

BEFORE THE MISSOURI DENTAL BOARD

MISSOURI DENTAL BOARD)
)
) Petitioner,)
)
) v.) No. 2013-002358
)
)
) GAVIN MESSER, D.D.S.)
)
) Respondent.)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER**

At its scheduled meeting on July 25, 2013, and pursuant to notice described in the Findings of Fact, the Missouri Dental Board (Board) took up the probation violation complaint alleging that Gavin Messer, D.D.S. (Licensee) has failed to comply with the terms of his probation.

The Board appeared at the hearing through Attorney Tina Crow Halcomb, Attorney at Law. Licensee was present at the hearing but was not represented by counsel. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the Board's legal advisor at the hearing, during deliberations, and in the preparation of this order.

Findings of Fact

1. The Board is an agency of the state of Missouri created and established pursuant to § 332.021, RSMo,¹ for the purpose of licensing all persons engaged in the practice of dentistry in this state. The Board has control and supervision of the licensed occupations and enforcement of the terms and provisions of Chapter 332, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

2. Licensee, Gavin Messer, D.D.S. holds dentist license number 015936 issued by the Board. Licensee's license was current and active at all relevant times. Licensee's license is currently on probation.

3. On or about April 7, 2011, Licensee and the Board entered into a Settlement Agreement (Settlement Agreement) which placed Licensee's license on probation for a period of five years (disciplinary period) for Licensee's violation of drug laws and infection control issues. The Settlement Agreement became effective April 22, 2011.

4. During the probationary period, Licensee was entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided that Licensee adhered to all the terms and conditions of the Settlement Agreement.

5. The Settlement Agreement, page 14, paragraph II. D, required that Licensee "shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMO; all federal and state drug laws, rules, and regulations, and all federal and state criminal laws."

6. The Settlement Agreement, page 14, paragraph II. C. required that Licensee "shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number."

7. On or about November 6, 2012, the Board received a telephone call from one of Licensee's patients stating that she had been trying to obtain her dental records from Licensee for two months but that his office was closed and the office phone number was disconnected.

8. On or about January 10, 2013, the Board's investigator went to Licensee's practice location, North Kansas City Hospital (Hospital), Suite 605. The door to the suite was locked and there was a sign on the door saying "closed until further notice."

9. On or about February 26, 2013, the Vice President and General Counsel of the Hospital contacted the Board's investigator and informed the Board's investigator that Licensee stopped paying rent in September 2012 and the Hospital began eviction procedures in December 2012.

10. Following this call, the Board sent a letter to Licensee advising him that the Board was trying to contact him. The Board sent the letter to Licensee at two addresses: 2790 Clay Edwards Drive, #605, North Kansas City, Missouri 64116 (work) and 18309 S. Cleveland Avenue, Belton, Missouri 64012 (home). Both letters were returned as not deliverable. Additional copies of the letter were sent to the following addresses: 8618 NE 98th Street, Kansas City, Missouri 64157, 310 King Avenue, Belton, Missouri 64012 and 500 North Scott Avenue, Suite C2, Belton, Missouri 64012.

11. As of May 7, 2013, the Board received no communication or response from Licensee by telephone or mail, indicating that he had received the Board's letters.

12. On or about May 29, 2013, the Board sent Licensee a copy of the probation violation complaint filed in this matter as well as Notice of the Probation Violation Hearing. The Board sent the Notice and complaint to Licensee at the following addresses: 18309 S. Cleveland Drive, Belton, Missouri 64013 (by regular mail) and 2790 Clay Edwards Drive, #605, North Kansas City, Missouri 64116 (by certified mail). The Notice sent to Clay Edwards Drive was returned "unable to forward." On or about June 3, 2013, the Board resent the Notice to Licensee at 8618 NE 98th Street, Kansas City, Missouri 64157. The Notice was returned unclaimed.

13. Licensee's failure to keep the Board apprised of his current home and work addresses and telephone numbers and his failure to notify the Board within 10 days of any change thereof are violations of the Settlement and constitute cause to take further

discipline against Licensee's license for failure to comply with the terms of the Settlement Agreement, Chapter 332, RSMo and rules and regulations of the Board.

14. Licensee appeared at the probation violation hearing on July 25, 2013 and testified on his own behalf. Licensee testified that he had not been working since September 2012. He stated that the bank "cleared out his business" and he had no current database to contact patients. He stated that he closed the office without giving any notice to his patients because the bank did not give him access. He admitted he also failed to notify the Board of the close of his practice as well as all address changes. He admitted his failure was a violation of the Settlement Agreement. He stated there were "a lot of things he should have done" but he was "despondent at the time." He stated he did receive letters from both the Board and the Bureau of Narcotics and Dangerous Drugs during this time.

Conclusions of Law

15. The Board has jurisdiction in this proceeding, pursuant to the Settlement Agreement to determine whether Licensee has violated the terms and conditions of the Settlement Agreement.

16. The Board also has jurisdiction pursuant to § 324.042, RSMo, to determine whether Licensee has violated the terms and conditions of the Settlement Agreement.

Section 324.042, RSMo, states, in pertinent part:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

17. Licensee's failure to keep the Board apprised of his current home and work addresses and telephone numbers and his failure to notify the Board within 10 days of any change thereof, as detailed in paragraphs 3 through 14 above, gives cause for the Board to

impose further discipline upon Licensee's dental license pursuant to the Settlement Agreement and § 324.042, RSMo.

18. The Settlement Agreement and § 324.042, RSMo, allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of the Settlement Agreement.

19. The Board has determined that this Order is necessary to ensure the protection of the public.

Decision and Order

20. It is the decision of the Board that Gavin Messer, D.D.S. has violated the terms of the Settlement Agreement, and that his license is, therefore, subject to further disciplinary action.

21. The Board orders that the dental license of Gavin Messer, D.D.S., license number 015936, shall be **SUSPENDED** for a period of **THREE (3) YEARS** or until such time as Licensee complies with all of the following requirements:

A. Licensee shall enroll in the Missouri Dental Well-Being Committee. At such time as Licensee enrolls, Licensee shall cause the Committee to send written notification to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, confirming that Licensee has joined the program. Licensee shall follow all recommendations of the Committee or the Committee Administrator with regards to counseling, evaluations, any treatment deemed necessary by an evaluation, and any follow-up care. Failure to participate in the Well-Being Committee shall constitute a violation of this Order.

B. Licensee, at Licensee's expense, shall obtain a Well Being Committee approved mental health evaluation. Licensee shall follow all recommendations of the entity with regards to counseling, evaluations, any treatment deemed necessary by an evaluation, and any follow-up care. Failure to complete the evaluation and follow all recommendations shall constitute a violation of this Order. A copy of the completed evaluation will be due, in the Board's office, within 30 days of the date of the evaluation.

C. Licensee shall cause the mental health practitioner completing his mental health evaluation as detailed in paragraph 21.B. to issue a letter to the Board stating that Licensee is fit to practice dentistry in the State of Missouri. The letter shall be sent directly to the Board's office from the evaluator.

During the period of **SUSPENSION**, the probation on Licensee's license issued in the Settlement Agreement shall be stayed. The period of suspension shall begin ten (10) days following the date the Executive Director signs this Order.

22. Upon completion of the suspension, Licensee's license shall then immediately be placed on **PROBATION** for the remainder of the period of probation set forth in the Settlement Agreement. As of the date of this Order, Licensee has two (2) years, eight (8) months, and twenty (20) days remaining in his term of probation. During the aforementioned probation, Licensee shall be entitled to practice as a licensed dentist subject to the following terms and conditions.

I. REQUIREMENTS REGARDING THE MISSOURI DENTAL WELL-BEING COMMITTEE

- A. During the probationary period, Licensee shall continue to participate in the Missouri Dental Well-Being Committee (Committee) (as required during the period of suspension) and continue to follow all recommendations for treatment or aftercare made by the treating professional and/or Committee which Licensee received upon enrolling in the program and/or which Licensee may receive during the periods of suspension and probation. Failure to continue to participate in the Well-Being Committee shall constitute a violation of this Order.
- B. If Licensee has not already done so, Licensee shall execute a medical release or other appropriate release that shall remain in effect for the entire disciplinary period authorizing the Board to obtain records of Licensee's treatment. Licensee shall not take any action to cancel this release. Licensee shall take any and all steps necessary to continue the release in effect and shall provide a new release when requested.

II. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall submit 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 the Board Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.

- C. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. Licensee 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 all other states and territories of the United States.
- E. During the periods of suspension and probation, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- F. If at any time during the periods of suspension and probation, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his 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 § 332.321.6, RSMo.
- G. During the periods of suspension and probation, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Order.
- H. If Licensee fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).
- I. This Order does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

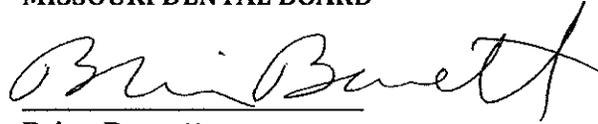
III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. Licensee shall notify, within 15 days of the effective date of this Order, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

This Order will be maintained as an open record of the Board as provided in Chapters 332, 610 and 324, RSMo.

SO ORDERED this 2nd day of AUGUST 2013.

MISSOURI DENTAL BOARD

A handwritten signature in black ink, appearing to read "Brian Barnett". The signature is written in a cursive style with a horizontal line underneath the name.

**Brian Barnett,
Executive Director**