

SBDE NOS. 2012-00352; 2012-00985; 2013-00164; 2013-00518

IN THE MATTER OF  
THE LICENSE OF

CLINTON HERZOG, DDS

TEXAS DENTAL LICENSE  
NUMBER 20239

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BEFORE THE STATE

BOARD OF

DENTAL EXAMINERS

**AGREED SETTLEMENT ORDER**

On the 14<sup>th</sup> day of August, 2015, the State Board of Dental Examiners ("Board") met in a regularly scheduled meeting and the above-styled case was heard.

On July 15, 2015, the Board proposed this Agreed Settlement Order ("ASO") in the above-styled case against Clinton Herzog, DDS, hereinafter "Respondent," holder of Texas Dental License No. 20239. At issue are allegations that Respondent violated the laws and rules regulating the practice of dentistry

Respondent hereby waives a formal adjudicatory hearing and enters into the following ASO Respondent, by signature below, acknowledges that Respondent was advised of the right to legal representation, and that Respondent understands the nature of the alleged violations. Respondent's signature hereon also acknowledges that an adequate opportunity was provided to allow Respondent to respond to the alleged violations

The following ASO is proposed, contingent on Board approval

**FINDINGS OF FACT**

- 1 Respondent, Clinton Herzog, DDS, holds Texas Dental License No. 20239. Respondent's license was initially issued on July 12, 2000, and was in full force and effect at all dates and times material and relevant to this ASO
- 2 Respondent's past disciplinary history, as described in the Order dated April 15, 2011, is incorporated by reference as part of this ASO
- 3 During the time period from December 23, 2008, through June 7, 2012, Respondent failed in his duty of fair dealing and fell below the minimum standard of care during the dental treatment of patient 1 Specifically
  - a. Respondent created an expectation in the patient that he would utilize his unique skill and expertise to execute a complicated

restorative treatment plan which included six crown restorations, two implants, and a cantilevered bridge off teeth numbers 6 and 11, but Respondent could not complete the treatment plan himself

- b Respondent prepped six teeth for crowns, performed extractions on teeth numbers 4, 5, 12, and 13, and placed implants in the areas of 5 and 12. However, Respondent did not take impressions of the teeth he prepped for crowns and left the majority of the follow up care to associates who were unqualified to execute the treatment plan. Further, the implants placed by Respondent were never restored and now are no longer functional for that purpose
  - c Respondent's treatment planning was below the standard of care because he knew or should have known that the treatment plan could not be delivered.
4. During the time period from December 2, 2009, through February 23, 2010, Respondent fell below the minimum standard of care during the dental treatment of patient 2. Specifically, Respondent seated a bridge on teeth numbers 28-31 that failed to make occlusal contact with the opposing teeth.
5. During the time period from December 2, 2009, through February 23, 2010, Respondent fell below the minimum standard of care by failing to make, maintain, and keep adequate records for patient 2. Specifically, the records did not include
- a vital signs,
  - b. clinical notes regarding bridge preparation;
  - c. lab orders or instructions to the dental laboratory for construction of the bridge; or
  - d an explanation why items (a) through (c) are not recorded.
6. On or about September 16, 2010, Respondent fell below the minimum standard of care during the dental treatment of patient 3. Specifically:
- a. Respondent left a broken instrument piece in the socket of tooth number 17 and a root tip in the socket of tooth number 32 following wisdom teeth extractions and did not advise the patient or take post operative x-rays. The patient returned for an emergency appointment in severe pain, and the instrument piece was removed by an associate dentist.
  - b. Respondent failed to evaluate the patient prior to administering nitrous oxide and Halcion
  - c Respondent failed to obtain baseline vital signs from the patient prior to administering nitrous oxide and Halcion
  - d Respondent failed to appropriately monitor the patient in accordance with the requirements of minimum sedation and use of nitrous oxide.

- 7 On or about September 16, 2010, Respondent fell below the minimum standard of care by failing to make, maintain and keep adequate records on patient 3. Specifically the records do not include:
  - a. vital signs;
  - b. written review of medical history and limited physical evaluation,
  - c. Respondent failed to obtain written informed consent from the patient for the use of nitrous oxide and Halcion
  - d. radiographs in accordance with ADA guidelines,
  - e. documentation of radiographs taken and findings deduced from them;
  - f. documentation of complications,
  - g. documentation of oxygenation, ventilation, and circulation monitoring;
  - h. a time-oriented sedation record of pulse oximetry, heart rate, respiratory rate, and blood pressure,
  - i. documentation of sedation recovery and discharge; or
  - j. an explanation why items (a) through (i) were not included.
8. During the time period from June 6, 2012, through August 7, 2012, Respondent failed in his duty of fair dealing during the dental care of patient 4. Specifically, Respondent collected fees for services not rendered on tooth number 30 (abutment and crown) and tooth number 31 (implant and crown).
- 9 During the time period from June 6, 2012, through August 7, 2012, Respondent fell below the minimum standard of care by failing to make, maintain and keep adequate records on patient 4. Specifically the records do not include written informed consent for the bone graft on tooth 30, the implant on tooth 30, the endodontic therapy on tooth 31, the extraction of tooth 31, or bone graft on tooth 31.

#### CONCLUSIONS OF LAW

The references to Statutes and Rules cited below are to the Statutes and Rules in effect at the time of the violations

- 1 The Board has authority and jurisdiction over this case pursuant to Tex Occ. Code, Title 3, Subtitle D, and Tex Admin Code, Title 22, Part 5.
- 2 Respondent's conduct constitutes a violation of Tex. Occ. Code §§ 263.002(a)(4), (10), and 22 Tex. Admin Code §§ 108.2(a), (b), (e), 108.7, (1), (2)(B), (3), (6) (eff. to Sept 2014), 108.8(b)(4), (5), (c)(1), (2)(A), (B), (5), (7), (12); 108.32(2)(A), (B), (6) (eff to May 2011), 108.34(a)(3)(A), (B), (D)(ii), (iii), (b)(2)(B), (C), (3)(A), (B), (D), (E) (eff to May 2011)

## AGGRAVATING AND MITIGATING FACTORS

1. In determining the appropriate sanctions in this matter, the Board considered the following aggravating factors Respondent's prior disciplinary history and the number of violations.

### ORDER

IT IS THEREFORE AGREED and ORDERED THAT

1. Respondent's Texas Dental License No 20239, issued to Clinton Herzog, DDS, is hereby SUSPENDED for a period of three (3) years to begin on the effective date of this ASO. However, such suspension is FULLY PROBATED.
2. Respondent SHALL reimburse patient 1 in the amount of seven thousand five hundred dollars (\$7,500 00) for the entire treatment plan and patient 2 in the amount of three thousand four hundred fifty-one dollars (\$3,451 00) for the services not rendered listed above

Proof of restitution SHALL be provided to the Board no later than thirty (30) days from the effective date of this ASO.

- 3 Respondent SHALL pay an administrative monetary fine in the amount of nine thousand dollars (\$9,000.00) payable to the "Texas State Board of Dental Examiners" located at 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701-3942. The administrative monetary fine SHALL be paid in full no later than six (6) months from the date of ratification of this ASO by the Board
- 4 Respondent SHALL complete a total of twenty-four (24) hours of continuing education ("CE") courses, which SHALL be completed within six (6) months of the effective date of this ASO. The twenty-four (24) hours of CE courses completed SHALL be in the following areas:

Risk Management and Record-Keeping	Six (6) hours
Surgical Extractions	Three (3) hours
Anesthesia Monitoring	Three (3) hours
Complex Restorative Treatment Planning	Six (6) hours
Crown and Bridge	Six (6) hours

This CE SHALL be in addition to Respondent's annual CE hours required for licensure by the Board

All CE courses SHALL be approved in advance by Board Staff. It is the responsibility of Respondent to obtain such approval. Courses taken without prior approval and/or prior to the effective date of this ASO SHALL NOT satisfy the requirements of this ASO. Board Staff SHALL have the

authority to reduce the number of CE days or hours based on course availability. Upon the successful completion of each course, Respondent SHALL provide complete documentation of the course completion to the Board

- 5 Respondent SHALL successfully complete the Jurisprudence Assessment-Board Order and submit proof of completion to Board Staff within thirty (30) days of the effective date of this ASO. Respondent may not take the Jurisprudence Assessment-Board Order prior to the effective date of this ASO Respondent SHALL be responsible for all costs relating to compliance with this requirement
- 6 Respondent SHALL abide by the Laws of the State of Texas, the Dental Practice Act, the rules and regulations of the Board, and any reporting requirements imposed to ensure compliance with this ASO

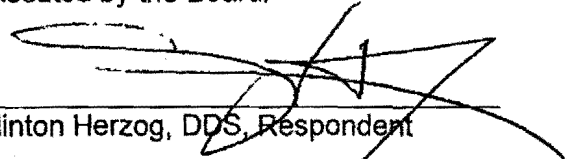
Signature page follows

By signing this ASO, Respondent agrees to its terms, acknowledges understanding it, and agrees to satisfactorily comply with the mandates of this ASO in a timely manner or be subject to appropriate disciplinary action by the Board

Respondent's signature hereon does not constitute either admission or denial of the allegations set forth in this ASO or the underlying complaint, and it does not constitute admission or denial of the findings of fact and the conclusions of law set forth

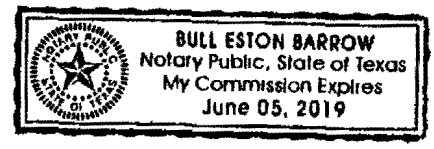
Respondent, by signing this ASO, waives any right to a formal hearing and any right to judicial review of this ASO Failure to comply with the terms and conditions of this ASO SHALL constitute a violation of this ASO and may subject Respondent to further disciplinary action by the Board

All of the above terms, conditions, and penalties become effective on the effective date of this ASO. The effective date of this ASO SHALL be the date it is executed by the Board.

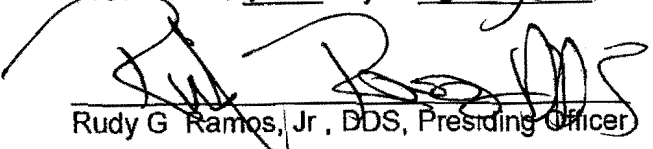
  
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Clinton Herzog, DDS, Respondent

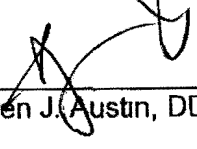
Bull ESTON BARROW notarized the signature of Clinton Herzog, DDS, this 13<sup>th</sup> day of August 2015

Bull Eston Barrow  
NOTARY PUBLIC IN and FOR THE STATE OF TEXAS



STATE BOARD OF DENTAL EXAMINERS  
SIGNED this 14<sup>th</sup> day of August, 2015.

  
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Rudy G. Ramos, Jr., DDS, Presiding Officer

  
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Steven J. Austin, DDS, Secretary