

SEP 11 2012

MISSOURI DENTAL BOARD

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND THOMAS H. ALMS, JR., D.D.S.**

Come now Thomas H. Alms, Jr., D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 013290 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2010 and Chapter 332, RSMo.



Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Thomas H. Alms, Jr., D.D.S. is licensed by the Board as a dentist, License No. 013290. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On July 6, 2010, the Board received a complaint against Licensee filed by Ciera M. Dawson, registered dental hygienist (RDH), license number 2008026569 on behalf of her grandmother, B.W., a patient of Licensee's. Dawson's complaint alleged that Licensee allowed a dental assistant, Lucinda Hall, to practice dental hygiene without a license and that Licensee performed an exam on B.W. without wearing gloves. The Board initiated an investigation into Dawson's complaint.

4. As part of the Board's investigation, on October 28, 2010, Investigator Sears travelled to Licensee's practice address in Mt. Vernon, Missouri. Licensee stated he was the only dentist in the practice and at the time of the interview, he employed five dental assistants. Licensee stated he does not always wear gloves when doing an examination of a patient's teeth. He stated he does wash his hands before performing an examination. Licensee admitted that he touches dental instruments with his ungloved hands and then, if work is necessary, he will put on gloves and retouch the same instruments with his gloved hands. He stated that if his assistants tell him that there is tarter in the patient's mouth, he will wear gloves.

5. As part of the Board's investigation, Investigator Sears also conducted an infection control inspection. During the inspection, Investigator Sears noted violations of infection control including indicators not used with each sterilization cycle, Licensee's admission that he does not wear gloves during examinations while using a mouth mirror, the practice did not spore test autoclaves, and the arms of staff were not covered while working with patients.

6. As part of the Board's investigation, Investigator Sears also requested a copy of Licensee's controlled substance records. Licensee provided invoices and his inventories. He stated he had no administration or dispensing records. He stated the administration and dispensing records were in the patient files. The records Licensee did provide revealed:



- a. Licensee did not have an initial inventory of his controlled substances in violation of 19 CSR 30-1.042(2)(A).
- b. Licensee did not have separate dispensing records showing the patient's name, address, drug name, drug strength, quantity, date and initials of the person dispensing in violation of 19 CSR 30-1.048(1).
- c. Licensee did not have an annual inventory which was compliant with 19 CSR 30-1.042(3) and the document he produced as an annual inventory did not contain the information required by 19 CSR 30-1.042(1)(D).
- d. Licensee's transfer records did not contain the date of transfer as required by 19 CSR 30-1.048(4) and did not account for 43 tablets of Halcion or 706 ml of Midazolam as required by 19 CSR 30-1.048(4)

7. Section 195.050.6, RSMo 2000 states:

Every person registered to manufacture, distribute or dispense controlled substances under section 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

8. Regulation 19 CSR 30-1.042 states, in pertinent part:

(1) General Requirements

...

(D) A registrant may take an inventory either as of the opening of business or as of the close of business on the inventory date. The registrant shall indicate on the inventory records whether the inventory is taken as of the opening or as of the close of business and the date the inventory is taken.

(2) Initial Inventory Date

(A) Every person required to keep records who is registered with the Department of Health after May 1, 1971 and who was not registered previously shall take an inventory of all stocks of controlled substances on hand on the date s/he first engages in the manufacture, distribution or dispensing of controlled substances.

...



(3) Annual Inventory Date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least once a year. The annual inventory may be taken on any date that is within one year of the previous annual inventory date.

9. Regulation 19 CSR 30-1.048 states, in pertinent part:

(1) Each individual practitioner, institutional practitioner and pharmacy shall maintain records with the following information for each controlled substance received, maintained, dispensed or disposed:

(A) The name of the substance;

(B) Each finished form (for example, ten milligram (10 mg) tablet or ten milligram (10 mg) concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (for example, 100 tablet bottle or three milliliter (3 ml) vial);

(C) The number of commercial containers of each finished form received from other persons, including the date of and number of containers in each receipt and the name, address and registration number of the person from whom the containers were received;

(D) The number of units or volume of the finished form dispensed including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed and the written or typewritten name or initials of the individual who dispensed or administered the substance;

(E) The number of units or volume of the finished forms, commercial containers, or both, disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

...

(4) A registrant who transfers a controlled substance to or receives a controlled substance from another registrant shall maintain a written record of the transfer which contains the following information: the date of transfer, drug name, strength, dosage form, quantity, name, address and registration number of the transferring registrant and the name, address and registration number of the receiving registrant[.]

10. Licensee's actions as described above in paragraphs 3 through 6 constitute incompetency and/or misconduct in the performance of, or relating to one's ability to perform the functions or duties of any



profession licensed or regulated by this chapter in that Licensee did not keep adequate dental records of his treatment plans and failed to meet the minimum standard of care for which the Board has authority to discipline Licensee's license.

11. Licensee's actions as described above in paragraphs 3 through 6 constitute violation of a professional trust or confidence in that Licensee failed to keep adequate records and failed to meet the minimum standard of care for which the Board has authority to discipline Licensee's license..

12. Licensee's actions as described above in paragraphs 3 through 6 constitute violation of the drug laws or rules of this state as described in paragraphs 7-9 above for which the Board has authority to discipline Licensee's license.

13. Licensee's actions as described above in paragraphs 3 through 6 constitute the failure to properly guard against contagious, infectious or communicable diseases or the spread thereof and the failure to maintain his office, laboratory and instruments in a safe and sanitary condition for which the Board has authority to discipline Licensee's license.

14. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (13), (15), (16), and (17), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

...

(13) Violation of any professional trust or confidence;

...

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

(16) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof;



- (17) Failing to maintain his or her office or offices, laboratory, equipment and instruments in a safe and sanitary condition[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo 2000: The terms of discipline shall include that the dental license, license number 013290, be placed on **PROBATION** for a period of two (2) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of the Board Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

- A. Licensee shall take and pass the Board's jurisprudence examination within the first twelve (12) months of Licensee's period of probation. Licensee shall contact the Board office to request a current law packet and permission to sit for the jurisprudence examination no less than thirty (30) days prior to the date Licensee desires to take the examination. Licensee shall submit the required re-examination fee to the Board prior to taking the examination. Failure to take and pass the examination during the first twelve (12) months of the disciplinary period shall constitute a violation of the Board Settlement Agreement.
- B. Education. Licensee shall successfully complete twenty (20) hours of continuing education in periodontic review, diagnosis and treatment planning, twenty (20) hours of continuing education in periodontics with an emphasis on medications, anxiolysis, diagnosis and treatment planning and ten (10) hours of continuing education in all facets of infection control at Oral Health Enrichment in Cleveland, Ohio within the first one hundred eighty (180) days of the beginning of Licensee's period of probation. Following completion of the fifty (50) hours of education as detailed above at Oral Health Enrichment, Licensee shall take and pass a written outcome assessment test on the education with a score of at least 80%. Failure to complete the education and pass the written outcome assessment test on the education within 180 days shall constitute a violation of the Board Settlement Agreement.
- C. Monitoring. Following successful completion of the fifty (50) hours of education at Oral Health Enrichment and successful completion of a written outcome test on the education, Licensee shall be monitored by a Board approved monitoring program. Licensee shall enter into the contract with the Board approved monitoring program within 10 days of the completion of the education described in paragraph A above.
- i. Licensee agrees to contract with the Board approved monitoring program for the two years of probation. As part of that contract, Licensee shall have an evaluator who is approved by the Board. Monitoring of patient charts will be conducted on a quarterly basis of 25 current patients under Licensee's care. The monitoring will include in-office visits and evaluation of Licensees record keeping, diagnosis, treatment planning, infection control, and other areas of the practice of dentistry identified by the evaluator. The monitoring shall be random and subject to the following requirements:



1. Prior to establishing a contract with the evaluator, Licensee must provide the evaluator with a copy of this Settlement Agreement. Licensee shall execute any and all releases or authorizations for the evaluator to provide the Board with copies of all written monitoring reports. Such releases or authorizations shall also authorize the Board to communicate with the evaluator about Licensee's needs, performance and progress.
2. Licensee is responsible for all costs associated with and pursuant to the contract agreement with the evaluator, including but not limited to, monitoring evaluations, preparing reports, and complying with the evaluator's recommendations.
3. Licensee shall arrange for the evaluator to submit to the Board a written report of the on-site observations, patient record evaluations, and any compliance recommendations made by the evaluator. Licensee shall comply with the evaluator's recommendations and submit a written report to the Board explaining the changes Licensee has made in his dental practice. Failure to follow all recommendations made by the evaluator shall constitute a violation of this order.

## II. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- C. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- D. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- E. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.
- F. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.
- G. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of revocation) following a hearing before the Board. If based on matters at issue in Cole County case no. 11AC-CC00510, a finding of cause by the Administrative Hearing Commission shall be required.
- H. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.



III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license, license number 013209, to lapse.
- B. Licensee shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

16. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 332, 610, 324, RSMo.

17. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

18. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

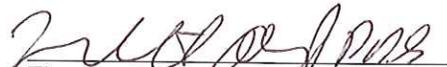
19. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:



**Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

20. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

**LICENSEE**

  
Thomas H. Alms, Jr., D.D.S.

Date 9-7-12

**BOARD**

  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 9/12/12

