

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND BRIAN G. DAVIS**

Come now Brian G. Davis, 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,<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 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.

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 2004033307 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

---

<sup>1</sup> 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, Brian G. Davis, D.D.S., is licensed by the Board as a dentist, License No. 2004033307. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On or about July 12, 2012, the Board received a complaint regarding Licensee from a patient, R.R. R.R. alleged that she went to Licensee for an emergency appointment. Licensee diagnosed her with an infection in tooth #5. R.R. stated that Licensee stated he would clear up the infection and then perform a root canal and place a crown. She stated she continued to have pain and difficulty chewing even after he placed the crown. She stated on April 18, 2012, she went back because of the pain. She stated Licensee took an x-ray and "did a little drilling on tooth #5." R.R. stated when she viewed the x-ray it appeared "dark on that side." She stated Licensee's assistant stated it was the film. R.R. stated after that visit she went out of town but could not enjoy her trip or food because she "started tasting infection again." She stated Licensee called in a prescription for amoxicillin. R.R. stated she went back to Licensee on June 15, 2012. She stated her mouth was sore and she had a "little knot" by her nose that she could feel. R.R. stated that Licensee concluded it was a "pus pocket" and he gave her more antibiotics and a pain medicine. R.R. stated she tried to get a refund but Licensee would not refund her money.
4. The Board's review of R.R.'s endodontic treatment revealed that:
  - a. Licensee diagnosed R.R.'s tooth number 5 with an abscess and his treatment plan included a root canal and crown to restore it.
  - b. Licensee completed the root canal on tooth number 5 on February 24, 2012. Tooth number 5 did not heal completely and was pressure sensitive.
  - c. Despite the tooth not healing completely, Licensee continued with the treatment of tooth #5 and proceeded to prepare the tooth for a crown.
  - d. Prior to final restoration, R.R. needed additional emergency treatment on tooth #5. R.R. was unable to contact anyone at Licensee's office. R.R. went to a different clinic and the clinic referred her to an endodontist, Dr. Kenneth J. Frick, D.D.S., a licensed Missouri dentist. As a



result of Licensee's errors in treating R.R., as described below, Dr. Frick repaired and retreated R.R.'s tooth number 5.

- e. During Licensee's treatment of R.R.'s tooth number 5, Licensee perforated R.R.'s tooth number 5 at the cement-enamel junction (CEJ), the place where the enamel of the crown of the tooth meets the cementum of the root. Perforating a tooth, or punching a hole in it, was below the standard of care.
- f. During Licensee's treatment of R.R.'s tooth number 5, Licensee continued to obviate what he thought was the lingual canal all the way down to the periodontal ligament (PDL), the group of ligaments that attach the tooth to the bone and help the tooth withstand the compressive forces involved in chewing. Licensee did not actually fill the PDL but left gutta percha, the filling material, in the lingual PDL space along the length of the root. Filling a canal all the way to the periodontal ligament and filling the wrong space was below the standard of care.
- g. Licensee's treatment of R.R.'s tooth number 5, perforating the tooth all the way to the CEJ and overfilling a canal all the way to the PDL on the lingual root left a tooth that has a guarded to poor long term prognosis despite the repair and retreatment by Dr. Frick.
- h. Licensee's treatment of R.R.'s tooth number 5, as described above, was below the standard of care.

5. As a result of R.R.'s complaint, the Board requested ten additional files from Licensee for which he provided endodontic services. On or about January 10, 2013, Board Investigator Kevin Davidson travelled to Licensee's practice, spoke with Licensee and informed him of the Board's request. Licensee collected and copies the files for Investigator Davidson.

6. The Board's review of Licensee's ten additional endodontic patient files revealed that:
- a. For patient R.K., in filling the root canal for tooth number 4, Licensee's obturation, or filling, was too short and not within normal limits and therefore was below the standard of care.
  - b. For patient L.H., in filling the root canal for tooth number 22, Licensee's obturation was very short and not within normal limits and therefore was below the standard of care.
  - c. For patient A.O., in filling the root canal for tooth number 29, Licensee over-filled the tooth which was not within normal limits and was, therefore, below the standard of care.



- d. For patient, S.B., in filling the root canal for tooth number 20, Licensee's obturation was too short and not within normal limits and therefore was below the standard of care.
- e. For patient L.C., in filling the root canal for tooth number 13, Licensee's obturation was short and Licensee created a second canal, neither of which was within normal limits and therefore was below the standard of care.
- f. For patient C.R., in filling the root canal for tooth number 12, Licensee's obturation was short and Licensee created a second canal, neither of which was within normal limits and therefore was below the standard of care.

7. Licensee's actions as described above in paragraphs 3 through 6 constitute incompetency and 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 failed to meet the minimum standard of care by providing endodontic services to patients R.R., R.K., L.H., A.O., S.B., L.C. and C.R., for which the Board has authority to discipline Licensee's license.

8. Licensee's actions as described above in paragraphs 3 through 6 constitute violation of a professional trust or confidence in that Licensee failed to meet the minimum standard of care by providing endodontic services to patients R.R., R.K., L.H., A.O., S.B., L.C. and C.R., for which the Board has authority to discipline Licensee's license.

9. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5) and (13), 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[.]



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:

10. The terms of discipline shall include that the dental license, license number 2004033307, 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 his Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

A. Licensee shall take and pass the Board's jurisprudence examination within twelve (12) months of this Agreement becoming effective. 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 this Agreement.

B. Education. Licensee shall successfully complete fifty (50) hours of continuing education in the area of Endodontics through 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 50 hours of education as detailed above from 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. Skills assessment. Immediately after completing the education and written outcome assessment outlined in paragraph B above and within the first one hundred eighty (180) days of the beginning of the period of probation Licensee shall successfully complete a clinical skills assessment at Oral Health Enrichment in Cleveland, Ohio. Failure to successfully complete the clinical skills assessment within 180 days shall constitute a violation of the Board Settlement Agreement.

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 the revocation).

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 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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. 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.

LICENSEE

  
Brian G. Davis, D.D.S.

Date 8/2/2013

BOARD

  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 8/9/13

