

BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

In The Matter Of:

ANDREW W. KELLY, D.D.S.
(License No. 7350)

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CONSENT ORDER

THIS MATTER is before the North Carolina State Board of Dental Examiners (Board) as authorized by G.S. § 90-41.1(b) for consideration of a Consent Order in lieu of a formal administrative hearing. Andrew W. Kelly, D.D.S. (Respondent) was represented by Hardy Lewis and Frank Recker. Carolin Bakewell represented the Investigative Panel.

While Respondent does not admit for any purposes, other than this disciplinary hearing and any other disciplinary or licensure proceeding before this Board or any other dental licensing Board, the findings of fact and conclusions of law contained in this Consent Order, in order to terminate further controversy and avoid additional proceedings, the Respondent consents to the terms of this Consent Order and the sanctions contained herein. Based upon the consent of the parties hereto, the Board enters the following:

FINDINGS OF FACT

1. The North Carolina State Board of Dental Examiners is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding pursuant to the authority granted to it in Chapter 90 of the North Carolina General Statutes, including the Dental Practice Act and the Rules and Regulations of the North Carolina State Board of Dental Examiners.

2. Respondent was licensed to practice dentistry in North Carolina on July 17, 2001 and holds license number 7350.

3. At all times relevant hereto, Respondent was subject to the Dental Practice Act and the Board's rules and regulations promulgated thereunder.

4. At all times relevant hereto, was engaged in the practice of general dentistry in Clemmons, North Carolina.

SALLY MELENDEZ

5. On March 12, 2009, Sally Melendez (Ms. Melendez) presented to Respondent's office for a new patient examination and implant consultation.

6. Following the exam, Respondent recommended a new bridge on teeth numbers 29-31, new crowns on teeth numbers 20 and 21, a possible implant and crown to replace missing tooth #19 and a restoration on tooth #7.

7. Ms. Melendez agreed to the treatment plan.

8. On March 25, 2009, Respondent restored Ms. Melendez' tooth #7 and removed the crowns on teeth numbers 20 and 21 and Ms. Melendez' lower right bridge.

9. During the process, Respondent perforated tooth #20. Respondent maintains that he repaired the perforation, but the treatment record for March 25 does not refer to the perforation.

10. The Respondent did not tell Ms. Melendez or her husband about the perforation.

11. The Respondent did not tell Ms. Melendez that the perforation, which was very large, would likely doom tooth # 20, nor did he discuss with Ms. Melendez the other treatment options open to her in light of the perforation.

12. The standard of care for dentists licensed in North Carolina at the time Respondent treated Ms. Melendez required dentists to inform a patient promptly when a tooth is perforated during a procedure, to note the incident in the patient treatment records on the date of the incident and to all discuss treatment options with the patient.

13. The Respondent violated the standard of care by failing to tell Ms. Melendez that he had perforated tooth #20, by failing to note it in her treatment record for March 25, 2009 and by failing to review her treatment options with her after the perforation occurred.

DEBORAH BARE

14. On July 16, 2008, Deborah Bare (Ms. Bare) presented to Respondent's office for a comprehensive examination.

15. Ms. Bare's mouth was in a state of serious disrepair and there were massive amounts of calculus on her teeth.

16. Following an examination, Respondent proposed a treatment plan that called for the extraction of teeth numbers 14 and 29, implants and crowns in the areas of teeth numbers 8, 14 and 29, root canals and crowns on teeth numbers 3, 13 and 20 and restorations in teeth numbers 2, 5, 7, 12, 19, 28, 30 and 31 for a fee of \$19,664.

17. Ms. Bare consented to the treatment plan and paid \$14,000 of the fee in advance.

18. Instead of first adequately addressing Ms. Bare's deteriorating periodontal condition and treating the carious lesions in teeth numbers 2, 5, 7, 12, 19, 28, 30 and 31, Respondent focused on completing the implants and crown work.

19. The standard of care applicable to dentists licensed in North Carolina at the time Respondent treated Ms. Bare required dentists to properly managing the sequence of patient treatment.

20. Respondent violated the standard of care by failing to properly manage the sequence of Ms. Bare's treatment.

GLADYS FOX

21. Ms. Gladys "Dolly" Fox became Respondent's patient in June 2004, at which time Ms. Fox was 84 years old.

22. On September 21, 2005, Ms. Fox presented to the Respondent's office with pain at tooth # 10.

23. The Respondent provided Ms. Fox with the option of extracting # 10 and replacing it with a bridge or an implant. The Respondent's treatment notes do not indicate that he offered to add tooth # 10 to Ms. Fox's existing partial.

24. Thereafter, the Respondent determined that Ms. Fox's teeth #'s 12 and # 13 were decayed. The teeth were ultimately extracted and Respondent placed implants at both sites in 2008.

25. Although the Respondent placed two implants at the site of tooth # 13, the consent form that Ms. Fox signed only indicated that one implant was to be placed. Moreover, the Respondent's treatment notes for Ms. Fox during this time period indicate that she may have lacked the capacity to give meaningful consent.

26. The partial fabricated by the Respondent was ill-fitting and did not engage the implant at Ms. Fox's tooth # 12. Instead, the partial was resting on top of the implant, which caused the partial to break and chip.

27. The standard of care for dentists licensed to practice dentistry in North Carolina at the time Respondent treated Ms. Fox required dentists to discuss all available treatment options with their patients, to obtain adequate informed consent to place implants and to provide properly fitting partial dentures that engage the patient's adjacent implants.

28. Respondent violated the standard of care for dentists licensed to practice dentistry in North Carolina by failing to discuss with Ms. Fox all available treatment options following the extraction of tooth number 10, by failing to obtain adequate informed consent to place two implants at the site of tooth # 13 and by providing her with an ill fitting partial denture that did not engage the implant at tooth # 12.

Based upon the Findings of Fact and the consent of the parties, the Board hereby enters the following:

CONCLUSIONS OF LAW

1. The North Carolina State Board of Dental Examiners has jurisdiction over the subject matter of this action and over the person of the Respondent.

2. Respondent has stipulated that such allegations, if proven, are legally sufficient to support Findings and Conclusions that he has violated G.S. § 90-41 as specified in the Findings of Fact. Furthermore, Respondent has stipulated that, solely for the purposes recited herein, Respondent will not contest the allegations set forth in

this Order, which allegations are previously incorporated in this Order, as if fully set forth herein, as Findings of Fact.

3. By failing to disclose to Ms. Melendez that he had perforated tooth #20, and by failing to note the incident in Ms. Melendez' treatment record for March 25, 2009, Respondent engaged in negligence in the practice of dentistry, in violation of G.S. § 90-41(a)(12).

4. By failing to properly manage the sequence of Ms. Bare's treatment, Respondent engaged in negligence in the practice of dentistry, in violation of G.S. § 90-41(a)12.

5. By failing to discuss Ms. Fox's treatment options, providing her with an ill fitting partial denture that did not properly engage the implant at tooth # 12, and failing to obtained adequate informed consent before placing two implants in the area of tooth # 13, the Respondent engaged in negligence in the practice of dentistry, in violation of G.S. § 90-41(a)(12).

6. Respondent's negligent acts constituted a violation of Article 2, Chapter 90, of the North Carolina General Statutes within the meaning of G.S. § 90-41(a)(6).

Based upon the foregoing Findings of Fact and Conclusions of Law and with the consent of the parties, the Board hereby enters the following

ORDER OF DISCIPLINE

1. License Number 7350 issued to Respondent for the practice of dentistry in North Carolina is hereby suspended for a period of one (1) year.

2. With the Respondent's consent, his license to practice dentistry shall be immediately reinstated, with no period of active suspension, provided that for five (5)

years from the date of this Order, he adheres to the following probationary terms and conditions:

- (a) Respondent shall violate no provisions of the Dental Practice Act or the Board's Rules and Regulations;
- (b) Respondent shall neither permit nor direct any of his employees to violate any provision of the Dental Practice Act or the Board's Rules and regulations;
- (c) Respondent shall permit the Board and its agents to inspect and observe his office and patient records and interview employers, employees and co-workers at any time during normal office hours;
- (d) Respondent shall, within one (1) year from the date of this Order, complete a continuing education course especially designed for him by the University of North Carolina School of Dentistry in conjunction with, and approved by, the North Carolina State Board of Dental Examiners. This will be a comprehensive, remedial course, not to exceed twenty (20) hours, which shall include (1) Recordkeeping; (2) Endodontics and (3) Treatment Planning. This requirement shall be in addition to the continuing education required by the Board for the renewal of Respondent's dental license. Respondent shall submit to the Board's Deputy Operations Officer written proof of satisfactory completion of this course before it will be accepted in satisfaction of this requirement. It is the

Respondent's responsibility to make all arrangements for and bear the cost of this course within the specified time;

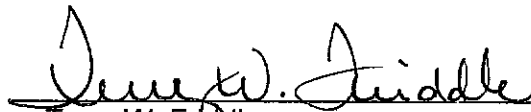
- (e) Within one year of the date of this order, Respondent shall successfully complete a Board approved eight (8) hour course in ethics. *No course shall be accepted in satisfaction of this continuing education requirement unless the course has been approved by the Board in writing before Respondent takes it.* Respondent shall submit to the Board's Deputy Operations Officer written proof of satisfactory completion of any approved course. It is the Respondent's responsibility to find and complete all course work within the specified time;
- (f) Respondent shall issue a full reimbursement of all fees paid by Ms. Melendez and Ms. Bare within six (6) months from the date of this Order. Respondent shall also issue a full reimbursement to Ms. Fox for all fees paid to him for her partial denture and for the implants placed in the #12 and #13 areas within six (6) months from the date of this Order. Respondent shall provide written proof that reimbursement has been made;
- (g) Within thirty (30) days of the date of this Order, Respondent shall reimburse the Board for the costs associated with its investigation of this matter in the amount of \$1140.00.

3. If Respondent fails to comply with any provision of this Order or breaches any term or condition thereof, the Board shall promptly schedule a public Show Cause Hearing to permit Respondent to show cause why his dental license should not be suspended. If, as a result of the Show Cause hearing, the Board is satisfied that Respondent failed to comply with or breached any term or condition of this Order, Respondent's license shall be rescinded and, upon written demand, Respondent shall immediately surrender his license and current renewal certificate to the Board for a period of one (1) year. This sanction shall be in addition to and not in lieu of any sanction the Board may impose as a result of future violations of the Dental Practice Act or the Board's Rules.

This the 18 day of August 2011.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By



Terry W. Fiddle
Deputy Operations Officer

STATEMENT OF CONSENT

I, ANDREW W. KELLY, D.D.S., do hereby certify that I have read the foregoing Consent Order in its entirety and that I do freely and voluntarily admit, exclusively for the purposes of this disciplinary proceeding and any other disciplinary or licensure proceedings before this Board or any other Dental Licensing Board, that there is a factual basis for the Findings of Fact set forth therein, that the Findings of Fact, if proven, support the Conclusions of Law, that I will not contest the Findings of Fact should further disciplinary action be warranted in this matter, and that I assent to the terms and conditions set forth therein. By signing this Statement of Consent I hereby express my understanding that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order shall become a part of the permanent public record of the Board.

This the 1st day of August, 2011.


ANDREW W. KELLY, D.D.S.