

**BEFORE THE MISSOURI DENTAL BOARD**

MISSOURI DENTAL BOARD	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 08-0159 DB
	)	No. 06-0492 DB
	)	
JAMES E. BUBENIK, D.M.D	)	
	)	
Respondent.	)	

**ORDER OF THE MISSOURI DENTAL BOARD**  
**DISCIPLINING THE DENTAL LICENSE OF**  
**JAMES E. BUBENIK, D.M.D**

On or about August 12, 2009, the Administrative Hearing Commission entered its Consent Order in the case of *Missouri Dental Board v. James Bubenik, D.M.D.*, Case No. 08-0159 DB. In that Consent Order, based upon the parties' request for Waiver of Hearing, Joint Stipulation and Request for Consent Order, the Administrative Hearing Commission found that Respondent James Bubenik, D.M.D.'s dental license (license # 013196) is subject to disciplinary action by the Board pursuant to § 332.321.2(6), RSMo 2000.

On or about April 7, 2008, the Administrative Hearing Commission entered its Consent Order in the case of *Missouri Dental Board v. James Bubenik, D.M.D.*, Case No. 06-0492 DB. In that Consent Order, based upon the parties' request for Waiver of Hearing, Joint Stipulation and Request for Consent Order, the Administrative Hearing Commission found that Respondent James Bubenik, D.M.D.'s dental license (license # 013196) is subject to disciplinary action by the Board pursuant to § 332.321, RSMo 2000.

The Board has received and reviewed the record of the proceedings before the Administrative Hearing Commission and the Decision of the Administrative Hearing

Commission. The record of the Administrative Hearing Commission is incorporated herein by reference in its entirety.

Pursuant to notice and §§ 621.110 and 332.321.3, RSMo 2000, the Board held a hearing on October 23, 2009, at approximately 1:00 p.m., at the Sheraton Kansas City Sports Complex Hotel, 9103 East 39th Street, Kansas City, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. The Board was represented by Legal Counsel Loretta Schouten. Respondent appeared in person and by counsel, James Deutsch, Blitz, Bardgett & Deutsch. After being present and considering all of the evidence presented during the hearing, the Board issues the following Findings of Facts, Conclusions of Law and Order.

**I.**

Based upon the foregoing the Board hereby states:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Board is an agency of the state of Missouri created and established pursuant to § 332.021, RSMo Cum. Supp. 2008, for the purpose of licensing all persons engaged in the practice of dentistry in this state. The Board has control and supervision of the licensed occupations and enforcement of the terms and provisions of Chapter 332, RSMo (as amended).

2. The Board hereby adopts and incorporates by reference the Consent Order and record of the Administrative Hearing Commission in *Missouri Dental Board v. James Bubenik, D.M.D., Case No. 08-0159 DB*, and *Missouri Dental Board v. James Bubenik, D.M.D., Case No. 06-0492 DB* in their entirety.

3. The Board set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

## II.

### CONCLUSIONS OF LAW

4. This Board has jurisdiction over this proceeding pursuant to §§ 621.110 and 332.321.3, RSMo.

5. The Board expressly adopts and incorporates by reference the joint stipulations of fact contained in the Waiver of Hearing, Joint Stipulation and Request for Consent Order referenced in the Consent Order issued by the Administrative Hearing Commission in its Consent Order dated August 12, 2009, in *Missouri Dental Board v. James Bubenik, D.M.D., Case No. 08-0159 DB*, and hereby enters its Conclusions of Law consistent therewith.

6. The Board expressly adopts and incorporates by reference the joint stipulations of fact contained in the Waiver of Hearing, Joint Stipulation and Request for Consent Order referenced in the Consent Order issued by the Administrative Hearing Commission in its Consent Order dated April 7, 2008, in *Missouri Dental Board v. James Bubenik, D.M.D., Case No. 06-0492 DB*, and hereby enters its Conclusions of Law consistent therewith.

7. As a result of the foregoing, and in accordance with the Administrative Hearing Commission's Orders dated August 12, 2009 and April 7, 2008, Respondent's dental license is subject to disciplinary action by the Board pursuant to § 332.321.2(6) and (15), RSMo 2000.

8. The Board has determined that this Order is necessary to ensure the protection of the public.

### III.

#### ORDER

Having fully considered all the evidence before the Board, and giving full weight to the Decision of the Administrative Hearing Commission, it is the **ORDER** of the Board that the dental license of James Bubenik, D.M.D. (license no. 013196) is hereby **SUSPENDED** for six (6) months beginning December 3, 2009. This suspension shall be immediately followed by five (5) years **PROBATION**. During the aforementioned probation, James Bubenik, D.M.D. shall be entitled to practice as a licensed dentist subject to the following terms and conditions.

### IV.

#### TERMS AND CONDITIONS

During the aforementioned probation, James Bubenik, D.M.D. shall be entitled to perform as a dentist subject to the following terms and conditions:

- A. During the probationary period James Bubenik, D.M.D. shall not perform enteral, parenteral, and/or general anesthesia/deep sedation on any patient.
- B. James Bubenik, D.M.D. shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City or its equivalent. This continuing education shall be in addition to the continuing education required by law for licensure renewal by the Board. This course must be taken within the first nine (9) months of Bubenik's disciplinary period. Bubenik shall provide the Board with proof of attendance from the sponsor of the program no later than thirty (30) days after attending the course. Failure to obtain the required additional continuing education hours and/or submit the required documentation to the Board will result in a violation of the terms of discipline.
- C. James Bubenik, D.M.D. shall take and pass the Board's designated jurisprudence examination within six (6) months of the start of the disciplinary period. Bubenik 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 Bubenik desires to take the examination. Bubenik 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 six (6) months of the disciplinary period shall constitute a violation of the terms of discipline.

- D. During the probationary period James Bubenik, D.M.D. shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo (as amended), all applicable board regulations, all applicable federal and state drug laws, rules and regulations and all applicable federal and state criminal laws. "State" includes the state of Missouri, all other states and territories of the United States, and the ordinances of their political subdivisions.
- E. During the probationary period, James Bubenik, D.M.D. shall keep the Board informed of his current work and home addresses and telephone numbers. James Bubenik, D.M.D. shall notify the Board in writing within ten days (10) of any change in this information.
- F. During the probationary period, James Bubenik, D.M.D. shall timely renew his dental license granted hereby and shall timely pay all fees required for licensure and comply with all other Board requirements necessary to maintain said license in a current and active state.
- G. During the probationary period, James Bubenik, D.M.D. shall accept and comply with unannounced visits from the Board's representatives to monitor compliance with the terms and conditions of this Order.
- H. During the probationary period, James Bubenik, D.M.D. shall appear in person for interviews with the Board or its designee upon request.
- I. James Bubenik, D.M.D. shall submit written reports to the Board on or before January 1 and July 1 during each year of the probationary period stating truthfully whether there has been compliance with all terms and conditions of this Order. The first such report shall be received by the Board on or before January 1, 2010.
- J. If, at any time during the probationary period, James Bubenik, D.M.D. changes his address from the state of Missouri, or ceases to maintain his dental license current or active under the provisions of Chapter 332, RSMo (as amended), or fails to keep the Board advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the probationary period.
- K. Upon expiration of the probationary period, James Bubenik, D.M.D.'s dental license shall be fully restored if all requirements of the law have been satisfied; provided, however, that in the event the Board determines that James Bubenik, D.M.D. has violated any term or condition of this Order, the Board may, in its discretion, pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions or remedies concerning the allegations identified herein.
- L. The Board retains jurisdiction to hold a hearing at any time to determine if a violation of this Order has occurred and, if a violation of this Order has occurred, may seek to amend this Order or impose further disciplinary or appropriate action at the discretion of the Board. No order shall be entered by the Board pursuant to this paragraph without any

required notice and opportunity for a hearing before the Board as provided by Chapter 536, RSMo (as amended).

M. Unless otherwise specified by the Board, all reports, documentation, notices, or other materials required to be submitted to the Board shall be forwarded to: Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102.

N. Any failure by James Bubenik, D.M.D. to comply with any condition of discipline set forth herein constitutes a violation of this Order.

This Order does not bind the Board or restrict the remedies available to it concerning any violation by Respondent of the terms and conditions of this Order, Chapter 332, RSMo (as amended), or the regulations promulgated thereunder.

The Board will maintain this Order as an open, public record of the Board as provided in Chapters 332, 610, and 324, RSMo (as amended).

**IT IS SO ORDERED, THIS 18TH DAY OF NOVEMBER, 2009.**

MISSOURI DENTAL BOARD

  
\_\_\_\_\_  
Brian Barnett, Executive Director



**BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

**MISSOURI DENTAL BOARD,** )  
 )  
                   **Petitioner,** )  
 )  
v. )  
 )  
**JAMES E. BUBENIK, D.M.D.** )  
 )  
                   **Respondent.** )

**CAUSE No.: 06-0492 DB**

**FILED**  
MAR 31 2008  
ADMINISTRATIVE HEARING  
COMMISSION

**WAIVER OF HEARING, JOINT STIPULATION, AND  
REQUEST FOR CONSENT ORDER**

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney, Nanci R. Wisdom, and Respondent, James E. Bubenik, D.M.D., by and through his attorney, Jane Smith, and pursuant to the provisions of 1 C.S.R. 15-3.440 and Missouri Revised Statutes Section 536.060 as applicable to this Commission by the provisions of Section 621.135 RSMo, and jointly state that the parties waive their right to a hearing before the Administrative Hearing Commission in the above-referenced cause, enter this Joint Stipulation consistent with the content of this document. In support of their motion, Petitioner, Missouri Dental Board, and Respondent, James E. Bubenik, D.M.D., hereby stipulate and agree to the following:

1. Respondent, James E. Bubenik, D.M.D. acknowledges that he is familiar with the various rights and privileges afforded by operation of law, including the right to a hearing on the charges against him; the right to appear and be represented by counsel; the right to have all charges against him proved 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; the right to appeal a decision in favor of the Petitioner, Missouri Dental Board, by the Administrative Hearing Commission on the basis if said decision is not supported by substantial and competent evidence. Being familiar with these and other attendant rights provided Respondent, William T. Kane, D.D.S., by operation of law, he knowingly and voluntarily waives each and every one of these rights and fully and freely enters into this "Waiver of Hearing, Joint Stipulation and Request for Consent Order" and consents and agrees to abide by the terms and conditions of this document.

2. Petitioner, Missouri Dental Board, is an agency of the State of Missouri created and established pursuant to Missouri Revised Statutes Section 332.021, as applicable to this matter for the purpose of administering and enforcing the provisions of Chapter 332, Dentistry.

3. Respondent, James E. Bubenik, D.M.D., is, and at all times relevant to this cause was, the holder of a current and valid license to practice dentistry and certificate of registration issued by Petitioner, Missouri Dental Board.

4. That the Second Amended Complaint of Petitioner in cause number 06-0492 DB in the above-styled cause is attached hereto as Exhibit A and made a part hereof by reference.

5. Respondent, James E. Bubenik, D.M.D., admits the allegations contained in the Second Amended Complaint of Petitioner in cause number 06-0492 DB and further admits that said conduct falls within the intendment of Section 332.321 RSMo as applicable to each allegation contained in the Second Amended Complaint and further admits that said conduct subjects his license to discipline under the provisions of Section 332.321 RSMo as applicable to the allegations contained in the Second Amended Complaint.

6. Based on the foregoing, the parties mutually agree that this document will be filed with the Administrative Hearing Commission and that the parties request that the Administrative Hearing Commission issue its order finding cause for discipline of the license of James E. Bubenik, D.M.D. pursuant to the provisions of Section 332.321 RSMo as alleged in the Second Amended Complaint heretofore filed in the above-styled cause and further referring this matter to the Missouri Dental Board for a formal disciplinary hearing.

7. The parties further agree that following the entry of the order of the Administrative Hearing Commission, the Missouri Dental Board will hold a hearing regarding discipline at which time James E. Bubenik, D.M.D. shall have the opportunity to offer evidence in mitigation. Respondent, James E. Bubenik, D.M.D., further agrees and stipulates that no promises have been made to him regarding the nature or quantum of discipline which shall be imposed by the Missouri Dental Board following the disciplinary hearing and further agrees and stipulates that the Missouri Dental Board will have the entire range of discipline open to it as provided in Section 332.321 RSMo.

WHEREFORE, based upon the foregoing, the parties mutually request that the Administrative Hearing Commission issue a Consent Order embodying the terms and conditions of this "Waiver of Hearing, Joint Stipulation, and Request for Consent Order" in the above-styled cause, and that cause number 06-0492 DB be closed.

James E. Bubnik DMD  
JAMES E. BUBENIK, D.M.D.

3-27-2008  
Date

BLITZ, BARDGETT & DEUTSCH, L.C.  
ATTORNEYS AT LAW  
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FAX (573) 634-3358

BY: Jane A. Smith  
Jane A. Smith #28681  
Attorney for Respondent

3-28-2008  
Date

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(573) 729-8630  
FAX: (573) 729-8640

BY: Nanci R. Wisdom  
Nanci R. Wisdom #39359  
Attorney for Petitioner

03-28-08  
Date

MISSOURI DENTAL BOARD

BY: Brian Barnett  
BRIAN BARNETT,  
EXECUTIVE DIRECTOR

3/31/08  
Date

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

<b>MISSOURI DENTAL BOARD,</b>	)	
P.O. BOX 1357	)	
3605 Missouri Blvd.	)	
Jefferson City, Missouri 65102	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>CAUSE NO: 06-0492DB</b>
	)	
<b>JAMES E. BUBENIK, D.M.D.</b>	)	
8112 Delmar Blvd.	)	
University City, MO 63130	)	
<b>Respondent.</b>	)	

**SECOND AMENDED COMPLAINT**

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney Nanci R. Wisdom and for its Second Amended Complaint in the above-referenced matter states and alleges as follows:

1. The Petitioner Missouri Dental Board is an agency of the State of Missouri, created and established pursuant to Missouri Revised Statute sections 332.021 to 332.061 for the purpose of executing and enforcing the provisions of Chapter 332 Dentistry.
2. Respondent, James E. Bubenik, D.M.D., is and at all times herein relevant, has been a licensed and certified dentist in the State of Missouri.
3. This Commission has jurisdiction to hear this Complaint pursuant to the provision in the Missouri Revised Statute section 621.045.

4. That at all times relevant herein, Respondent, James E. Bubenik, D.M.D., possessed a valid registration issued by the Drug Enforcement Agency and the Bureau of Narcotics and Dangerous Drugs.

5. Petitioner has incorporated and realleges as if fully set forth herein the Allegations Common to All Counts contained herein.

6. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. stored outdated controlled substances including fentanyl, Demerol and midazolam at his home address without a Missouri controlled substance registration for that address in violation of §195.030.6 RSMo and 19 CSR 30-1.026(3).

7. Fentanyl is a Schedule II controlled substance.

8. Demerol is a Schedule II controlled substance.

9. Midazolam is a Schedule IV controlled substance.

10. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. stored executed Drug Enforcement Administration official order forms and other controlled records at his home and other separate storage sites and not at his registered practice location in violation of §195.050.6 and 19 CSR 30-1.041(2).

11. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. stocked diazepam, meperidine, fentanyl, Demerol, midazolam, Nembutal and chloral hydrate at his registered practice location.

12. Diazepam is a Schedule IV controlled substance.

13. Meperidine is a Schedule II controlled substance.

14. Nembutal is a Schedule III controlled substance.

15. Chloral hydrate is a Schedule IV controlled substance.

16. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. did not possess an annual inventory of controlled substances in violation of §195.050.6 RSMo and 19 CSR 30-1.042(3).

17. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. failed to document patient's addresses in his dispensing log in violation of §195.050.6 RSMo and 19 CSR 30-1.048(1).

18. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. possessed two bottles originally containing 100 tablets of 5 mg diazepam received by James E. Bubenik, D.M.D. from Besse Medical.

19. As of August 22, 2005, Respondent, James E. Bubenik, D.M.D. had not recorded the date of receipt of the controlled substances in paragraph 17 in his records for controlled substances in violation of §195.050.6 RSMo and 19 CSR 30-1.048(1).

20. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. had failed to record the number of packages of controlled substances received and the date the controlled substances were received on the third copy of the Drug Enforcement Administration 222 Order Forms #943160866 and 943160867 in violation of 21 CFR 1305.09(e) and §195.050.3 RSMo.

21. On or about August 22, 2005, an investigation by Bureau of Narcotics and Dangerous Drugs revealed Respondent, James E. Bubenik, D.M.D. did not dispense controlled substances in Federal Drug Administration compliant containers in violation of 19 CSR 30-1.066(1)(B).

22. On or about August 22, 2005, an investigation by Bureau of Narcotics and Dangerous Drugs revealed Respondent, James E. Bubenik, D.M.D. dispensed controlled

substances in containers not bearing the required label warning against the illegal transfer of controlled substances in violation of §195.100.3 RSMo.

23. On or about August 22, 2005, Respondent, James E. Bubenik, D.M.D. did not possess sufficient controlled substance records to allow Bureau of Narcotics and Dangerous Drugs to perform an accurate audit of his controlled substances by not having an annual inventory or complete receipt records.

24. As a result of the allegations in paragraph 22, Respondent, James E. Bubenik, D.M.D. did not have adequate controls and procedures in place to detect and prevent the diversion of controlled substances in violation of 19 CSR 30-1.031(1) and §195.040.7 RSMo.

25. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

... (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;

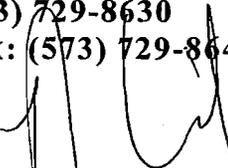
... (15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

26. That as a result of the foregoing, Respondent, James E. Bubenik, D.M.D. has failed to comply with Missouri Revised Statute section 332.321.2.

27. That Missouri Revised Statute section 332.321.3 gives Petitioner, Missouri Dental Board, the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner, Missouri Dental Board, prays this Commission to enter an order finding that it has cause to take disciplinary action against Respondent, James E. Bubenik, D.M.D., or, in the alternative, this matter be set for an evidentiary hearing.

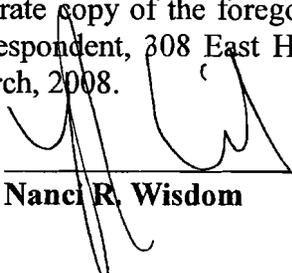
**NANCI R. WISDOM, L.C.  
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107 WEST FOURTH STREET  
SALEM, MISSOURI 65560  
(573) 729-8630  
FAX: (573) 729-8640**

BY: 

\_\_\_\_\_  
**Nanci R. Wisdom #39359  
Attorney for Petitioner**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was sent by hand delivery to Jane A. Smith, Attorney for Respondent, 308 East High Street, Suite 301, Jefferson City, MO., on this 28th day of March, 2008.

  
\_\_\_\_\_  
**Nanci R. Wisdom**

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI DENTAL BOARD,

Petitioner,

vs.

JAMES E. BUBENIK, D.M.D.,

Respondent.

No. 08-0159 DB

**CONSENT ORDER**

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2008, gives us jurisdiction.

On August 3, 2009, the parties filed a "Waiver of Hearing, Joint Stipulation and Request for Consent Order." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 332.321.2(6), RSMo Supp. 2008. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo Supp. 2008.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo Supp. 2008.

No statute authorizes us to determine whether the agency has complied with the provisions of § 621.045.4. RSMo Supp. 2008. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on August 12, 2009.

\_\_\_\_\_  
NIMROD T. CHAPEL, JR.  
Commissioner

BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

AUG 03 2009

ADMINISTRATIVE HEARING  
COMMISSION

MISSOURI DENTAL BOARD, )  
Petitioner, )  
v. ) Cause No. 08-0159DB  
JAMES E. BUBENIK, D.M.D, )  
Respondent. )

**WAIVER OF HEARING, JOINT STIPULATION  
AND REQUEST FOR CONSENT ORDER**

COMES NOW, Petitioner, Missouri Dental Board, by and through its attorney, Loretta Schouten, and Respondent, James E. Bubenik, D.M.D., by and through his attorney, James B. Deutsch, and pursuant to 1 C.S.R. 15-3.440 and Missouri Revised Statute, section 536.060 as applicable to this Commission by section 621.135, RSMo, and joint state that the parties waive their right to a hearing before the Administrative Hearing Commission in the above referenced case, enter this Joint Stipulation consistent with the content of this document. In support of their motion, Petitioner, Missouri Dental Board, and Respondent, James E. Bubenik, D.M.D., hereby stipulate and agree to the following:

1. Respondent, James E. Bubenik, D.M.D. acknowledges that he is familiar with the various rights and privileges afforded by operating of law, including the right to a hearing on the charges against him; the right to appear and be represented by counsel; the right to have all charges against him proved 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 Commission concerning the charges pending against him; the right to appeal a decision in favor of the Petitioner, Missouri Dental Board, by the Administrative Hearing Commission on the basis if said decision is not supported by substantial and competent evidence. Being familiar with these and other attendant rights provided Respondent James E. Bubenik, D.M.D., by operation of law, he knowingly and voluntarily waives each and every one of these rights and fully and freely enters into this "Waiver of Hearing, Joint Stipulation and Request for Consent Order" and consents and agrees to abide by the terms and conditions of this document.

2. Petitioner, Missouri Dental Board is an agency of the State of Missouri created and established pursuant to Missouri Revised Statute Section 332.021, as applicable to this matter for the purpose of administering and enforcing the provisions of Chapter 332, Dentistry.

3. Respondent James E. Bubenik, D.M.D., is, and at all times relevant to this case was, the holder of a current and valid license to practice dentistry and certificate of registration issued by Petitioner, Missouri Dental Board.

4. That the First Amended Complaint of Petitioner in cause number 08-0159 DB in the above styled cause is attached as Exhibit A and made a part hereof by reference.

5. Respondent James E. Bubenik, D.M.D. admits the allegations contained in the First Amended Complaint of Petitioner in cause number 08-0159 DB and further admits that said conduct falls within the intendment of Section 332.321, RSMo as

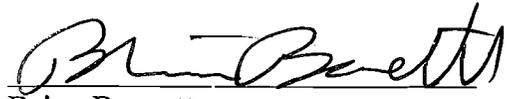
applicable to each allegation contained in the First Amended Complaint and further admits that said conduct subjects his license to discipline under the provisions of Section 332.321, RSMo as applicable to the allegations contained in the First Amended Complaint.

6. Based on the foregoing, the parties mutually agree that this document will be filed with the Administrative Hearing Commission and that the parties request that the Administrative Hearing Commission issue its order finding cause for discipline of the license of James E. Bubenik, D.M.D. pursuant to the provisions of Section 332.321, RSMo as alleged in the First Amended Complaint heretofore filed in the above styled cause and further referring this matter to the Missouri Dental Board for a formal disciplinary hearing.

7. The parties further agree that following the entry of the order of the Administrative Hearing Commission, the Missouri Dental Board will hold a hearing regarding discipline at which time James E. Bubenik, D.M.D. shall have the opportunity to offer evidence in mitigation. Respondent James E. Bubenik, D.M.D. further agrees and stipulates that no promises have been made to him regarding the nature or quantum of discipline which shall be imposed by the Missouri Dental Board following the disciplinary hearing and further agrees and stipulates that the Missouri Dental Board will have the entire range of discipline open to it as provided in Section 332.321, RSMo.

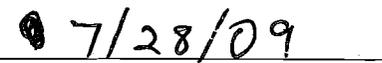
WHEREFORE, based upon the foregoing, the parties mutually request that the Administrative Hearing Commission issue a Consent Order embodying the terms and conditions of this "Waiver of Hearing, Joint Stipulation, and Request for Consent Order" in the above styled cause and that cause number 08-0159DB be closed.

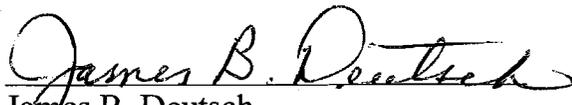
  
James E. Bubenik, D.M.D.

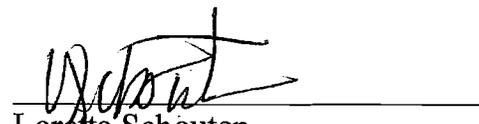
  
Brian Barnett  
Executive Director  
Missouri Dental Board

7-14-2009  
7-14-2009

Date

  
Date

  
James B. Deutsch  
Missouri Bar No. 27093

  
Loreta Schouten  
Missouri Bar No. 52290

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Attorney for Respondent

Attorney for Petitioner

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

<b>MISSOURI DENTAL BOARD,</b>	)	
<b>P.O. BOX 1357</b>	)	
<b>3605 Missouri Blvd.</b>	)	
<b>Jefferson City, Missouri 65102</b>	)	
<b>                    Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CAUSE NO: 08-0159 DB</b>
	)	
<b>JAMES E. BUBENIK, D.M.D.</b>	)	
<b>8112 Delmar Blvd.</b>	)	
<b>University City, MO 63130</b>	)	
<b>                    Respondent.</b>	)	

**FIRST AMENDED COMPLAINT**

**ALLEGATIONS COMMON TO ALL COUNTS**

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney Nanci R. Wisdom and for its Allegations Common to All Counts of the First Amended Complaint in the above-referenced matter states and alleges as follows:

1. The Petitioner Missouri Dental Board is an agency of the State of Missouri created and established pursuant to Missouri Revised Statute sections 332.021 to 332.061 for the purpose of executing and enforcing the provisions of Chapter 332 Dentistry.
2. Respondent, James E. Bubenik, D.M.D., is and at all times herein relevant, has been a licensed and certified dentist in the State of Missouri.
3. This Commission has jurisdiction to hear this First Amended Complaint pursuant to the provision in the Missouri Revised Statute section 621.045.

4. That at all times relevant herein, Respondent, James E. Bubenik, D.M.D., possessed a valid registration issued by the Drug Enforcement Agency and the Bureau of Narcotics and Dangerous Drugs.

#### COUNT I

COMES NOW the Petitioner, Missouri Dental Board, by and through its attorney, Nanci R Wisdom, and for Count I of the First Amended Complaint herein states and alleges as follows:

5. Petitioner has incorporated and realleges as if fully set forth herein the Allegations Common to All Counts contained herein.

6. On or about July 13, 2004, Respondent treated patient M.J. with the use of parental conscious sedation (PCS).

7. Patient M.J. died while under the care of Respondent.

8. PCS can only be used pursuant to 4 CSR 110-2.181 (rescinded April 30, 2005) on patients who meet the guidelines of American Society of Anesthesiologists (ASA) Class I or ASA Class II.

9. Among other disorders, patient M.J. suffered from a seizure disorder and was prescribed the drug imipramine.

10. Respondent administered the reversal agent Romazicon to patient M.J.

11. Romazicon is contraindicated when a patient has a suspected overdose of cyclic antidepressants such as imipramine.

12. Respondent's staff was not properly documented as trained to monitor PCS in accordance with 4 CSR 110-2.181 (rescinded April 30, 2005).

13. Respondent did not properly report the death of patient M.J. to the Missouri Dental Board in accordance with 4 CSR 110-2.210 (rescinded October 30, 2005; moved to 20 CSR 2110-2.210).

14. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board may file a First Amended Complaint against a dentist licensed to practice in Missouri under the following circumstances:

... (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. That as a result of the foregoing, Respondent, James E. Bubenik, D.M.D. has violated Missouri Revised Statute section 332.321.2(6), RSMo.

16. Missouri Revised Statute section 332.321.3 gives Petitioner, Missouri Dental Board, the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner, Missouri Dental Board, prays this Commission to enter an order finding that it has cause to take disciplinary action against Respondent, James E. Bubenik, D.M.D., in Count I or, in the alternative, this matter be set for an evidentiary hearing.

#### COUNT II

COMES NOW, Petitioner, Missouri Dental Board, by and through its attorney, Nanci R. Wisdom, and for its cause of action in Count II of the First Amended Complaint filed herein states as follows:

17. Petitioner incorporates by reference herein the statements and allegations contained in the Allegation Common to All Counts in the First Amended Complaint.

18. Respondent administered PCS to patient H.J. on January 19, 2005, to perform dental treatment on patient H.J.

19. Patient H.J. suffered respiratory complications with the PCS, was taken to the hospital and died when life support was withdrawn on January 24, 2005, without regaining consciousness.

20. After patient H.J. became pulseless, Respondent used a bag and mask device with an oral airway to attempt to oxygenate H.J., performed CPR and unsuccessfully attempted to intubate patient H.J.

21. PCS can only be used pursuant to 4 CSR 110-2.181 (rescinded April 30, 2005) on patients who meet the guidelines of American Society of Anesthesiologists (ASA) Class I or ASA Class II.

22. Respondent's staff was not properly documented as trained to monitor PCS as required by 4 CSR 110-2.181.

23. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board may file a First Amended Complaint against a dentist licensed to practice in Missouri under the following circumstances:

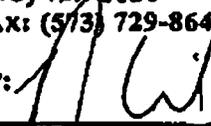
... (6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

24. That as a result of the foregoing, Respondent has violated Missouri Revised Statute section 332.321.2.

25. Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner, Missouri Dental Board, prays this Commission to enter an order finding that it has cause to take disciplinary action against Respondent, James E. Bubenik, D.M.D., in Count II or, in the alternative, this matter be set for an evidentiary hearing.

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BY: 

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