BEFORE THE STATE OF NEW MEXICO
BOARD OF DENTAL HEALTH CARE

IN THE MATTER OF:

WILLIAM C. KOTTKE, D.D.S. Case No. 08-104-COM
License No. DD-1571

Respondent.

DECISION AND ORDER

This matter was heard on April 1, 2011 before Hearing Officer Lidio G. Rainaldi, Jr., D.D.S., a member of the New Mexico Board of Dental Health Care. The hearing was conducted at the Farmington City Hall Council Chambers, 800 North Municipal Drive, Farmington, New Mexico. Gloria I. Lucero, Assistant Attorney General, appeared as administrative prosecutor. Respondent William C. Kottke, D.D.S. appeared and was represented by attorney James R. Wood of Miller Stratvert PA.

A copy of the Hearing Officer’s Report, filed on May 2, 2011, is attached hereto as “Attachment A” and incorporated by reference.

On May 6, 2011, a quorum of the Board (Jose Fretzke absent) met to consider and deliberate upon the administrative record established at the hearing, including the transcript of the hearing and exhibits, and the Hearing Officer’s Report. After considering and evaluating all of the testimony, exhibits and argument, and by a majority of those Board members voting, Charles Schumacher, DDS abstaining, the Board hereby renders this Decision and Order pursuant to the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 through 61-1-31.

Findings of Fact

The Board adopts the thirty (30) Findings of Fact as set forth in the Hearing Officer’s Report and incorporates them herein. [Attachment A]

Conclusions of Law

The Board determines that the administrative record and Findings of Fact in this matter support its adoption of the following Conclusions of Law.

2. The Board investigates complaints and determines whether a licensed
dentist has violated the Dental Health Care Act or the Board’s rules, and has exclusive
power to discipline a licensed dentist who, following an administrative hearing, is found

3. All notices in this matter, including the Notice of Contemplated Action,
were served on Respondent in accordance with the Uniform Licensing Act, NMSA 1978,

4. Venue for this matter is appropriate in Farmington, New Mexico. NMSA

5. The Board has the power to discipline Respondent for any cause stated in
the Dental Health Care Act. NMSA 1978, § 61-5A-10(F); 16.5.16.9(A) NMAC.

6. The Board applied its technical knowledge, experience and expertise in
the practice of dentistry in making a judgment as to Respondent’s adherence to
professional standards of conduct for dentists licensed in New Mexico, and in evaluating
the testimony and documentary evidence in the record and making its findings of fact,
reaching its conclusions of law, and rendering a decision based on those findings and
conclusions. NMSA 1978, § 61-1-11(C); Weiss v. N.M. Bd. of Dentistry, 110 N.M. 574

7. The Board found adequate and persuasive the documentary evidence,
including dental radiographs and photographs, and clinical treatment notes, and relied on
all of this evidence and the testimony in evaluating the entire administrative record and
reaching its conclusions as to Respondent’s diagnosis, care and treatment of his patient.

8. Generally, the standard of proof in administrative hearings is by a
preponderance of the evidence. Foster v. Board of Dentistry, 103 N.M. 776, 777-778

9. “Gross incompetence” or “gross negligence” means a significant departure
from the prevailing standard of care in treating patients. 16.5.16.10(A) NMAC.

10. “Unprofessional conduct” means, in relevant part, the failure to seek
consultation whenever the welfare of the patient would be safeguarded or advanced by
referral to individuals with special skills, knowledge, and experience. 16.5.16.10(B)(4)
NMAC.

11. Respondent has violated the Dental Health Care Act, NMSA 1978, § 61-
5A-21(A)(3), and is guilty of gross negligence and gross incompetence as defined by the
Board’s rules, 16.5.16.10(A) NMAC. As shown in the patient chart notes, radiographs,
photographs, and testimony, Respondent significantly departed from the prevailing
standard of care in treating patients by failing to diagnose and treat Patient CG’s multiple

William C. Kottke, DDS, 08-104 COM Decision and Order, Page 2 of 5
caries and significant decay, need for root canal therapy, need for multiple crowns and other dental problems:

a. At the time of her complaint to the Board, Respondent had regularly seen Patient CG for approximately 22 years, and Patient CG had kept her 6-month recall appointments with Respondent for all of that time. Respondent routinely performed dental examinations and prophylaxes on Patient CG over the more than two decades she was his patient.

b. On August 26, 2008, Respondent performed an examination and adult prophylaxis on Patient CG at her regular six-month visit, but charted nothing about Patient CG’s complaint of pain in her upper left quadrant or any possible dental reason for that pain.

c. At her appointment with Respondent on August 26, 2008, Patient CG informed him of pain in her upper left quadrant, which pain Respondent did not investigate further and verbally dismissed as probably due to allergies. Little more than three months later, Patient CG presented to James Cole, D.D.S. with her complaint of continued and severe pain in her upper left quadrant, which Dr. Cole investigated and identified as coming from Tooth #15 and resulting from decay under the crown, and which tooth eventually was extracted by Dr. Cole because it was beyond repair.

d. In examining Patient CG on December 4, 2008 for purposes of rendering a second opinion regarding her ongoing dental problems, Dr. Cole identified and charted multiple teeth with significant decay necessitating treatment that Respondent himself had failed to diagnose or treat.

e. The teeth whose problems (decay, caries, need for root canal therapy, need for crowns, need for restorations) Respondent failed to diagnose and treat included: large decay on Tooth #15 as the primary source of Patient CG’s longstanding upper left quadrant pain, and obvious decay and other dental problems on Teeth #12 and #13, #18, #19, #20, #21, #28, #29, #4 and #5, #11, #14, and #31.

f. Respondent failed to diagnose or suggest treatment of at least fourteen of Patient CG’s teeth, nearly half of the total teeth in her mouth.

g. Patient CG’s decay on multiple teeth, causing the need for extraction, root canal therapy, crowns and composite restorations, are evident on Respondent’s radiographic images, including the bitewings done by him on February 14, 2008, but Respondent failed to diagnose or treat any of these problem teeth.

h. Respondent explained his failure to diagnose and treat multiple and significant decay in Patient CG as he “overlooked some things,” which “things” put his patient at risk and did not safeguard her welfare or oral health.
In treating Patient CG in August 2007 and again on August 26, 2008, both of Respondent’s hands were noticeably shaking, and when asked about this, Respondent told his patient that he had pulled a shoulder muscle, an explanation unsatisfactory to Patient CG.

12. Despite Patient CG’s dental situation being such that she had multiple undiagnosed and untreated decay, for which she needed extensive treatment, including root canals and crowns, and despite Respondent’s year-long condition where both of his hands were shaking so much as to concern his patient, Respondent failed to consult with or refer her to another dentist; Respondent’s failure to do so endangered Patient CG’s welfare and constitutes unprofessional conduct that violates the Dental Health Care Act, NMSA 1978, § 61-5A-21(A)(5) and the Board’s rules, 16.5.16.10(B)(4) NMAC.


14. The Board may impose a fine not to exceed one thousand dollars ($1,000.00) for each violation of the Dental Health Care Act or the Board’s rules. NMSA 1978, § 61-1-3(L) (1993).

15. A professional licensee who, following an administrative hearing, is found by the Board to have violated the Dental Health Care Act or the Board’s rules, shall pay all costs of the Board’s disciplinary proceedings. NMSA 1978, §§ 61-1-4(G) (2003); 61-5A-21(C).

ORDER

The New Mexico Board of Dental Care determines that Respondent William C. Kottke, D.D.S. violated the Dental Health Care Act and the Board’s rules, as specifically described above in the Findings of Fact (Attachment A) and Conclusions of Law.

IT IS THEREFORE ORDERED that:

A. Respondent William C. Kottke, D.D.S. shall have his license to practice dentistry in New Mexico SUSPENDED for a period of thirty (30) days, beginning thirty (30) days after his receipt of the Board’s Decision and Order. This thirty-day period will allow Respondent to take all steps necessary to avoid any patient abandonment. Simultaneously with the suspension of his license, Respondent shall surrender his current license to practice dentistry in New Mexico to Kathy Ortiz, Board Administrator, Regulation and Licensing Department, Toney Anaya Building, 2550 Cerrillos Road, 2nd Floor, Santa Fe, New Mexico 87505.
B. Respondent William C. Kottke, D.D.S. shall successfully complete and return to the Board office the New Mexico Dental Jurisprudence Examination within ninety (90) days after his receipt of the Board’s Decision and Order.

C. Respondent William C. Kottke, D.D.S. shall successfully complete a minimum of thirty (30) hours of continuing education in the diagnosis and treatment planning of caries and related dental problems. A dentist Board member designated by the Board Chair shall approve this continuing education before Respondent enrolls. Respondent shall successfully complete this continuing education within one (1) year after receipt of the Board’s Decision and Order.

These thirty (30) hours of continuing education shall not count towards the triennial renewal requirement of sixty (60) hours of continuing education prescribed by 16.5.10.8 NMAC. Respondent shall provide to the Board Administrator written documentation that he has successfully and timely completed this continuing education.

D. Respondent William C. Kottke, D.D.S. shall pay to the Board a fine in the amount of three thousand dollars ($3,000.00) for his violations of the Dental Health Care Act and the Board’s rules. Respondent shall pay this fine within thirty (30) days of receipt of the Board’s Decision and Order.

E. Respondent William C. Kottke, D.D.S. shall pay to the Board the costs of these administrative disciplinary proceedings in the amount of four hundred, fifty three dollars and eighty seven cents ($453.87) within thirty (30) days of receipt of the Board’s Decision and Order. Assessed costs include the transcript and witness fees, as permitted by New Mexico Board of Veterinary Medicine v. Rieger, 2007-NMSC-044, 142 N.M. 248.

Respondent William C. Kottke, D.D.S. is hereby informed that, in accordance with the attached statement of rights, he may obtain judicial review of this Decision and Order.

NEW MEXICO BOARD OF
DENTAL HEALTH CARE

[Signature]
Jessica Brewster, D.D.S.
Board Chair

Date Filed with Board Office: June 27th 2011