

SEP 13 2010

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND SHIRLEY B. DILLARD, D.M.D.**

MISSOURI DENTAL BOARD

Come now Shirley B. Dillard, D.M.D.. ("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 2000, 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 2000.

Licensee acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to present evidence on her 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 her and, subsequently, the right to a disciplinary hearing before the Board at which time she 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 her 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 her.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline her 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 013634 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 and Chapter 332, RSMo.

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 Shirley B. Dillard, D.M.D. ("Licensee") is licensed by the Board as a dentist, License No. 013634. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On November 12, 2009, the Missouri Department of Revenue (DOR) suspended Licensee's dental license in accordance with House Bill 600 (HB600), codified as §324.010, RSMo.¹

4. On or about February 17, 2010, Board Investigator Joseph Sears (Sears) visited Licensee's practice location to determine if she was practicing while suspended by DOR. Sears determined that Licensee was practicing. Sears wrote an investigative report regarding the February 17, 2010 visit. The Board reviewed Sears' report at its March 2010 conference call. The Board referred the matter back to Sears for additional investigation to determine if Licensee was still practicing while under suspension.

5. On or about April 12, 2010, Sears visited Licensee's practice a second time. Upon arriving, Sears observed that Licensee was still practicing with a suspended license. Licensee stated that "she believed she was now 'good' with the Board and DOR" which was why she had continued to practice. Licensee stated she had made arrangements with DOR and was making payments toward the amount owed to DOR. However, Licensee could not provide Sears with a copy of a compliance letter from DOR confirming she was in compliance. Sears requested documentation of compliance as soon as possible and reminded Licensee that her license was suspended and she was not allowed to continue practicing. Licensee stated that she understood.

6. While at Licensee's practice on April 12, 2010, Sears obtained a copy of Licensee's patient calendar for the last thirty days and copies of six patient records for individuals seen during that time period. A review of the calendar and records reveals:

- a. Licensee had patients scheduled on March 1, 2, 3, 4, 6, 10, 11, 12, 13, 15, 16, 17, 18, 20, 24, 25, 26, 27, 29, 30 and 31 and April 1, 3, 7, 8, 9, 10, 12, 13 and 14.

¹ According to House Bill 600 of the 92nd General Assembly (2003), any holder of a professional license who has failed to pay taxes or file tax returns will have their license subject to suspension within ninety days of being notified by DOR of any delinquency or failure to file.

- b. Licensee performed dental services on patient E.A. on December 30, 2009; January 7, 2010; February 11, 12 and 25, 2010; and March 5, 2010.
- c. Licensee performed dental services on patient C.C. on March 6, 2010; and April 7 and 10, 2010.
- d. Licensee performed dental services on patient A.C. on February 4, 2010; March 2, 5 and 19, 2010; and April 8, 2010.
- e. Licensee performed dental services on patient R.C. on March 20 and 30, 2010.
- f. Licensee performed dental services on patient L.F. on March 16 and 27, 2010.
- g. Licensee performed dental services on patient A.H. on March 13, 2010

7. On or about April 20, 2010, Licensee contacted Sears by telephone. Licensee stated that she was not actually in compliance with DOR and it would "likely be some time before she would be able to be in compliance." Sears again reminded Licensee she was not allowed to continue practicing while her license was suspended. Licensee stated she understood and had canceled all of her patients at that time.

8. On or about May 6, 2010 Leon Vickers, Health Services Administrator for the Jefferson City Correctional Center (JCCC) contacted Sears. He stated that the JCCC had employed Licensee during her suspension. He stated he was unaware of the suspension and JCCC would not have allowed her to work if they had known of the suspension. Vickers also stated that JCCC terminated Licensee upon learning that she worked while suspended. Vickers provided a copy of Licensee's patient calendar from January 1, 2010 through May 6, 2010. The calendar demonstrated that Licensee worked at JCCC seeing patients and performing dental services on the following days between January 1 and May 6, 2010: January 11, 12, 18, 19, 25 and 26; February 8, 9, 22 and 23; March 8, 9, 22, 23 and 29; April 5, 6, 19 and 20. Licensee saw an average of eleven patients each day.

9. On May 10, 2010, Licensee contacted Sears by telephone. Licensee stated that she was still not in compliance with DOR and again that it would be some time before she would be in compliance. Licensee stated that DOR was reviewing her documentation and requesting information from her before they would reinstate her license. Sears again reminded Licensee that she was not allowed to continue practicing while her license was suspended. Licensee stated she understood.

10. On May 17, 2010 Licensee provided the Board with a copy of her compliance letter from DOR. The letter, dated May 17, 2010, confirmed that Licensee was in compliance and her license could be reinstated. The Board reinstated Licensee's license on May 17, 2010.

11. Section 332.081, RSMo. states, in relevant part: "No person or other entity shall practice dentistry in Missouri or provide dental services as defined in section 332.071 unless and until the board has issued to the person a certificate certifying that the person has been duly registered as a dentist in Missouri or to an entity that has been duly registered to provide dental services by licensed dentists and dental hygienists and unless and until the board has issued to the person a license, to be renewed each period, as provided in this chapter, to practice dentistry or as a dental hygienist, or has issued to the person or entity a permit, to be renewed each period, to provide dental services in Missouri."

12. Licensee's conduct in practicing dentistry while her license was suspended as described in paragraphs 3 through 10 constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed by the chapter in that she was aware her license was suspended between November 12, 2009 and May 17, 2010 but she provided dental services to patients as demonstrated in paragraphs 4, 5, 6 and 8 above.

13. Licensee's conduct in practicing dentistry while her license was suspended as described in paragraphs 3 through 10 constitutes violation of a professional trust or confidence.

14. Licensee's conduct in practicing dentistry while her license was suspended as described in paragraphs 3 through 10 constitutes violation of a provision of this chapter in that Licensee violated § 332.081, RSMo.

15. Licensee's conduct in practicing dentistry while her license was suspended as described in paragraphs 3 through 10 constitutes assisting or enabling any person to practice a profession licensed by this chapter who is not currently eligible to practice in that Licensee was not currently eligible to practice because her license was suspended.

16. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6), (10) 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 the functions or duties of any profession licensed or regulated by this chapter;

(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;

...

(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 2000:

The terms of discipline shall include that the dental license, license number 013634, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided she 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 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 this 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 submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this 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 her 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 her 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 herself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of her current place of business and residence, the time of her 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 this Settlement Agreement.
- H. 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).
- I. 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 her 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.

1. 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, 324, RSMo.

2. 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.

3. Licensee, together with her heirs and assigns, and her 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.

5. 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.

6. 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

Shirley B. Dillard, D.M.D.
Shirley B. Dillard, D.M.D.

Date 9/9/10

BOARD

Brian Barnett
Brian Barnett,
Executive Director
Missouri Dental Board

Date 9/13/10