. WISDOM, L.C.
ATTORNEY AT LAW
POST OFFICE BOX 983
107 WEST FOURTH STREET
SALEM, MISSOURI 65560
(573) 729-8630
FAX: (573) 729-8640**

BY: 

**Nanci R. Wisdom #39359
Attorney for Petitioner**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was forwarded to Nicole L. Sublett, Attorney for Respondent, P.O. Box 28, Jefferson City, MO, 65102, by regular U. S. Mail and via facsimile transmission to (573)636-7119 on this 26 day of November, 2008.



Nanci R. Wisdom