

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND MARC R. BOIVIN, D.D.S.**

Come now Marc R. Boivin, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement ("Settlement Agreement") for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline. 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 complaints and disciplinary matters currently outstanding and within the Board's knowledge. However, nothing herein shall prevent the Board from taking additional action against Licensee in the event complaints or facts giving rise to discipline are provided to the Board subsequent to this Settlement Agreement.

Pursuant to the terms of § 536.060, RSMo 2000<sup>1</sup>, 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

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<sup>1</sup> Unless otherwise noted, all references to RSMo are to RSMo 2000.

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 the 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 were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in the Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 014216 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 and Chapter 332, RSMo.

### **I. Joint Stipulations of Fact**

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 Marc R. Boivin, D.D.S. is licensed by the Board as a dentist, License No. 014216. Licensee's Missouri license was active at all times relevant.

3. On December 7, 2009, the Board received information from the Missouri Board of Pharmacy that Licensee may have prescribed Tamiflu and other medications for a patient and a family member. As a result of this information, the Board opened a complaint and investigation.

4. After a preliminary review of local pharmacy records by Board Investigator Joseph Sears, Licensee voluntarily met with Investigator Sears on April 7, 2010 at the Board's request.

5. In a voluntary audit of Licensee's patient charts and prescription logs, multiple entries in Licensee's prescription log could not be accurately reconciled with individual patient charts as follows:

- a. In reviewing patient S.B.'s chart for prescriptions written by Licensee during 2008, Licensee could not reconcile the dosage forms for four prescriptions he wrote for patient S.B.;
- b. In reviewing patient S.D.'s chart for prescriptions written by Licensee during 2008, Licensee could not reconcile all documentation regarding three prescriptions he wrote and could not reconcile the drug name, strength and dosage for one prescription he wrote for patient S.D.
- c. In reviewing patient R.H.'s patient chart for prescriptions written by Licensee between 2008 and 2009, Licensee could not reconcile all documentation for thirteen prescriptions he wrote, could not reconcile the dosage form for six prescriptions he wrote, could not reconcile the quantity and dosage form for two prescriptions he wrote, could not reconcile the drug name and dosage form for three prescriptions he wrote, and could not reconcile the date, drug name and dosage form for one prescription he wrote for patient R.H.
- d. In reviewing patient T.N.'s patient chart for prescriptions written by Licensee between 2008 and 2009, Licensee could not reconcile all

documentation regarding twenty-two prescriptions he wrote, could not reconcile the drug name, strength and dosage form for two prescriptions he wrote, could not reconcile the dosage form and quantity for one prescription he wrote, could not reconcile the dosage form for two prescriptions he wrote, and could not reconcile the drug strength, dosage form and quantity for one prescription he wrote for patient T.N.

- e. In reviewing patient D.S.'s patient chart for prescriptions written by Licensee during 2008, Licensee could not reconcile the dosage form and quantity for two prescriptions he wrote, could not reconcile all documentation on two prescriptions he wrote, could not reconcile the dosage form for two prescriptions, and could not reconcile the drug name, strength and dosage form for one prescription he wrote for patient D.S.
- f. In reviewing patient A.W.'s patient chart for prescriptions written by Licensee between 2007 and 2009, Licensee could not reconcile the dosage form for six prescriptions he wrote, could not reconcile all documentation regarding one prescription he wrote, and could not reconcile the drug name and dosage form for one prescription he wrote for patient A.W.
- g. Out of his practice of nearly 9500 patients, Licensee's other charts appeared to be in compliance with state and federal law and regulations.

6. Licensee maintained controlled substances for the purpose of providing ECS, or enteral conscious sedation, for use in his practice. During one inspection on April 7, 2010, these controlled substances were maintained in a double locked safe pursuant to regulation but the safe was not secured to either the desk or the wall. On a second inspection by the Board investigator on July 13, 2010, Licensee had secured the safe in compliance with state regulations.

7. During one inspection by a Board investigator on April 7, 2010, Licensee did not have his certificate of licensure hanging on his dental office wall. On a second inspection by the Board investigator on July 13, 2010, Licensee's certificate of licensure was hanging on the dental office wall.

## **II. Joint Conclusions of Law**

10. Based on the facts stipulated by Licensee and the Board in Section I. above, the Board has grounds to discipline Licensee's license under § 332.321.2(6) and (15), RSMo, which provide:

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:

...

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

...

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

...

11. Based on the facts stipulated by the Board and Licensee in Section I. above,

Licensee's conduct is in violation of § 332.361, RSMo, which provides:

1. Any duly registered and currently licensed dentist in Missouri may write, and any pharmacist in Missouri who is currently licensed under the provisions of chapter 338, RSMo, and any amendments thereto, may fill any prescription of a duly registered and currently licensed dentist in Missouri for any drug necessary or proper in the practice of dentistry, provided that no such prescription is in violation of either the Missouri or federal narcotic drug act.

2. Any duly registered and currently licensed dentist in Missouri may possess, have under his control, prescribe, administer, dispense, or distribute a "controlled substance" as that term is defined in section 195.010, RSMo, only to the extent that:

(1) The dentist possesses the requisite valid federal and state registration to distribute that class of controlled substance;

(2) The dentist prescribes, administers, dispenses, or distributes the controlled substance in the course of his professional practice of dentistry, and for no other reason;

(3) A bona fide dentist-patient relationship exists; and

(4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

12. Based on the facts set forth above, Licensee's conduct is in violation of

§ 332.181, RSMo, which provides:

3. All persons once licensed to practice dentistry in Missouri shall renew his or her license to practice dentistry in Missouri on or before the license renewal date and shall display his or her license for each current licensing period in the office in which he or she practices.

### **III. Joint Agreed Disciplinary Order**

13. Based upon the foregoing, the parties mutually agree and stipulate that the Board has grounds to discipline Licensee's license. The following shall constitute the disciplinary order entered by the Board in this matter under the authority of §§ 332.361 and 621.045, RSMo.

14. Based on the foregoing, Licensee's dental license, number 014216, shall be **SUSPENDED** for a period of fourteen (14) days starting April 4, 2013, immediately followed by **PROBATION** for a period of three (3) years ("disciplinary period").

15. 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 probation set forth as follows:

#### **A. 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 Settlement Agreement.

#### **B. 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 submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all terms and conditions of the Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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 the Settlement Agreement.

h. If Licensee fails to comply with the terms of the Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

#### C. ADDITIONAL REQUIREMENTS

a. Licensee shall not make application to the Board for, or hold, any sedation permits pursuant to § 332.362, RSMo, and any rules or regulations validly promulgated pursuant thereto.

b. Licensee shall not allow his license to lapse.

c. Licensee shall notify, within 15 days of the effective date of the 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 the Settlement Agreement understand that the Missouri Dental Board will maintain the Settlement Agreement as an open record of the Board as provided in Chapters 332, 610 and 324, RSMo.

17. Upon the expiration of the disciplinary period, Licensee's license as a dentist shall be fully restored, with no restriction, if all other requirements of law have been satisfied.

18. The terms of the Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither the 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.

19. 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 the Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems the Settlement Agreement or any portion thereof to be void or unenforceable.

20. 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 Settlement 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 the Board Settlement 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.**

21. 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 Settlement Agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

**LICENSEE**

Marc R. Boivin D.D.S. *M.R. Boivin D.D.S.*  
Marc R. Boivin, D.D.S.

Date 3-14-13

**BOARD**

Brian Barnett *Brian Barnett*  
Brian Barnett  
Executive Director  
Missouri Dental Board

Date 3/22/13