

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND FRED E. BAILEY, D.D.S.**

COME NOW Fred E. Bailey, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this Settlement Agreement Between the Missouri Dental Board and Fred E. Bailey, D.D.S. ("Settlement Agreement") for the purpose of resolving the question of whether Licensee shall be subject to discipline for the allegations at issue in the Board's Complaint filed with the Administrative Hearing Commission on July 2, 2013, Case No. 13-1229DB ("AHC Case"). Licensee enters this Settlement Agreement for the purposes of settlement only and to avoid the additional expense of litigation. This Settlement Agreement shall fully and finally resolve all issues related to the AHC Case. However, nothing herein shall prevent the Board from taking additional action against Licensee on any matter unrelated to the matters addressed in this Settlement Agreement.

Licensee and the Board jointly stipulate and agree that the final disposition of the AHC Case may be effectuated as described below pursuant to Chapters 536, 621 and 332 of the Revised Statutes of Missouri and the regulations promulgated thereunder. The parties specifically stipulate and agree to disposition of the AHC Case as set forth in this Settlement Agreement pursuant to Section 536.060, RSMo. For the purposes of settling the dispute in the AHC Case, Licensee and the Board stipulate to all facts and conclusions of law in this Settlement Agreement in accordance with the provisions of Chapters 536, 621 and 332, RSMo., and agree to abide by the terms of this Settlement Agreement.

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 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 hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially 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 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 were violated.

Licensee and the Board waive these rights and agree to abide by the terms of this document which is a legally enforceable contract. 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 013597, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and 332, RSMo.

I. 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 is licensed by the Board as a dentist, License No. 013597. Licensee's Missouri license was at all times relevant current and active.

3. Licensee employed S.L. as a dental hygienist from August 2010 through December 2011.

4. S.L. was terminated from Licensee's employment in December 2011.
5. Licensee did not notify the Board of S.L.'s termination.
6. 20 CSR 2110-2.140 states in pertinent part:
 - (1) A dentist shall notify the board when s/he employs a dental hygienist and when a dental hygienist leaves his/her employment.
7. In 2010, Licensee allowed a dental assistant to remove surface occlusal calculus with a Titan Scaler.
8. 20 CSR 2110-2.120 states in pertinent part:
 - (2) A registered and currently licensed dentist may not delegate to a dental assistant or certified dental assistant, as defined in subsections (1)(B) and (C) respectively, the performance of the following procedures:

 6. The scaling of teeth
9. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(6) and (10), RSMo, which state 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 anyone or any combination of the following causes:
 - (6) Violation of, assisting, or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

 - (10) Assisting or enabling any person to practice or offer to practice, by lack of supervision or in any other manner, any profession licensed or regulated by this chapter who is not registered and currently eligible to practice pursuant to this chapter[.]

II. Settlement Terms & Disciplinary Order

Based on the foregoing, and upon sufficient consideration described herein, the parties mutually agree and stipulate that the parties shall perform the following contractually binding requirements and that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3 and Chapter 332, RSMo.:

1. Provided that Licensee adheres to all of the terms of this Settlement Agreement, as set forth further below, the Board shall enter an order against Licensee's license for **PUBLIC CENSURE**.

2. Licensee shall complete 40 hours of continuing education through correspondence courses in ethics, professionalism and ethical decision making ("Continuing Education") from Oral Health Enrichment, LLC ("OHE"), 27900 Chagrin Boulevard, Suite W-207, Woodmere Village OH 44122 (info@ohenrichment.org). Such Continuing Education shall be completed by Licensee within three months of the first receipt of educational material from OHE. Licensee shall contact OHE to request the education material within 10 days of the final execution of this settlement agreement by the Board Executive Director.

3. Within 10 days of completing the required continuing education from OHE, licensee shall take and pass a written outcome assessment test on the continuing education material with a score of at least 80%. Licensee shall contact OHE and report his completion of the educational material. Licensee shall then contact the Board and make arrangements to take the OHE examination at the Board office.

4. Once Licensee has completed the Continuing Education at set forth in Paragraph 2 above, OHE will provide an examination covering the information contained in the Continuing Education to the Board. The Board shall provide the examination from OHE to Licensee for

completion. Once notified by the Board that the examination from OHE is available, Licensee shall contact the Board to make arrangements for the Board to proctor the examination to Licensee.

5. Upon Licensee's successful completion of the Continuing Education and OHE examination, the terms of this Settlement Agreement shall be satisfied and the Board shall enter without further action or documentation its PUBLIC CENSURE against Licensee's license.

6. Upon Licensee's successful completion of the Continuing Education and OHE examination, the Board will dismiss the pending AHC Case filed with the Administrative Hearing Commission, with prejudice.

7. Licensee's failure to take the Continuing Education and OHE examination as set forth above shall constitute a violation of this Settlement Agreement.

8. If Licensee fails to comply with his obligations under this Settlement Agreement, the parties acknowledge and agree that the Board may pursue action to seek and impose discipline on Licensee's license notwithstanding this Settlement Agreement and may base its cause for discipline upon any conduct alleged in the Complaint filed in the AHC Case.

9. If Licensee has failed to achieve a satisfactory score of 80% or more on his OHE examination, but has completed the course materials and attempted the examination at least one time within three months of the first receipt of educational material from OHE, Licensee shall be allotted an additional fifteen (15) days to complete up to two more attempts at achieving a satisfactory score. If Licensee fails to achieve a satisfactory score on the OHE examination within the time frame allotted, the Board may then exercise its right to seek and impose discipline upon Licensee's license by pursuing its pending complaint with the Administrative Hearing Commission.

III. Additional Terms

1. The parties agree to seek a joint continuance of any hearing scheduled before the Administrative Hearing Commission as necessary to allow Licensee and the Board time to comply with their respective obligations under this Settlement Agreement.

2. The parties agree that, in the event the Board seeks discipline in any action against Licensee, including but not limited to the current AHC Case, the Board will not use as evidence any documents prepared by OHE, Licensee or the Board necessary to comply with the terms and conditions of the this Settlement Agreement including, but not limited to, any settlement agreement, letter, examination, test results, written statements, or other documentation which may become necessary to effectuate the terms of this Settlement Agreement, against Licensee in any case seeking discipline or other relief related to matters included in this Settlement Agreement.

3. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained 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.

4. In return for the dismissal of the pending AHC Case against Licensee, and the agreement to the terms of the Settlement Agreement herein, Licensee, together with his heirs and assigns 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 Section 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 its settlement. Licensee acknowledges 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 void or unenforceable.

5. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation so long as the terms of this Settlement Agreement are in force and complied with and the AHC Case is dismissed with prejudice by the Board as provided in this Settlement Agreement. Nothing herein, however, shall prohibit Licensee from seeking attorney's fees and costs of litigation under Section 536.087, RSMo, or any other claim for compensation to which it would otherwise be entitled as a prevailing party in a case before the Board, should the Board proceed forward with disciplinary action against Licensee at the AHC outside of this Settlement Agreement.

6. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit its request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

7. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect

15 days after the document is signed by the Executive Director of the Board.

8. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 332, RSMo.

LICENSEE



Fred E. Bailey, D.D.S.

Date 10/30/2014

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date 11/6/2014