

**BEFORE THE STATE OF NEW MEXICO  
BOARD OF DENTAL HEALTH CARE**

**IN THE MATTER OF:**

**WILLIAM C. KOTTKE, D.D.S.**  
License No. DD-1571

**Case No. 09-28-COM**

**Respondent.**

**DECISION AND ORDER**

This matter was heard on November 5, 2011, by the full New Mexico Board of Dental Health Care, and on November 18, 2011 by Board members Jessica Brewster, D.D.S. and Robert Gherardi, DMD. The hearing was conducted on day one at the New Mexico Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico, and on day two at the New Mexico Dental Association, 9201 Montgomery Blvd NE # 601, Albuquerque, New Mexico. Gloria I. Lucero, Assistant Attorney General, appeared as administrative prosecutor. Respondent William C. Kottke, D.D.S. appeared (on day two) and was represented by attorney James R. Wood of Miller Stratvert PA.

On January 27, 2012, a quorum of the Board met to consider and deliberate upon the administrative record established at the hearing, including the transcript of the hearing and exhibits. After considering and evaluating all of the testimony, exhibits and argument, and by a majority of its members voting, 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**

1. The hearings in this matter were conducted in accordance with the rules and regulations governing the New Mexico Board of Dental Health Care (“Board”).
2. All parties to these proceedings were properly and timely noticed and all interested parties were present at the hearing. [Administrative Record]
3. Respondent William Kottke, D.D.S. (“Respondent” or “Dr. Kottke”), is currently licensed to practice dentistry in the State of New Mexico under license number DD1571, and is subject to the jurisdiction and licensure authority of the Board. He has held this license since January 29, 1986. He is in private practice in Farmington, New Mexico.
4. This case is before the Board because of a complaint filed against Respondent by his Patient CC on June 22, 2009 that Respondent had failed to diagnose and treat dental disease. [Ex. 3]. Dr. Kottke responded to the complaint on September 19, 2009. [Id.].

5. On or about April 20, 2011, the Board issued a Notice of Contemplated Action (“NCA”) to Respondent alleging that he had violated the Dental Health Care Act [NMSA 1978, § 61-5A-21] and the Board’s rules, including 16.5.16.10 NMAC. The NCA stated that the Board had sufficient evidence to act upon Respondent’s license to practice dentistry in New Mexico given its information regarding Respondent’s patient diagnosis, and standard of care in treating patients. [Ex. 1].

6. Respondent did not timely request a formal hearing within the 20 day time limit stated both in the Uniform Licensing Act, NMSA 1978, Section 61-1-4(D) and in the NCA. As a result, on June 1, 2011 Board staff notified Respondent that no hearing would be held. [Ex. 1]. The letter dated June 1, 2011 is included as Administrative Record Attachment 3, but was not introduced or admitted as an exhibit.

7. On June 27, 2011, Respondent requested the Board to reopen his case and allow a hearing. Although not required by law, the Board granted the request to reopen and set a hearing date for September 23, 2011. The letter dated June 27, 2011 is included as Administrative Record Attachment 4, but was not introduced or admitted as an exhibit. Notice of the September 23, 2011 hearing is included as Administrative Record Attachment 5, but was not introduced or admitted as an exhibit.

8. The September 23, 2011 hearing was reset at the request of Respondent to November 5, 2011. [Ex. 12]

9. On November 4, 2011, less than 24 hours before the scheduled hearing, Dr. Kottke emailed the Dental Board office stating he would be unable to attend the November 5, 2011 hearing due to a family emergency.

10. The full eight member Board, six witnesses, the administrative prosecutor, the Board’s assistant attorney general, a court reporter, and three Board staff had made arrangements to be in Santa Fe for the hearing, so the Board proceeded with the hearing and heard witness testimony on November 5, 2011.

11. Although not required by law, the Board continued the hearing until November 18, 2011 so that Dr. Kottke could testify. The continued hearing was conducted by Board members Robert Gherardi, D.M.D. and Jessica M. Brewster, D.D.S.

12. Joe J. Simmons III, D.D.S., License No. DD1973, is currently licensed to practice general dentistry in the State of New Mexico. He has held this license since July 17, 1999. He is in private practice in Farmington, New Mexico.

13. Dennis R. Miller, D.M.D., MS, License No. DD1987, is currently licensed to practice the dental specialty of periodontics in the state of New Mexico. He has held this license since October 6, 1999. He is in private practice in Farmington, New Mexico.

14. Dr. Kottke has taken the required number of continuing education hours each year to maintain his license.

## **Patient CC**

15. On June 22, 2009, Board staff received a complaint from Patient CC, a patient of Respondent.
16. CC had been a patient of Dr. Kottke's from 1986 until 2008.
17. Patient CC was seen by Dr. Kottke for examinations, cleaning and radiographs at least 28 times over 22 years.
18. Dr. Kottke's examination and treatment notes show no routine periodontal examination or charting being done for Patient CC.
19. There are no notes for Patient CC regarding bone height or bone loss.
20. There are no notes for Patient CC regarding oral hygiene instruction until 2005 "TBI." TBI is dental abbreviation for "Tooth Brush Instruction."
21. There are no notes regarding Patient CC's compliance with home care.
22. There are no referrals from Dr. Kottke to any specialist for Patient CC.
23. Dr. Kottke did note "mod cal Post Teeth" for Patient CC on May 29, 2003. "Mod cal Post Teeth" is dental abbreviation for moderate calculus on posterior teeth. "Calculus" is hard calcium-like deposits that form on teeth due to inadequate plaque control. It is also called tartar. Calculus must be mechanically removed by a dental professional during scaling.
24. Dr. Kottke did note "7 mm Pockets 1, 2, 15, 16" for Patient CC on November 5, 2003. Dr. Kottke stated that he recommended removal of Patient CC's third molars at this time. Pocket measurement in millimeters (mm) is the depth of the margin between the gingiva and bone. Normal gingival depth is 1-3 mm. 7mm of depth means periodontal disease exists.
25. Dr. Kottke does his own prophylaxes and periodontal scaling in his office. "Scaling" is a deep-cleaning, non-surgical procedure whereby plaque and tartar from above and below the gum line are scraped away.
26. From 1988 through 2005 Dr. Kottke performed a routine adult prophylaxis on Patient CC at regular intervals. Dr. Kottke stated this consisted of scaling and polishing the teeth.
27. On July 29, 2005, Dr. Kottke performed a "scale" on Patient CC's teeth. Dr. Kottke testified this consisted of removal of subgingival calculus and root planing. "Planing" is the smoothing of rough spots on the tooth root.
28. On October 16, 2007, Dr. Kottke's notes indicate a periapical (PA) x-ray of tooth #22 was taken for Patient CC and that there was "slight lingual swelling" associated with #22. A

periapical x-ray shows the root, tooth and surrounding bone. There was no follow-up or treatment noted for this swelling.

29. On April 12, 2007, Dr. Kottke wrote in his treatment notes “inflammation 3rds” for Patient CC, and on October 16, 2007, Dr. Kottke wrote in his notes “recommend 3rds ext.” 3rds is a dental abbreviation for “Third Molars” and “ext” is dental abbreviation for extraction.

30. Patient CC’s last appointment with Dr. Kottke occurred in 2008. Dr. Kottke’s notes state an examination and adult prophylaxis were done. The notes also state “3rds inflamed 6mm.”

31. At this last appointment with Patient CC, Dr. Kottke did not diagnose any caries or periodontal disease except that associated with the third molars.

32. Patient CC went to the office of Dr. Joe J. Simmons on June 1, 2009 for a comprehensive examination. CC’s chief complaint was cold and pressure sensitivity in the lower right quadrant.

33. Dr. Simmons diagnosed Patient CC with advanced generalized periodontitis, with 3-4 mm of generalized horizontal bone loss, radiographically visible calculus, generalized furcal involvement of the molars and numerous bony defects (some as deep as 11 and 12 mm). Dr. Simmons’ notes reflect this diagnosis and he testified to this also. Periodontitis and periodontal disease are synonymous. Furcal involvement means the bone loss has progressed into the tooth roots separation.

34. Dr. Simmons also diagnosed carious lesions for Patient CC in teeth 2, 14, 15, 18, 20, 29, 30, 31.

35. Dr. Simmons referred Patient CC to Dr. Dennis Miller, a specialist in periodontics.

36. Dr. Miller performed an initial periodontal evaluation on Patient CC on June 9, 2009, and a complete periodontal examination on June 15, 2009. He diagnosed severe chronic adult periodontitis.

37. Dr. Miller gave Patient CC a prognosis of fair to hopeless for several molars because of the severe bone loss.

38. Dr. Miller found significant deposits (of calculus) on Patient CC’s root surfaces.

39. When questioned whether Patient CC’s periodontal prognosis would be better had his periodontal condition been diagnosed and treated sooner, Dr. Miller said “definitely yes”.

### **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.

1. The Board has jurisdiction over the parties and subject matter in this proceeding pursuant to the Dental Health Care Act. NMSA 1978, §§ 61-5A-10(F) (2003), 61-5A-21(A) (2003).
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 in violation. NMSA 1978, §§ 61-5A-10, 61-5A-21.
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, §§ 61-1-1 through 61-1-31 (2003).
4. 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.
5. 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 (1990).
6. The Board found adequate and persuasive the documentary evidence, including dental radiographs and clinical treatment notes, and relied on both all of this evidence and the testimony in evaluating the entire administrative record and reaching its conclusions as to both Respondent's diagnosis, care and treatment of his patients.
7. 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 (1986); NMSA 1978, § 61-1-13 (1993).
8. "Gross incompetence" or "gross negligence" means a significant departure from the prevailing standard of care in treating patients. 16.5.16.10(A) NMAC.
9. "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.
10. 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 and testimony, and as specifically described above in the Findings of Fact, Respondent significantly departed

from the prevailing standard of care in treating patients by failing to diagnose and treat advanced periodontal disease in Patient CC.

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 and testimony, and as specifically described above in the Findings of Fact, Respondent significantly departed from the prevailing standard of care in treating patients by failing to diagnose and treat periodontal disease in Patient CC.

12. Respondent has violated the Dental Health Care Act, NMSA 1978, § **61-5A-21(A)(5)**, and is guilty of unprofessional conduct as defined by the Board's rules, **16.5.16.10(B)(4) NMAC**. As shown in the patient chart notes, radiographs and testimony, and as specifically described above in the Findings of Fact, Respondent's failure to seek consultation or refer Patient CC to a periodontist, did not safeguard Patient CC's welfare and constitutes unprofessional conduct.

13. Respondent's gross negligence and gross incompetence, and his unprofessional conduct, all constitute violations of the Dental Health Care Act, NMSA 1978, § **61-5A-21(A)(7)**.

14. The Board determines that, in addition to the evidence and administrative record in this Case No. 09-28 COM, Respondent has demonstrated a pattern and practice of gross negligence and gross incompetence in treating his patients, all as shown in the evidence and administrative hearing records in the four other cases heard by the Board since April 1, 2011: Case Nos. **08-93 COM** [June 27, 2011 Decision and Order], **08-104 COM** [June 27, 2011 Decision and Order], **09-19 COM** [February 10, 2012 Decision and Order], and **09-32 COM** [February 10, 2012 Decision and Order].

15. 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).

16. 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 and Conclusions of Law.

IT IS THEREFORE ORDERED that Respondent **William C. Kottke, D.D.S.**:

A. shall have his license to practice dentistry in New Mexico **SUSPENDED** for a period of eighteen (18) months, beginning sixty (60) days after his receipt of the Board's

Decision and Order. This sixty-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, 2<sup>nd</sup> Floor, Santa Fe, New Mexico 87505.

B. shall pay to the Board a fine in the amount of two thousand dollars (\$2,000.00) for his violations of the Dental Health Care Act and the Board's rules. Respondent shall pay this fine within thirty (30) days of his receipt of the Board's Decision and Order.

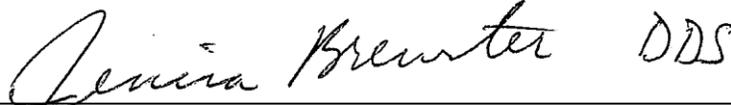
C. shall pay to the Board the costs of these administrative disciplinary proceedings in the amount of one thousand forty-seven dollars and twelve cents (\$1,047.12) within thirty (30) days of his receipt of the Board's Decision and Order. Assessed costs include the transcript and witness fees, as permitted by New Mexico Board of Veterinary Medicine v. Riegger, 2007-NMSC-044, 142 N.M. 248.

D. shall successfully complete a minimum of sixty (60) hours of continuing education in the diagnosis and treatment of periodontal disease AND shall further successfully complete a minimum of ten (10) hours of continuing education in recordkeeping. The Board Chair or her designee shall approve this continuing education before Respondent enrolls. Respondent shall successfully complete this continuing education within one (1) year after his receipt of the Board's Decision and Order.

These seventy (70) hours of continuing education shall not count towards the triennial requirement of sixty hours of continuing education prescribed by 16.5.10.8 NMAC. Respondent shall provide the Board Administrator written documentation to that he has successfully and timely completed this continuing education.

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

 *Jessica Brewster* DDS  
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Jessica Brewster, D.D.S.  
Board Chair

Date Filed with Board Office: February 10, 2012