

RECEIVED

MAY 10 2011

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND DONALD L. GOSSETT, D.D.S.**

MISSOURI DENTAL BOARD

Come now Donald L. Gossett, 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 013475 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 Donald L. Gossett, D.D.S. is licensed by the Board as a dentist, License No. 013475. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On or about August 18, 2010, the Board received a complaint against Licensee filed by patient R.H. In his complaint, R.H. alleged that he went to Licensee on July 27, 2010 to have a full upper and partial lower extraction done and Licensee removed R.H.'s wisdom tooth instead of a decayed molar. R.H. alleged that the treatment plan called for Licensee to remove decayed molar, tooth number 19. However, Licensee removed tooth number 17, his wisdom tooth, leaving tooth number 19 in place. R.H. states that the treatment plan called for tooth number 17 to remain to anchor his lower partial denture. R.H. also stated that he has exposed bone on his upper gum that was not closed up by Licensee and he will have to pay his general dentist to remove the decayed molar even though he paid Licensee to do so.
4. The Board conducted an investigation of R.H.'s complaint including reviewing R.H.'s dental record from Licensee and also his general dentist. The records reveal that on July 27, 2010, Licensee extracted eleven teeth from R.H. R.H.'s treatment called for extraction of tooth number 19 as it had distal decay and for tooth number 17 to remain as a distal abutment for a denture. During the procedure on July 27, 2010, Licensee extracted tooth number 17 but left tooth number 19. During a visit with his general dentist, R.H. expressed concern over removing the wrong tooth. His general dentist assured him it would not adversely affect him. During post-operative visits, Licensee agreed to extract tooth number 19 at no cost to R.H. On August 27, 2010, Licensee extracted tooth number 19. Licensee noted patient was "doing well, no complaint of pain or swelling. Clinically healing well without erythema or other problems," during a September 7, 2010 follow-up visit.
5. On or about October 25, 2010, the Board received Licensee's written response to R.H.'s complaint. In his letter dated October 19, 2010, Licensee stated R.H. was a patient of record for many years and was referred to Licensee for these services by his general dentist. Licensee stated he explained to R.H.



that they would reconstruct his mouth to a livable situation. He expressed concern over R.H.'s maxillary molars which would require removal. He stated they had a lengthy discussion about his treatment plan and R.H. decided to go forward with the surgery. He agreed to the treatment in the plan which would involve removal of all maxillary teeth and teeth numbers 19, 31 and 32 in the mandible. Licensee noted a carious lesion on the distal of tooth number 19 which was radiographically evident but not easily noted clinically. Licensee stated on the day of surgery, R.H. was treated with intravenous and local anesthesia and the extractions of the maxillary teeth and sinus closures were completed as anticipated. Licensee stated that "unfortunately tooth number 17 was removed instead of tooth number 19. My only explanation for this is that I looked at the treatment plan and in my mind it was logical that it was going to be a distal extension on both sides. Since we had removed tooth number 32 and 31, I inappropriately assumed that tooth number 17 was the tooth to be removed. It was not clinically evident that there was a problem with 19; however it was radiographically evident. Unfortunately tooth number 17 was removed instead of 19 and all other treatment was completed successfully." Licensee stated he received a call from R.H.'s general dentist regarding the removal of tooth 17 instead of 19. Licensee stated he was "disappointed this had occurred, but at that point could not reconcile the issue." He stated when R.H. returned for his postoperative appointment, Licensee explained to him he was aware of the situation and apologized for the error. He mentioned he did not think it would alter his treatment plan drastically. R.H. informed Licensee that his general dentist would be removing tooth number 19 and Licensee offered to do it if R.H. agreed. Licensee continued to treat R.H. including for some dull aching associated with the extraction of tooth 17. Licensee completed a debridement of tooth 17 and also extracted tooth 19 at no cost to R.H. Licensee stated R.H. "seemed to be quite pleased with the treatment's resolution." He stated that R.H. is not adjusting his long term treatment plan. He stated he "made every attempt to complete [R.H.]'s care in an appropriate manner. All of [R.H.]'s follow up care and the extraction of tooth number 19 were completed at no charge. It appears that [R.H.] had enough confidence in me to allow me to continue his care and bring it to completion."

6. Licensee's actions as described above in paragraphs 2 through 5 constitute incompetency or 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 in that Licensee



extracted the wrong tooth from patient R.H. as detailed in his treatment plan and failed to meet the minimum standard of care by extracting the wrong tooth for which discipline of Licensee's license is appropriate.

7. Licensee's actions as described above in paragraphs 2 through 5 constitute violation of a professional trust or confidence in that Licensee extracted the wrong tooth from patient R.H. as detailed in his treatment plan and failed to meet the minimum standard of care by extracting the wrong tooth for which discipline of Licensee's license is appropriate.

8. 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 2000:

1. The terms of discipline shall include that the dental license, license number 013475, be **CENSURED.**

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


Donald L. Gossett, D.D.S.

Date 5.4.2011

BOARD


Brian Barnett,
Executive Director
Missouri Dental Board



Date 5/11/11

