

SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND ROBERT S. BATES, D.D.S.

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Come now Robert S. Bates, 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 § 536.060,¹ 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.

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 investigative report and other 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.

Solely 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 2007001210 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

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, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee, Robert S. Bates, D.D.S. is licensed by the Board as a dentist, License No. 2007001210. Licensee's Missouri license is, and was at all times relevant herein, current and active.

3. Licensee was the president of Allcare Dental Management, LLC which managed a chain of dental offices in thirteen states that abruptly closed effective December 31, 2010 due to financial problems. Licensee had not, at the time of the closures in thirteen other states, opened an Allcare location in Missouri.

4. On or about November 14, 2011, Licensee entered into a Consent Agreement for Reprimand with the Commonwealth of Massachusetts Board of Registration in Dentistry (Massachusetts Board). Licensee and the Massachusetts Board entered into the Consent Agreement for Reprimand as a result of Licensee allegedly violating the Massachusetts Dental Act by allegedly failing to provide treatment and services which patients had paid for, failing to provide patient records and patient abandonment.

5. On or about January 6, 2012, Licensee entered into a Consent Decree and Order with the West Virginia Board of Dental Examiners (West Virginia Board). The West Virginia Board initiated a matter to discipline Licensee's West Virginia license on the basis of allegations of patient abandonment and failure to provide for reasonable continuity of care. The Consent Decree and Order suspended Licensee's West Virginia license for a period of one year, all but ninety working days, stayed. The Consent Decree and Order also required a West Virginia Board approved course in Ethics and Dental Practice Management to be completed within one year of the Consent Decree and Order. Additionally, the Consent Decree and Order required Licensee to complete the Jurisprudence, Ethics and Risk Management Examination administered by the North East Regional Board of Dental Examiners, Inc., and the Dental law examination given by the West Virginia Board. Finally, the Consent Decree and Order required Licensee to pay a fine in the amount of \$500 and to reimburse the West Virginia Board its costs in the amount of \$3,250 within ninety days of the Consent Decree and Order.

6. On or about April 11, 2012, Licensee entered into a Consent Agreement with the Ohio State Dental Board (Ohio Board). The Ohio Board initiated proceedings to discipline Licensee's license as a result of allegations of patient abandonment and failure to provide for reasonable continuity of care for patients in need of treatment. The Consent Agreement suspended Licensee's license for three years. Additionally, the Consent Agreement precluded Licensee from having his license reinstated unless and until five requirements were met including submitting an application and fees for reinstatement after the term of suspension is complete, taking forty hours of continuing dental education through an Ohio Board approved course in diagnosis, treatment planning and office management, taking and passing with a score of at least 80%, outcome assessment tests on the continuing education, completing twenty hours of continuing education through an Ohio Board approved course in dental ethics and passing the Ohio Board jurisprudence examination. Finally, the Consent Agreement mandated that if Licensee's Ohio dental license was reinstated, it would be placed on two years probation and Licensee would be required to provide a minimum of 520 hours of pro bono dental services within two years of reinstatement.

7. On May 9, 2012, Licensee entered into a Consent Decree with the State of New Hampshire, Board of Dental Examiners (New Hampshire Board). Licensee was the president of Allcare Dental Management, LLC and Allcare Dental and Dentures of NH, PC. Pursuant to the Consent Decree, Licensee acknowledged that:

- a. Allcare opened offices in Nashua and Manchester in mid-2006;
- b. Even though Licensee did not provide hands on dental care to any Allcare New Hampshire office patients, as the dentist/owner of the professional corporation behind Allcare, he was "practicing dentistry" in New Hampshire under RSA 317-A:20;
- c. The Complainants were patients of the Nashua and Manchester offices, but Licensee did not personally treat them as patients;
- d. The patients of the Nashua and Manchester offices were treated by New Hampshire licensed dentists employed by Allcare;
- e. On December 31, 2011, Allcare suffered severe cash constraints and, upon the strict advice of legal counsel, closed all of its offices spread across 13 states, including the Nashua and Manchester offices;

- f. As a result of the office closings, Allcare was left with no employees, no phone system, no computer network and no website;
- g. When Allcare closed the Nashua and Manchester offices, neither Allcare, Licensee nor the dentists employed by Allcare through December 31, 2011, provided any further treatment to the patients of the Nashua and Manchester offices;
- h. During the first 68 days of 2011, Licensee assisted patients in requesting and receiving records of the treatment they received, and attempted to find a New Hampshire dentist willing to take custody of Allcare's records, which he was able to secure on or about March 9, 2011 when another dentist agreed to serve as custodian of the Nashua and Manchester office records;
- i. Although Licensee, by posting written notices on the doors of Nashua and Manchester offices, by posting an electronic notice on a new website he created and by contacting the New Hampshire Board of Dental Examiners, attempted to notify patients of the office closings, there was not adequate prior notice of the office closures to meet the requirements of Den 501.01(k) and Principle 2.F; and
- j. Although Licensee's written notice informed patients that emergency services could be obtained by calling 9-1-1, visiting an emergency room or finding another dentist of their choosing, Licensee was not available to provide emergency care as needed to meet the requirements of Den 501.01(k) and Principle 4.B.

And, accordingly, Licensee voluntarily surrendered his New Hampshire dental license.

8. On or about June 6, 2012, Licensee entered into a Consent Order with the State of Connecticut, Department of Public Health, Healthcare Quality and Safety Branch (Connecticut Department). As a result of the Consent Order, Licensee's Connecticut dental license was reprimanded. The Connecticut Department entered into the Consent Order with Licensee as a result of discipline by West Virginia, Massachusetts and North Dakota related to alleged patient abandonment and inadequate transfer of dental records by Allcare locations in those states.

9. On or about July 11, 2012, Licensee entered into a Stipulation and Consent Order with the State of Vermont, Secretary of State, Office of Professional Regulation, Board of Dental Examiners (Vermont

Board). The Vermont Dental Board entered into the Stipulation and Consent Order with Licensee which changed the status of Licensee's Vermont dental license to conditioned and ordered an administrative penalty of \$1,000. In the Stipulation and Consent Order, Licensee did not contest that the Massachusetts Dental Board disciplined his license for alleged failure to provide treatment and services patients had paid for and patient abandonment. Licensee also did not contest that the West Virginia Board disciplined his license for allegedly closing the practice without prior notice to patients as detailed in the West Virginia Consent Decree and Order. Both the Massachusetts and West Virginia orders were attached to the Vermont Stipulation and Consent Order.

10. Section 332.052, RSMo states:

1. Dentists shall maintain an adequate and complete patient record for each patient and may maintain electronic records provided the record-keeping format is capable of being printed for review by the board.
2. Patient records remaining under the care, custody and control of the licensees shall be maintained by the licensee, or the licensee's designee, for a minimum of seven years from the date of when the last professional service was provided or in the case of a minor, seven years from the age of majority.
3. Any correction, addition, or change in any patient record made more than forty-eight hours after the final entry is entered in the record as an addendum shall be clearly marked and identified as such, and the date, time, and name of the person making the correction, addition, or change shall be included, as well as the reason for the correction, addition, or change.
4. Dentists and nondentists shall maintain copies of laboratory work orders for seven years.

11. Regulation 20 CSR 2110-2.114 states:

- (1) Any duly registered and currently licensed dentist in Missouri who moves his/her practice to a location which is inconvenient to his/her active patients or who ceases to practice dentistry or who shares a fee in any patient whose treating dentist moves to an inconvenient location or ceases to practice dentistry, upon request of that patient, or the person responsible for payment for that patient, shall refund an appropriate portion of the fee received for an unfinished treatment or make arrangements for the treatment to be completed by a dentist acceptable to the patient for no additional fee. Active patients are those who have received care and/or treatment within the previous twelve (12) months.
- (2) Upon the relocation or cessation of practice described in section (1) of this rule, the treating dentist, within thirty (30) days, shall notify in writing all his/her active patients with unfinished services or treatments of their rights under section (1) of this rule. Dentists who share in the fee of any patient affected by this rule also shall notify the patient of his/her

rights. This notification may be made together with the treating dentist in one (1) notice.

(3) Failure to comply with the provisions of this rule will subject the holder of a certificate of registration and license to practice dentistry in this state to disciplinary action in accordance with section 332.321.2(5), (6) and (13), RSMo.

(4) The provisions of this rule are declared severable. If any provision of this rule is held invalid by a court of competent jurisdiction, the remaining provisions of this rule shall remain in full force and effect, unless otherwise determined by a court of competent jurisdiction to be invalid.

12. Licensee's actions as described in paragraphs 3 through 8 above constitute disciplinary action against the holder of a license imposed by other states upon grounds for which discipline is authorized in this state, for which the Board has cause to discipline Licensee's Missouri dentist license.

13. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(8), 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:

...

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter imposed by another state, province, territory, federal agency or country upon grounds for which discipline is authorized in this state[.]

Joint Agreed Disciplinary Order

14. 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: The terms of discipline shall include that the dental license, license number 2007001210, be **VOLUNTARILY SURRENDERED**, which shall be reportable as discipline against Licensee's license. Licensee shall immediately return to the Board all indicia of licensure.

15. 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, and 324, RSMo.

16. 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.

17. 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.

18. 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.

19. 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 fact 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.

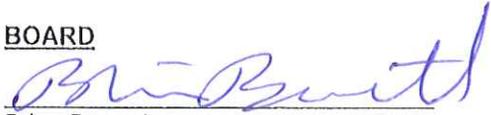
LICENSEE



Robert S. Bates, D.D.S.

Date 12/31/13

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date 2/5/14