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MISSOURI DENTAL BOARD

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND JAMES G. EVANS, D.D.S.**

Come now James G. Evans, 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 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 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 013030 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 James G. Evans, D.D.S. is licensed by the Board as a dentist, License No. 013030. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about December 17, 2009, the Board received a complaint concerning Licensee from [redacted], a patient of Licensee. Ms. [redacted] alleged in the complaint that she went to Licensee for an abscessed tooth and Licensee extracted the tooth and "talked her into getting a six tooth bridge." Ms. [redacted] alleges that Licensee's dental assistant did a procedure where she wrapped the teeth in "some type of cord" to make a better impression. Ms. [redacted] states that when the dental assistant removed the cord after the impression, some of the acrylic stuck to her teeth which took the assistant and Licensee "quite some time" to remove. She also alleges that Licensee was very "harsh and rough" during this time. Ms. [redacted] alleges she eventually had to get a lower denture which Licensee "could not get to fit correctly" and she ended up going to another dentist for a different set of dentures.

4. The Board conducted an investigation of Ms. [redacted]'s complaint. The Board conducted numerous interviews regarding Ms. [redacted]'s complaint.

a. On March 17, 2010, Board Investigator Joseph Sears (Sears) interviewed Licensee at his practice office in St. Peters, Missouri. Licensee stated that he attempted to provide Ms. [redacted] with what she wanted but the attempt failed. He stated that the acrylic did "become wedged" but it was not the assistant that caused it, nor was it the assistant that removed it. He stated he refunded Ms. [redacted] her money after she signed a malpractice waiver. Licensee also provided a copy of Ms. Huff's records.

b. During the March 17, 2010 interview, Licensee stated that he employs three dental assistants and four dental hygienists. He stated that assistant Oana Bianca Popescu, DMD assisted on Ms. [redacted]; Ms. Popescu is a dentist from Romania who was unable to be licensed as a dentist in the United States. Licensee stated she no longer works for him. Licensee stated that his



assistants: do infection control work, assist chairside, do profiles on children only, place dressings, pack cord, and take study model impressions. Licensee stated he does not allow the assistants to place or seat crowns, place amalgam, scale teeth, place or cement ortho bands or brackets, place composites or adjust dentures. He also stated the assistants do not assist with nitrous oxide because his practice does not use it.

- c. Investigator Sears also spoke with Tonia Gonzales, an assistant who had been with the practice for seven months. She stated she is not an expanded function dental assistant (EFDA) nor Dental Assistant National Board (DANB) certified. She stated that Licensee allows her to: seat patients, set up operatories, complete infection control work on operatories, chairside assist, take x-rays, polish teeth, profiles on children under 15 years of age, take alginate impressions, pack cord, and place dressings. She stated she does not diagnose, interpret x-rays, treatment plan, cut teeth, scale teeth, extract teeth, write prescriptions, give injections, bend archwires, place dressings, size crowns, place or condense amalgam, carve amalgam, place composites, place or cement ortho brackets or bands, clip wires, remove ortho bands and bonds, final cementing of a permanent appliance or prosthesis, or adjust dentures. She stated she is not allowed to work with patients if Licensee is not in the office.
- d. Investigator Sears also interviewed assistant Courtney Dunman who has been an assistant with the practice for ten years. Ms. Dunman stated she is not EFDA nor DANB certified. She states she currently only assists with orthodontic patients. Ms. Dunman stated that her job duties include: seating patients, setting up operatories, assisting chairside, taking x-rays, polishing teeth, clipping wires and removing ortho bands and bonds. Ms. Dunman stated she does not diagnose, interpret x-rays, treatment plan, cut, scale, or extract teeth, write prescriptions, give injections, bend archwires, place dressings, size crowns, place or condense amalgam, carve amalgam, place composites, profiles on children under the age of 15, pack cord, final cementing of a permanent appliance or prosthesis, or adjust dentures. She also stated she does not work with patients when Licensee is not at the practice.
- e. Investigator Sears interviewed assistant Sabrina Rogers, who had been with Licensee's practice for two years. Ms. Rogers is neither EFDA nor DANB certified. Ms. Rogers stated her



Job duties include: seat patients, set up operatories, complete infection control work on operatories, chairside assist, take x-rays, polish teeth, profiles on children under 15 years of age, take alginate impressions, pack cord, clip wires and remove ortho bands and bonds. Ms. Rogers stated she does not: diagnose, interpret x-rays, treatment plan, cut, scale or extract teeth, write prescriptions, give injections, bend archwires, place dressings, size crowns, place or condense amalgam, carve amalgam, place composites, place or cement ortho brackets or bands, final cementing of a permanent appliance or prosthesis or adjust dentures. She stated she does not work with patients when Licensee is not in the office.

- f. Investigator Sears interviewed assistant Taylor Harris who had been with the practice two and a half years at the time of the interview. Ms. Harris is neither EFDA nor DANB certified. Ms. Harris stated that she is allowed to: seat patients, set up operatories, complete infection control work on operatories, chairside assist, take x-rays, polish teeth, profiles on children under the age of 15, take alginate impressions, clip wires, and remove ortho bands and bonds. She stated she is not allowed to: diagnose, interpret x-rays, treatment plan, cut, scale or extract teeth, write prescriptions, give injections, bend archwires, place dressings, size crowns, place or condense amalgam, carve amalgam, place composites, pack cord, place or cement ortho brackets or bands, final cementing of a permanent appliance or prosthesis or adjust dentures. Ms. Harris stated that she does not work with patients when Licensee is not in the office.
- g. Investigator Sears interviewed JoyLynn R. Cameron, RDH. Ms. Cameron had been with Licensee eight months at the time of the interview. She stated her job duties include: profiles on individuals over fifteen years of age, scaling teeth, conducting oral screenings, taking x-rays, periodontal root planning, applying fluoride treatments and administering block and infiltration anesthesia. She stated she does not apply dental sealants, cut or extract teeth, diagnose, treatment plan or bend archwires. She stated she does not see new patients before the doctor. She stated she can see a patient of record who has been seen by the doctor within one year if Licensee is in the office, but she stated, she does not do this. Ms. Cameron does hold both a local anesthesia (including block and infiltration) and a nitrous oxide permit.



- h. Investigator Sears interviewed Marlene Aubuchon, RDH who stated she has worked for Licensee for two years. She stated her job duties include: profiles on individuals over fifteen years of age, scaling teeth, conducting oral screenings, taking x-rays, periodontal root planning, applying dental sealants, providing oral hygiene instructions, applying fluoride treatments and administering infiltration anesthesia. She stated she does not cut or extract teeth, diagnosis, interpret x-rays, treating plan or bend archwires. She stated she does not see new patients before Licensee. She stated she can see a patient of record who has been seen by the doctor within one year if Licensee is in the office, but she stated, she does not do this. Ms. Aubuchon holds an infiltration local anesthesia permit from the Board.
  - i. Investigator Sears interviewed Pamela S. Smith, RDH who had worked with Licensee for eight years at the time of the interview. Ms. Smith stated that her job duties include: profiles on individuals over fifteen years of age, scaling teeth, conducting oral screenings, taking x-rays, periodontal root planning, applying dental sealants, providing oral hygiene instructions, applying fluoride treatments and administering block and infiltration anesthesia. She stated she does not cut or extract teeth, diagnosis, interpret x-rays, treating plan or bend archwires. She stated she does not see new patients before Licensee. She stated she can see a patient of record who has been seen by the doctor within one year if Licensee is in the office, but she stated, she does not do this. Ms. Smith holds a local anesthesia permit (including block and infiltration) from the Board.
  - j. As of March 29, 2010, Dr. Oana B. Popescu was currently practicing as a dentist in the United Kingdom.
  - k. Licensee was current on his continuing education hours and basic life support certification for the reporting period December 1, 2006 through November 30, 2008.
5. As part of the investigation, the Board met with Licensee at its July 22, 2010 meeting. During the meeting, Licensee stated:
- a. At her request, he refunded Ms. the money for the full lower plate because she had gone to another dentist for a different lower plate.



- b. His original treatment plan was to split her remaining lower anterior teeth together and give her a new partial. The original treatment plan was unsuccessful because the partial did not fit properly and she was not wearing it. Licensee informed Ms. that treatment plan was going to fail and so she needed those teeth extracted and a full lower plate. Licensee only saw her once or twice but she did not like the plate and was "very unhappy."
- c. The acrylic used in making the impression got "locked in" and was in "underneath some undercuts." "The chairside came to me and she couldn't get it off." It took Licensee "awhile" to get it off.
- d. The chairside assistant, Oana Popescu, packed the cord for Ms. 's procedure.
- e. In answer to the Board's question of what do the assistants do to assist with ortho patients, Licensee stated that he learned after the investigation that clipping wires or cutting wires was an expanded duty. He also stated they debanded teeth, and that he "learned that they can't take a bracket off," but it was commonplace for them to take brackets off of teeth.
- f. Ms. 's chart did not document the treatment options that Licensee gave to her prior to beginning treatment.

6. As a result of the meeting, the Board requested additional x-rays other than the panorex x-ray from Licensee that were specific to the area of treatment. On July 29, 2010, the Board received a letter from Licensee stating that the only panorex in the record was a copy and so he would try and track down the original x-ray because the copy of the copy would be dark. Licensee also stated he was providing copies of periapical x-rays of the lower anterior region. The original panorex was provided Ms. 's next Dentist for his use professionally and the radiography was provided the Board within the week following the meeting.

7. Pursuant to regulation 20 CSR 2110-2.120:

(2) A registered and currently licensed dentist may not delegate to a dental assistant or certified dental assistant, as defined in subsections (1)(B) and (C) respectively, the performance of the following procedures:

- (A) Diagnosis, including interpretation of dental radiographs and treatment planning;
- (B) Cutting of tooth structure;
- (C) Surgical procedures on hard and soft tissues including, but not limited to, the removal of teeth and the cutting and suturing of soft tissues;
- (D) The prescription, injection and parenteral administration of drugs;



- (E) The final bending of archwire prior to ligation;
  - (F) The scaling of teeth; and
  - (G) Administration of nitrous oxide-oxygen analgesia except that a dental assistant or certified dental assistant may assist in the administration of and monitor nitrous oxide-oxygen analgesia with specific training as provided in section (3) of this rule.
- (3) A dental assistant or certified dental assistant may assist the administration of and monitor nitrous oxide analgesia under direct supervision if s/he—
- (A) Has successfully completed formal certified training in a course approved by the Missouri Dental Board; and
  - (B) Has successfully passed an approved competency test regarding the clinical and didactic training; or
  - (C) Has been certified in another state to assist the administration and monitor nitrous oxide subsequent to equivalent training and testing. The dental assistant may qualify to perform this function by presenting proof of competence of this equivalent training and testing to the Missouri Dental Board;
  - (D) The responsibility of the dental assistant or certified dental assistant shall be to provide the Missouri Dental Board proof of competence; and
  - (E) Upon presentation to the dental board of proof of competency that the dental assistant or certified dental assistant has complied with the requirements imposed by subsections (3)(A), (B) or (C) of this rule, and remitted the appropriate fee as specified in 4CSR 110-2.170, the Missouri Dental Board will issue the appropriate certification to the dental assistant or certified dental assistant.
- (4) A currently licensed dentist may delegate, under direct supervision, functions listed in subsection (4)(D) of this rule to a certified dental assistant or a dental assistant subsequent to submission to the Missouri Dental Board of the following satisfactory proof of competence:
- (A) After June 1, 1995, all certified dental assistants graduating from accredited dental assisting programs in Missouri will have competency testing for all functions listed in subsection (4)(D) of this rule and may be delegated those functions by a currently licensed dentist;
  - (B) Certified dental assistants graduating prior to June 1, 1995, or from programs outside Missouri, may be delegated the functions in subsection (4)(D) of this rule with proof of competence issued by their educational institutions and may be delegated other specific functions if they have completed an approved course, passed an approved competency examination, and can provide proof of competency as defined in subsection (1)(D);
  - (C) Dental assistants, as defined in subsection (1)(B), may be delegated any specific function listed in subsection (4)(D) of this rule if they have successfully completed a basic dental assisting skills mastery examination approved by the board, completed an approved course, passed an approved competency examination, and can provide proof of competence as defined in subsection (1)(D);
  - (D) Functions delegable upon successful completion of competency testing are—



1. Placement of post-extraction and sedative dressings;
2. Placing periodontal dressings;
3. Size stainless steel crowns;
4. Placing and condensing amalgam for Class I, V, and VI restorations;
5. Carving amalgam;
6. Placing composite for Class I, V, and VI restorations;
7. Polishing the coronal surfaces of teeth (air polisher);
8. Minor palliative care of dental emergencies (place sedative filling);
9. Preliminary bending of archwire;
10. Removal of orthodontic bands and bonds;
11. Final cementation of any permanent appliance or prosthesis;
12. Minor palliative care of orthodontic emergencies (that is, bend/clip wire, remove broken appliance);
13. Making impressions for the fabrication of removable prosthesis;
14. Placement of temporary soft liners in a removable prosthesis;
15. Place retraction cord in preparation for fixed prosthodontic impressions;
16. Making impressions for the fabrication of fixed prosthesis;
17. Extra-oral adjustment of fixed prosthesis;
18. Extra-oral adjustment of removable prosthesis during and after insertion; and
19. Placement and cementation of orthodontic brackets and/or bands; and

(E) Upon request by the Missouri Dental Board, the licensed and supervising dentist must provide copies of proof of competence of dental auxiliaries.

(5) A currently licensed dentist may delegate under direct supervision to a dental assistant or certified dental assistant any functions not specifically referenced in sections (2)-(4) of this rule and not considered either the practice of dentistry or the practice of dental hygiene as defined in sections 332.071 and 332.091, RSMo, and 4 CSR 110-2.130.

(6) The licensed dentist is responsible for determining the appropriateness of delegation of any specific function based upon knowledge of the skills of the auxiliary, the needs of the patient, the requirements of the task and whether proof of the competence is required.

(7) Pursuant to section 332.031.2., RSMo, the dentist is ultimately responsible for patient care. Nothing contained in the authority given the dentist by this rule to delegate the performance of certain procedures shall in any way relieve the supervising dentist from liability to the patient for negligent performance by a dental assistant or certified dental assistant.

8. Licensee's delegation of duties including packing cord, removing bonds and bands and clipping wire to any of his dental assistants is improper delegation in violation of regulation 20 CSR 2110-2.120.



9. Licensee's delegation of duties including packing cord, removing bonds and bands and clipping wire to any of his dental assistant assists the assistants in practicing a profession for which she is not licensed or certified by the State of Missouri.

10. Licensee's delegation of duties including packing cord, removing bonds and bands and clipping wire to his dental assistants constitutes violation of a professional trust or confidence.

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

....

(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:

1. The terms of discipline shall include that the dental license be placed on **PROBATION** for a period of **four (4) 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 packed 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 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 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). Such additional discipline may be imposed following a hearing, subject to proper notice, before the Board.
- 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 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.



2. 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.

3. 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.

4. 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.

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

James G. Evans  
James G. Evans, D.D.S.

Date 2/21/11

BOARD

Brian Barnett  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 2/28/11

