BEFORE THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

IN THE MATTER OF:

Eugene Kenneth Olsen, D.D.S.	)	
(License No. 8149)	)	CONSENT ORDER

THIS MATTER is before the North Carolina State Board of Dental Examiners (Board) as authorized by G.S. § 90-41.1(b) and 150B-38 for consideration of a Consent Order, in lieu of a formal contested case hearing. A Settlement Conference was held before the full board on June 15, 2019. Kenneth L. Jones represented Respondent, Dr. Eugene Kenneth Olsen. Crystal S. Carlisle represented the Investigative Panel of the North Carolina State Board of Dental Examiners. Respondent acknowledges that the Board has evidence to prove the findings of fact and conclusions of law and to warrant the order of discipline. The parties hereby consent to the Findings of Fact and Conclusions of Law set forth herein, and to the entry of the Order of Discipline.

FINDINGS OF FACT

1. The Board 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 in Article 2, and the Rules and Regulations of the Board, set forth in 21 North Carolina Administrative Code Chapter 16.

2. Respondent was licensed by credentialing on April 24, 2006, and his license number 8149 remains active.

3. Respondent was and remains subject to the Dental Practice Act and the rules promulgated thereunder at all times relevant set forth herein.

Patient JP

4. On March 29, 2016, Patient JP was seen by Dr. C, an associate dentist in Respondent's office, for a limited evaluation. Patient JP was interested in options to replace her missing teeth.

5. Dr. C explained to Patient JP that she had multiple active dental issues including: generalized severe gingival inflammation; multiple teeth and surfaces with caries; grade 3 mobility on tooth #18; grade 2 mobility on teeth #19, #30 and #31; and guarded/hopeless prognosis of her mandibular molars.

6. Dr. C informed Patient JP, and documented in Patient JP's treatment notes in all capital letters, "...ALL ACTIVE DENTAL DISEASE MUST BE TREATED PRIOR TO DEFINITIVE DENTAL TREATMENT INCLUDING ORTHODONTICS AND TOOTH REPLACEMENTS (I.E. IMPLANTS, FPDS and RPDS)."

7. Patient JP was missing tooth #23 and requested that Dr. C present a treatment plan for a mandibular flipper. Dr. C agreed, but informed Patient JP that the mandibular flipper may not fit as well after restorations and/or extractions were completed and explained the functional limitations of the mandibular flipper.

8. Dr. C made impressions for the mandibular flipper on April 9, 2016 and performed a comprehensive exam on April 20, 2016. At the exam, Dr. C noted severe bone loss on teeth #18, #19 and #31 with recommended extraction; poor prognosis for tooth #5; and guarded prognosis for #24. Dr. C recommended scaling and root planing for all quadrants.

9. The mandibular flipper was delivered on April 22, 2016. Scaling and root planing of Patient JP's upper right and lower right quadrants was performed on July 20, 2016.

10. Tooth #29 was extracted at an emergency visit on August 17, 2016.

11. Scaling and root planing on the upper left and lower left quadrants was performed on September 20, 2016. In addition to bone loss, draining fistulas were noted on #6F and #8F and several teeth had poor prognoses. Teeth #18 and #19 were extracted on November 30, 2016.

12. On December 27, 2016, Patient JP had an orthodontic consultation with Respondent and expressed interest in traditional braces. Respondent advised Patient JP that he could try to put braces on the upper teeth, but she may still lose her upper teeth.

13. Respondent began Patient JP's orthodontic treatment on March 8, 2017, despite Dr. C's prior recommendation that all active dental disease must be treated before orthodontics. Respondent did not have Patient JP sign an Informed Consent for orthodontic treatment.

14. Tooth #31 was extracted on February 14, 2017, because it was periodontally involved with a hopeless prognosis.

15. On March 8, 2017, Respondent placed brackets and archwires on Patient JP's teeth.

16. On April 19, 2017, Ms. Parris had her first periodontal maintenance appointment where it was noted that she had class 3 mobility on tooth #5 and class 2 mobility on tooth #6. Exudate was noted from #6, and the treatment notes stated that Patient JP was in ortho and #5/6 would be kept until she was done with ortho. Respondent stated those teeth would come out eventually.

17. Respondent noted in Patient JP's treatment records that she came in for rotation of the upper left on May 26, 2017. He noted tooth #5 was very mobile and would need to be extracted eventually, and he added wire ligatures to teeth #6 and #7.

18. Tooth #5 was extracted on June 21, 2017. On July 19, 2017, Respondent checked the rotation of teeth #6 and #11, and he stated #11 needed more rotation.

19. On August 22, 2017, Patient JP was noted to have mobility at teeth #6, #7 and #8; exudate from teeth #6 and #7, and a facial abscess at teeth #7 and #8. Respondent placed Arestin in the pockets of teeth #7 and #8 on August 30, 2017 "to stabilize infection to keep teeth a little longer."

20. On September 27, 2017, Respondent placed implants at teeth #5 and #12 in order to assist with the retention of an upper partial.

21. Patient JP had another periodontal maintenance appointment on February 21, 2018 where it was noted that she had class 2 chronic periodontitis, generalized, severe. Abutments were placed on her implants on February 28, 2018.

22. Respondent continued Patient JP's orthodontic treatment. On May 30, 2018, Dr. C saw Patient JP again and classified her periodontal condition as class 3, aggressive periodontitis, generalized, severe. Dr. C observed a periodontal abscess on teeth #6 and #7 and mobility and severe bone loss were present around those teeth. Exudate was observed at tooth #22 with a severe bone defect in that area.

23. The treatment notes for May 30, 2018 state that when Dr. C has seen the patient in March of 2016, she made it clear that no orthodontic treatment should be performed until the dental disease was under control. It was also noted that Patient JP's periodontal condition was not stable when orthodontic treatment began in March of 2017. Dr. C suggested extraction of teeth #6, #7 and #8, and possibly tooth #22, due to poor prognosis.

24. Patient JP was seen by orthodontist, Dr. RB, on August 23, 2018. Dr. RB diagnosed Patient JP with generalized, moderate chronic periodontitis and local, severe chronic periodontitis.

25. Dr. RB stated that he would only accept Patient JP's case to treat her periodontal condition at this time because periodontal status takes priority over completing orthodontic

treatment. He further stated that if active orthodontic treatment were continued, it may increase the risk of tooth loss.

26. Patient JP and her treatment records were evaluated by Dr. B on March 4, 2019. Dr. B was not able to locate a comprehensive treatment plan for Patient JP's orthodontic treatment in Respondent's records for Patient JP. Dr. B anticipates Patient JP will need the following teeth extracted: #6, #7, #8, #11, #22 and #30.

27. Dr. B opined that there was no rationale for why orthodontic treatment was provided on presumably hopeless teeth. He noted there were multiple notations in the treatment record indicating Patient JP had severe periodontal disease, including pocket depths of 7, 8 and 9; draining fistulas on teeth #6 and #7; and bone loss.

28. Dr. B and an orthodontist he consulted with opined that no orthodontic treatment should be initiated in a case with such extensive bone loss. Definitive periodontal diagnosis and treatment must be completed prior to the initiation of any orthodontic treatment, which was not done in this case.

29. Dr. B opined that there was a lack of communication with Patient JP about her treatment and a lack of coordination between the general dental care and the orthodontic care Respondent provided to her.

30. Dr. B concluded that Respondent's treatment of Patient JP did not meet the standard of care.

31. The standard of care in North Carolina requires dentists to formulate a treatment plan for treating patients and coordinate with other dentists treating patients in formulating the treatment plan.

32. Respondent violated the standard of care by failing to create a treatment plan for Patient JP's dental treatment and failing to coordinate with other dentists in his office who were also providing treatment to Patient JP.

33. The standard of care in North Carolina requires that a patient be clearly informed of the treatment the dentist will provide, including the intended outcome.

34. Respondent violated the standard of care by failing to clearly inform Patient JP of the treatment he was providing to her, including the intended outcome.

35. The standard of care requires that a dentist obtain a written record that a patient gave informed consent for treatment.

36. Respondent violated the standard of care by failing to obtain written informed consent for orthodontic treatment of Patient JP.

37. The standard of care in North Carolina requires dentists to provide dental treatment in the proper sequence.

38. Respondent violated the standard of care by failing to treat Patient JP's periodontal disease prior to the initiation of any orthodontic treatment.

Patient FC

39. On March 21, 2018, Patient FC was seen by Dr. K at Respondent's practice for an orthodontic examination and consult. Patient FC stated she wanted traditional braces, and Dr. K advised her that Respondent handled the traditional braces in the office. No radiographs were taken at this consultation.

40. Dr. K included a starred section of the treatment notes on March 21, 2018 stating that Patient FC should have a comprehensive examination prior to starting ortho, or at the very

least, have her previous records transferred to the practice. Dr. K also stated she should have her third molars removed before starting orthodontic treatment.

41. Patient FC was seen by Respondent on April 2, 2018. He applied brackets and archwires to her upper teeth even though she had not had a comprehensive examination or her third molars removed.

42. On May 16, 2018, Patient FC was seen by Dr. K again. Dr. K noted that Patient FC was six-months pregnant and refused to have radiographs taken.

43. Dr. K advised Patient FC that a comprehensive examination could not be performed without radiographs, and no one would be able to diagnose any disease or infection in the gum or bone. Dr. K recommended that patient FC return after her baby was born, but she wanted to proceed with a gingival cleaning. Periodontal probing readings were attempted, but the gingiva was inflamed and tender, and accurate probings could not be obtained.

44. On May 21, 2018, Respondent placed brackets and archwires on Patient FC's lower teeth.

45. Patient FC's treatment records were evaluated by Dr. B on March 13, 2019. Dr. B stated it was disturbing that full orthodontic treatment was initiated without pretreatment radiographs or periodontal probing being accomplished.

46. Dr. B also consulted with an orthodontist who agreed with his opinion that orthodontic treatment should not be started without a diagnosis and treatment plan which are developed through adequate records taken before the initiation of treatment including: appropriate radiographs, photographs, study models and periodontal status.

47. Dr. B opined that Respondent did not meet the standard of care in his treatment of Patient FC.

48. The standard of care in North Carolina requires a comprehensive examination, diagnosis and treatment plan be completed before beginning orthodontic treatment.

49. Respondent violated the standard of care by failing to conduct a comprehensive examination to enable an informed diagnosis and treatment plan to be formulated before beginning orthodontic treatment.

50. The standard of care in North Carolina requires dentists to coordinate with other dentists treating the patient in formulating a treatment plan.

51. Respondent violated the standard of care by failing to coordinate with other dentists in his office who were also providing treatment to Patient FC. The standard of care requires that a dentist obtain a written record that a patient gave informed consent for treatment.

52. Respondent violated the standard of care by failing to obtain written informed consent for orthodontic treatment of Patient FC.

Patient CM

53. On August 28, 2017, Patient CM presented to Respondent for an orthodontic consultation. Patient CM stated the clenching/grinding of her teeth was causing major headaches.

54. Respondent noted Patient CM had a deep overbite and recommended Invisalign in order to get Patient CM's teeth to fit properly. Respondent advised Patient CM that Invisalign would correct her issue by about 90% and may relieve her headaches, and he took impressions the same day.

55. A full mouth probing was also completed on the same day and demonstrated 5-7 millimeter pockets with bone loss.

56. Patient CM had scaling and root planing of her lower left and lower right quadrants on September 6, 2017 and her upper left and upper right quadrants on September 14, 2017.

57. The Invisalign trays were delivered by Respondent on October 16, 2017.

58. On October 26, 2017, Patient CM had a recheck after the scaling and root planing appointments. It was noted that she had class 2 chronic periodontitis, generalized severe.

59. Dr. K saw Patient CM on November 14, 2017. Dr. K noted a large infection at #30 which was described an endo-perio lesion with guarded prognosis. Dr. K prescribed antibiotics and scheduled an appointment for Patient CM with Respondent.

60. Respondent was examined by Respondent on November 27, 2017, and he noted she would return for treatment on #30.

61. At a periodontal maintenance appointment on January 22, 2018, Patient CM complained of extreme pain at #30 and stated she was not able to chew on the right side. Her root canal treatment was not scheduled until February 22, 2018. Her periodontal classification was class 2, chronic periodontitis, generalized, moderate severity.

62. Respondent performed root canal treatment on tooth #30 on February 5, 2019.

63. A periodontal maintenance appointment conducted on June 25, 2018 showed 5-6 millimeter pockets and Patient CM's periodontal classification was class 2, chronic periodontitis, localized, moderate severity.

64. On August 6, 2018, Patient CM presented to Respondent's office. Respondent noted she continued to wear her Invisalign trays. He performed a PA of tooth #30 and stated not much had changed since the last x-ray, and he wondered if the tooth had a fracture. Respondent stated he would keep a watch on tooth #30.

65. Respondent performed a periodic exam on November 5, 2018. Patient CM's periodontal classification was Class 2, chronic periodontitis, localized, moderate severity. Teeth #24 and #25 had class 3 mobility, and it was noted that Patient CM had moderate to severe bone

loss. Respondent stated he hoped "perio will improve more upon completion of Invisalign." He provided Patient CM with her last set of aligners.

66. There was no mention of tooth #30 at Patient CM's November 5, 2018 appointment with Respondent, but it was extracted on February 15, 2019, and an implant was placed at the area of #30 on May 20, 2019.

67. Dr. B evaluated Patient CM's records on March 13, 2019 and stated that radiographs from the root canal treatment performed by Respondent on February 5, 2019 indicate one, maybe two, separated endodontic files in the mesial root and a possible perforated mesial root. There are no notes in Patient CM's treatment record regarding the separated endodontic file(s), perforated mesial root, or that Respondent informed Patient CM that the file(s) were left in her tooth and the prognosis for tooth #30 had worsened.

68. Respondent produced a statement from Patient CM that she was informed that an instrument had broken off in her tooth and the tooth may need to be removed; however, no record of this conversation was contained in her treatment record.

69. Dr. B also observed that there was delay in treatment of tooth #30. Respondent produced a statement from CM that she requested that treatment of tooth #30 be delayed until it was symptomatic.

70. Finally, Dr. B observed that orthodontic treatment should not have been initiated on Patient CM who had active periodontal disease documented in her treatment records.

71. The standard of care in North Carolina requires dentists to provide dental treatment in the proper sequence.

72. Respondent violated the standard of care by failing to treat Patient CM's periodontal disease prior to the initiation of any orthodontic treatment.

73. The standard of care in North Carolina requires dentists to maintain treatment records which include a patient's diagnosis, including complications that arise during the course of treatment, and written informed consent for treatment.

74. Respondent violated the standard of care by failing to document in CM's treatment record: the separated endodontic file(s) that were left in tooth #30; the poor prognosis of the tooth following the root canal treatment; his communication of these facts to Patient CM; and a written record of informed consent for orthodontic treatment.

Based upon the foregoing Findings of Fact and the consent of the parties hereto, the Dental Board Hearing Panel enters the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter of this action and over the person of Respondent.

2. Respondent had notice of the settlement conference in this matter and is properly before the Hearing Panel of the Board assigned hereto.

3. Respondent violated the applicable standard of care and thereby engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. § 90-41(a)(6) and (12) in his care and treatment of patient JP by:

a. failing to create a treatment plan for Patient JP's dental treatment and failing to coordinate with other dentists in his office who were also providing treatment to Patient JP;

b. failing to clearly inform Patient JP of the treatment he was providing to her, including the intended outcome; and

c. failing to treat Patient JP's periodontal disease prior to the initiation of any orthodontic treatment.

4. Respondent violated the applicable standard of care and thereby engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. § 90-41(a)(6) and (12) in his care and treatment of patient FC by:

a. failing to conduct a comprehensive examination to enable an informed diagnosis and treatment plan to be formulated before beginning orthodontic treatment; and

b. failing to coordinate with other dentists in his office who were also providing treatment to Patient FC.

5. Respondent violated the applicable standard of care and thereby engaged in negligence in the practice of dentistry in violation of N.C. Gen. Stat. § 90-41(a)(6) and (12) in his care and treatment of patient CM by:

a. failing to treat Patient CM's periodontal disease prior to the initiation of any orthodontic treatment; and

b. failing to document in CM's treatment record: the separated endodontic file(s) that were left in tooth #30; the poor prognosis of the tooth following the root canal treatment; and his communication of these facts to Patient CM.

6. Respondent violated the applicable standard of care by failing to obtain written informed consent for orthodontic treatment of Patients JP, FC and CM, thereby violating N.C. Gen. Stat. § 90-41(a)(6) and (12) and 21 NCAC 16T .0101.

Based upon the foregoing Findings of Fact and Conclusions of Law and with the consent of the parties hereto, it is ORDERED as follows:

ORDER OF DISCIPLINE

1. License No. 8149 issued to Respondent for the practice of dentistry in North Carolina is hereby suspended for a period of five (5) years. The active period of suspension is stayed, and Respondent's dental license is provisionally restored, provided Respondent complies with the following probationary terms and conditions for a period of five (5) years from the date of this Decision:

   a. Respondent shall violate no provision of the Dental Practice Act or the Board's Rules and Regulations;

   b. Respondent shall neither direct nor permit any of his employees to violate any provision of the Dental Practice Act or the Board's Rules; and

   c. Respondent shall permit the Board or its agents to inspect and observe his office, conduct a random review of patient chart records, and interview employers, employees, and co-workers at any time during normal office hours.

2. Within twelve (12) months of signing this Order, Respondent shall complete the following continuing education course(s) specially designed for him by the University of North Carolina in conjunction with the North Carolina State Board of Dental Examiners directives and approved by it in advance, including a comprehensive, remedial course covering: (1) treatment planning; (2) sequence of treatment; (3) recordkeeping, including informed consent (4) orthodontics, and (3) periodontics. 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 Director of Investigations written proof of satisfactory completion of this course before it will be accepted in satisfaction of this requirement. It is Respondent's responsibility to make all arrangements for and bear the cost of this course within the specified time.

3. Respondent shall not perform any orthodontic treatment and shall transfer the care of any current orthodontic patients to another provider until he has completed all of the requirements in paragraph 2 above and has submitted proof of completion to the Board. Respondent shall have forty-five (45) days within which to transfer care of his current patients.

4. Within fifteen (15) days of the date of this Order, Respondent shall submit to the Board all current periodontal probing charts for all active orthodontic patients.

5. Within thirty (30) days of the date of this Order, Respondent shall reimburse the Board for the costs associated with the investigation of this matter in the amount of $1,500.00.

6. Respondent recognizes that the conditions, limitations, or requirements set forth in this Consent Order may present him with certain practical difficulties. The Board concludes that each one is necessary to ensure public protection and it does not intend to modify or eliminate any of the conditions, limitations, or requirements set forth herein based on such potential difficulties.

7. If Respondent fails to comply with any provision of this Decision or breaches any term or condition thereof, including those in paragraph one (1), the Board shall promptly schedule a public Show Cause Hearing to allow Respondent an opportunity to show cause as to why Respondent's suspension shall not be activated for violating a valid order of the Board. If after the Show Cause Hearing, the Board is satisfied that Respondent failed to comply or breached any term or condition of this Decision, the Board shall activate the suspension and may enter such other

discipline or conditions as the evidence warrants for proven violations of the Dental Practice Act or of the Board's Rules occurring after entry of this Decision.

This the 26th day of August, 2019.

THE NORTH CAROLINA STATE
BOARD OF DENTAL EXAMINERS

By: Marlin W. Young DDS

NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS

STATEMENT OF CONSENT

I, Eugene Kenneth Olsen, D.D.S., do hereby certify that I have read the foregoing Consent Order in its entirety. I assent to its terms and conditions set out herein. I freely and voluntarily admit that there is a factual basis for the findings of fact herein, that the findings of fact support the conclusions of law, that I will not contest the findings of fact, the conclusions of law, or the order in any future proceedings before or involving the Dental Board, including if future disciplinary proceedings or action is warranted in this matter. I knowingly waive any right to appeal or otherwise later challenge this Consent Order once entered. I understand that the Board will report the contents of this Consent Order to the National Practitioner Data Bank and that this Consent Order will become part of the Board's permanent public record. I further acknowledge that this required reporting may have adverse consequences in other contexts and any potential effects will not be the basis for a reconsideration of this Consent Order. I have consulted with my attorney prior to signing this Consent Order.

This the 16th day of August, 2019.

Eugene K Olsen DDS

Eugene Kenneth Olsen, D.D.S.