

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND DAVID M. FUCHS, D.D.S.**

Come now David M. Fuchs, 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,¹ 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 2005012120 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

¹ 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 David M. Fuchs, D.D.S. is licensed by the Board as a dentist, License No. 2005012120. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about March 25, 2011, the Board received a complaint regarding Licensee from S.H., a former patient of Licensee's. S.H. stated she went to Licensee on January 31, 2011 for an exam and because she had a broken tooth. Licensee informed S.H. that she would need a crown. S.H. stated she told Licensee that she got nervous at the dentist and asked him if he could prescribe something to relax her during the crown procedure. Licensee prescribed S.H. three medications to be taken prior to her crown appointment on February 28, 2011. Lorazepam 2 mg at 5:30 a.m., Hydroxyzine pam, 50 mg at 6:00 a.m., and Meperidine 50 mg at 7:00 a.m. S.H. stated her appointment was at 8:00 a.m.

4. S.H. dozed off at various times throughout the crown procedure. In the middle of the procedure, S.H. awoke and reported that she was not able to breathe. S.H. felt as if she were "strangling." Licensee's dental assistant removed impression material from S.H.'s mouth and S.H. was able to breathe at that point. S.H. required assistance to walk out of the operatory and to the front desk after the procedure, and reported feeling groggy until about noon the following day.

5. During S.H.'s February 28, 2011 appointment, Licensee's dental assistant, L.B., took impressions of S.H.'s mouth while Licensee was out of the room. L.B. was not an expanded function dental assistant (EFDA) or a Dental Assistant National Board (DANB) certified dental assistant.

6. Section 332.098, RSMo, states, in relevant part:

1. Dentists delegating expanded-functions duties to dental assistants or dental hygienists shall do so in accordance with rules set forth by the board. No person shall perform expanded-functions duties in this state except under his or her own name and unless the board has issued to such person a permit to perform expanded-functions duties in this state; however, no provision of this section or this chapter shall be construed to make it unlawful for a duly registered and currently licensed dentist in this state to perform dental services that would be considered expanded-functions duties in this state or to make it unlawful for dental assistants,



certified dental assistants, or expanded-functions dental assistants to perform polishing of teeth. Under section 332.093, the board shall not promulgate any rule allowing the delegation of acts to a dental assistant that would conflict with the practice of dental hygiene as defined in section 332.091. Expanded-functions permits shall be renewed every five years. The board may promulgate rules specifying the criteria by which expanded-functions permits may be issued and renewed. Expanded-functions permits shall be subject to discipline as provided in section 332.321.

7. Section 332.362, RSMo, states, in relevant part:

1. All duly registered and currently licensed dentists in Missouri who prescribe and administer deep sedation or general anesthesia agents in the course of providing dental services shall possess a deep sedation or general anesthesia permit issued by the board. All duly registered and currently licensed dentists in Missouri who prescribe and administer conscious sedation agents in the course of providing dental services shall possess a conscious sedation permit issued by the board.

2. Dentists prescribing or administering deep sedation or general anesthesia or conscious sedation agents shall do so in accordance with rules set forth by the board.

3. Any dental office where deep sedation or general anesthesia or conscious sedation agents are administered shall possess a site certificate issued by the board and comply with the board's minimum standard for site certificates.

8. Regulation 20 CSR 2110-2.120 states, in relevant part:

...

(1) Definitions.

(A) Certified dental assistant – a dental assistant is currently certified by the Dental Assisting National Board, Inc.

(B) Dental assistant – an employee of a duly registered and currently licensed dentist in Missouri, other than a dental hygienist or a 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 competence 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—

16. Making impressions for the fabrication of fixed prosthesis;

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

9. Regulation 20 CSR 2110-4.010 states, in relevant part:

(1) The following words and terms, when used in this rule shall have the following meanings.

(B) Anxiolysis - the diminution or elimination of anxiety. Anxiolysis is not conscious sedation

(C) Conscious sedation – a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by a pharmacologic or non-pharmacologic method, or a combination thereof. Conscious sedation is not deep sedation or general anesthesia.

(D) Conscious sedation permit – a document issued by the Missouri Dental Board to a dentist that allows the dentist to administer enteral and/or parenteral conscious sedation.

(E) Conscious sedation site certificate – a document issued by the Missouri Dental Board to a specific dental office where conscious sedation is administered.

(F) Deep sedation – a controlled state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to verbal command, and is produced by a pharmacologic or non-pharmacologic method or a combination thereof.

...



(L) Enteral conscious sedation – a technique of administration in which the drug is absorbed through the gastrointestinal tract or oral mucosa (i.e. oral, rectal, or sublingual). Enteral conscious sedation is not parenteral conscious sedation, deep sedation or general anesthesia.

10. Regulation 20 CSR 2110-4.020 states, in relevant part:

(1) No dentist shall administer enteral and/or parenteral conscious sedation unless the dentist possesses a conscious sedation permit issued by the Missouri Dental Board. (A dentist is not required to possess a permit for the prescription or administration of drugs prescribed for anxiolysis and/or pain control.) This permit shall be renewed by June 1 every five (5) years from the year of issuance.

(2) No dentist shall prescribe sedative agents for enteral sedation unless the dentist possesses an enteral or parenteral sedation permit issued by the Missouri Dental Board. No dentist shall prescribe parenteral conscious sedation agents unless the dentist possesses a parenteral conscious sedation permit issued by the Missouri Dental Board.

(3) No dentist shall administer enteral and/or parenteral conscious sedation at a dental office unless the office has been issued a site certificate by the Missouri Dental Board. No dental office shall be the site for the administration of enteral and/or parenteral conscious sedation without being issued a site certificate by the Missouri Dental Board. This site certificate shall be renewed by June 1 every five (5) years from the year of issuance. The dentist-in-charge is responsible for submitting the application and maintaining the documentation as required in sections (8) and (10) of this rule.

11. Licensee's delegation of duties including taking of a crown impression to a non-EFDA or DANB certified dental assistants as described in paragraph 5 above was improper delegation in violation of § 332.098, RSMo and regulation 20 CSR 2110-2.120 for which the Board has cause to discipline Licensee's license.

12. Licensee's practicing conscious sedation without conscious sedation and site permits, as described in paragraphs 3 and 4 above, constitutes violation of § 332.362, RSMo and regulations 20 CSR 21100-4.010 and 4.020, for which the Board has cause to discipline Licensee's license.

13. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5) and (6), 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[.]

Joint Agreed Disciplinary Order

14. 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.

15. The terms of discipline shall include that the dental license 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 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 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. Vacations or other temporary trips outside the state of Missouri shall not constitute removal or absence from the state for purposes of this paragraph.

- 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. In the event the Board determines that the Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the Licensee. No order shall be entered by the Board pursuant to this paragraph without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.
- 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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



David M. Fuchs, D.D.S.

Date 04/17/2013

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date 5/1/13

