

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND THOMAS M. GOTSIS, D.D.S.**

Come now Thomas M. Gotsis, 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 a preponderance of the 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 were 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 015476 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 Thomas M. Gotsis, D.D.S. is licensed by the Board as a dentist, License No. 015476. Licensee's Missouri license is current and active.

3. On or about June 6, 2012, the Board received a complaint regarding Licensee. The complaint alleged that the Missouri Bureau of Narcotics and Dangerous Drugs (BNDD) was investigating possible drug law violations against Licensee. The complaint alleged that BNDD's investigation revealed that multiple patients of Licensee received large quantities of Hydrocodone/APAP, a controlled substance pursuant to Chapter 195, RSMo. The complaint also alleged that Licensee prescribed people believed to be Licensee's relatives Hydrocodone/APAP, including several relatives that lived in another state. Some patients had received in excess of 1,000 doses of Hydrocodone/APAP. Finally, the complaint alleged that two dentists prescribed Licensee Hydrocodone/APAP. As a result of the complaint, the Board initiated an investigation.

4. Prior to interviewing Licensee, BNDD obtained controlled substance profiles from area pharmacies for Licensee. The profiles identified nine patients who had each been prescribed a large quantity of Hydrocodone/APAP by Licensee.

5. On June 25, 2012, Board Investigator Kevin Davidson² went to Licensee's practice with Michael Boeger, Administrator of BNDD and a BNDD investigator (collectively, "the investigators"). First, Mr. Boeger requested that Licensee pull the patient files for the nine patients identified in the pharmacy profiles. While waiting for the files, Investigator Davidson observed a letter Licensee wrote to his patients stating he was having back surgery on June 27, 2012. The letter also provided a dentist's name for services. In reviewing the nine patient records, the investigators determined that only a few of the controlled substance prescriptions Licensee prescribed were documented in the patient records. Several patients had no prescriptions documented and according to their patient records were receiving only preventative care.

6. During the June 25, 2012 visit to Licensee's office, the investigators spoke with Licensee's employee who is also a patient identified on the pharmacy profiles. The profiles revealed that Licensee

² Mr. Davidson was employed by the Board at the time of the complaint and initial investigation. Mr. Davidson is no longer an employee of the Board.

prescribed the employee 1,260 doses of Hydrocodone/APAP 10-650 tablets from March 7, 2007 through August 28, 2011. None of those prescriptions were documented in her patient record. The employee stated that Licensee would give her a prescription for "headaches and other things" and that she had plastic surgery for "everything below the neck" and needed something for the pain. She stated Licensee gave her pain medications as she needed them over a period of years. She stated she knew it was outside the scope of Licensee's practice.

7. During the June 25, 2012 visit, the investigators also spoke with Licensee. Licensee admitted he prescribed the employee Hydrocodone/APAP when she had plastic surgery and for things outside the scope of dentistry. He stated he was just trying to help her. He also stated that there was not documentation in the patient files for the controlled substance because "he wrote a lot of prescriptions for friends and most of the time the prescriptions were not for dental reasons." He stated he knew it was outside the scope of dentistry. He stated for patient D.E., Licensee picked up the prescription for D.E. and took it to D.E.'s apartment. Licensee stated he was not aware it was unlawful to pick up someone else's controlled substance prescription. Licensee stated he did not maintain an inventory for controlled substances. He stated he did not dispense them, even to D.E., so he did not believe he needed the inventory.

8. The review of the patient records compared to the pharmacy profiles revealed:

- a. Patient G.G.'s (a family member of Licensee) patient record did not contain any documentation of controlled substances prescribed by the BNDD controlled substance profile showed that Licensee wrote three prescriptions for Hydrocodone/APAP in March and April of 2011 for thirty tablets each or a total of 90 tablets.
- b. Patient N.G.'s (a family member of Licensee) patient record did not contain documentation of prescribed controlled substances but the BNDD profile showed that Licensee prescribed Hydrocodone/APAP to N.G. four times and issued two refills for a total of six prescriptions and 160 doses. Licensee also wrote three prescriptions for Alprazolam, a class IV controlled substance, for a total of 18 doses. Licensee wrote the prescriptions for N.G. from February 2007 through April 2011.
- c. Patient L.G.'s (a family member of Licensee) patient record did not exist but the BNDD profile showed that Licensee issued three prescriptions and one refill of Alprazolam and one

- prescription of Zolpidem (Ambien), a class IV controlled substance. Licensee wrote prescriptions for 20 doses of Alprazolam and ten doses of Zolpidem between March 2007 and February 2012.
- d. Patient D.W.'s patient record did not contain documentation of controlled substances Licensee prescribed but the BNDD profile stated that Licensee prescribed Hydrocodone/APAP for D.W. 17 times plus 15 refills for a total of 1,450 doses. Licensee wrote the prescriptions between June 2009 and March 2012.
 - e. Patient D.N.'s patient file contained documentation of a prescription for 40 tablets Hydrocodone/APAP that Licensee wrote on December 28, 2010; a prescription for 40 tablets of Hydrocodone/APAP written on February 2, 2011 and a notation on D.B.'s computer record of a prescription for Hydrocodone/APAP written on May 22, 2012 with no quantity listed. There is no record of that prescription being filled. The BNDD profiles, however, demonstrate that Licensee wrote D.B. a total of 26 new prescriptions and 21 refills, a total of 1,921 doses, between December 2006 and May 2012.
 - f. Patient E.M.'s patient file stated he was first seen as a patient in February 1981 and documented six prescriptions Licensee wrote him for Hydrocodone/APAP. Licensee wrote the prescriptions between July 2001 and September 2010 according to the patient file. The BNDD controlled substance profile documented thirteen new prescriptions and ten refills, a total of 1,120 doses, which Licensee wrote for E.M. between August 2009 and June 2011.
 - g. Patient L.M.'s patient file stated that she was first seen as a patient in May 1987 and included two prescriptions for Hydrocodone, one on March 18, 2002 and one December 1, 2008 that Licensee wrote for L.M. The patient file documented a third prescription for Hydrocodone/APAP on the computer record but not the chart on November 2, 2011. The BNDD profile documented that Licensee wrote twelve new prescriptions and nine refills for Hydrocodone/APAP, a total of 930 doses, between, December 2008 and November 2011.
 - h. Patient D.E.'s patient record did not contain documentation of any controlled substances that Licensee wrote for him. However, the BNDD profile indicated Licensee wrote four new prescriptions and three refills, a total of 980 doses, for D.E. between October 2009 and

September 2011. The profile also demonstrated that Licensee picked up a prescription for D.E. on September 14, 2011. The pharmacy notified BNDD of the suspicious activity.

9. Also on June 25, 2012, the investigators went to the dental practice of both dentists alleged to be writing Licensee prescriptions for Hydrocodone/APAP. The first, Dr. T.N.'s receptionist stated that Licensee was not a patient of record. She asked about Licensee's race. When informed of Licensee's race, the receptionist asked if Licensee was a dentist. The receptionist then stated that Dr. T.N. went to Licensee's practice to see him and she did not know where the patient record was. The second, Dr. M.M. stated that Licensee was a good friend and he prescribed him Hydrocodone/APAP when working on his teeth. He stated he had done major work on Licensee, including crowns and implants, prescribed for him in limited doses and when only necessary. The patient record demonstrated that Dr. M.M. saw Licensee between April 7, 2010 and March 28, 2012. Dr. M.M. prescribed Vicodin, a controlled substance, seven times during that period.

10. On July 3, 2012, Investigator Davidson spoke with patient L.M. regarding the Hydrocodone/APAP Licensee wrote to her. She stated she had been Licensee's patient for 14 years and she stated he prescribed her pain medication. She stated he prescribed it when he did fillings and root canals. She did not remember the number of times he wrote a prescription but she stated she asked Licensee if he would write her a prescription for Hydrocodone/APAP due to pain she was having in her back. She stated he wrote it and that he wrote a "couple" but was not more specific. She that patient E.M. was her brother.

11. On July 3, 2012, Investigator Davidson spoke with patient D.E. about the controlled substance prescriptions. D.E. stated Licensee was his dentist and a "good friend." He stated he had not had dental work done that required controlled substance pain medication but that he had back surgery and when he ran out of his original prescription, Licensee wrote him a prescription for Hydrocodone. He stated he could not remember how many prescriptions but guessed it was three or four. He stated that Licensee picked up the prescription for him because he had been out of town. He stated Licensee picked it up because Licensee "was also in pain so he had asked if he could write a prescription and then go pick it up and get a few tablets of pain medication for himself." D.E. told Licensee that would be okay and he took about 10 tablets of Hydrocodone.

12. On July 5, 2012, Investigator Davidson spoke with patient E.M. about the controlled substances prescriptions. E.M. stated he had been a long time patient of Licensee and over the years he had a lot of work done. He stated three years ago Licensee pulled all of his upper teeth and made a denture. E.M. stated

Licensee gave him controlled substance pain medication following the procedure. He stated that Licensee also gave him prescriptions for pain medicine following three back surgeries he had because they were good friends and E.M. could not afford to go to the doctor.

13. On July 5, 2012, Investigator Davidson spoke with patient D.B. about the controlled substance prescriptions. D.B. stated he was a patient and family friend of Licensee. He stated that Licensee prescribed him pain medicine for pain in his wisdom teeth for "six or seven years" because he put off having them pulled. He stated Licensee would also write him prescriptions for Amoxicillin and a Z-Pak.

14. On August 27, 2012, Investigator Davidson met with Licensee a second time. Licensee was present in the office but not seeing patients following back surgery. Licensee stated he was in the process of selling his practice because he could not continue due to the chronic back issues. Licensee described his practice and staff. Licensee stated that patient G.G. was his brother for whom he had done dental work and prescribed controlled substances following the dental work. He stated patient N.G. was his son for whom he did dental work. Licensee stated he prescribed N.G. controlled substances for pain following deep fillings. He stated L.G. was his wife. He stated he did not have a patient record for her but had prescribed controlled substances to her. He stated he prescribed patient D.W. controlled substances for "TMD issues." He stated "a lot of the prescriptions had been called in and didn't get charted." Licensee stated D.W. gave him some of the pills he prescribed to her. He stated D.W. gave him ten pills a total of ten times. He stated that patient E.M. "gave him a few pills." He stated that he prescribed controlled substances to patient L.M. following a root canal but also for her back problems. He stated he prescribed controlled substances to patient D.E. for dental related work and for his back surgery. He stated D.E. gave him pills but he could not remember how many times. He stated that Dr. T.N. prescribed him controlled substances for his back but he did not tell Dr. T.N. why he needed the pills.

15. On September 19, 2012, the Board received information from Licensee that he was scheduled to go to the Florida Recovery Center after he closed his practice.

16. BNDD completed an inspection at Licensee's practice on June 25, 2012. On or about July 2, 2012, BNDD completed its initial investigation into the allegations regarding Licensee's prescriptions for controlled substances. BNDD determined that Licensee routinely prescribed high level of narcotics to patients for years. BNDD concluded that Licensee committed the following violations of Chapter 195 and regulation 19

CSR 30: 1) possessing a patient's controlled substances (§ 195.070.4, RSMo), 2) illegal possession of controlled substances (§§ 195.050.4, 195.180 and 195.201, RSMo), 3) failure to maintain controlled substance receipt record (§ 195.050.6, RSMo, and 19 CSR 30-1.048(1)), 4) failure to maintain an initial inventory of controlled substances (§ 195.050.6, RSMo, and 19 CSR 30-1.042(2)(A)), 5) failure to maintain controlled drug dispensing log (§ 195.050.6, RSMo, and 19 CSR 30-1.048(1)) , 6) prescribing in bad faith outside the scope of practice in an unlawful manner (§ 195.070.1, RSMo, and 19 CSR 30-1.060), 7) prescribing outside the scope of drug registration (§ 195.030.2, RSMo), 8) illegal distribution of controlled drugs (§§ 195.030.2 and 195.242.1, RSMo) , 9) failure to document controlled drug prescriptions in patients' charts (§ 195.050.6, RSMo, and 19 CSR 30-1.048(2)), and 10) inadequate security to prevent diversion of drugs (19 CSR 30-1.031(1)).

17. On or about January 17, 2013, Licensee completed treatment at Florida Recovery Center. Licensee complied with all discharge recommendations except one due to financial concerns. Licensee discussed alternatives to the recommendation. Licensee participates in random toxicology screening, all of which has been negative, attends monitoring meetings, therapy, AA meetings and meets with his AA sponsor. Licensee also attended a three-day continuing medication education course at the University of Florida related to misprescribing controlled drugs. Licensee also joined the Missouri Well Being Program.

18. On March 27, 2014, Board Investigator Tracey Pfaff spoke with Licensee. Licensee described his treatment and aftercare including the 12-step program, therapy, and participation in AA. He stated he knew he was accountable for everything that happened and took full responsibility.

19. During the Board's regularly scheduled October 2014 meeting, Licensee appeared before the Board. Licensee stated that his behavior between 2009 and 2012 was "egregious" and he took full responsibility for what occurred. He stated that he "did things he never thought he would do because of his back problems" including writing himself prescriptions for controlled substances. He admitted he wrote prescriptions outside the scope of dentistry. He described how he stays accountable including church, bible study, AA, drug testing, the doctors in Florida, and Well Being. He stated he "accepts the consequences the Board gives."

20. Section 332.052, RSMo, states, in relevant part:

1. Dentists shall maintain an adequate and complete patient record for every patient and may maintain electronic records provided the record-keeping format is capable of being printed for review by the board.

21. Section 332.361, RSMo, states, in relevant part:

1. Any duly registered and currently licensed dentist in Missouri may write, and any pharmacist in Missouri who is currently licensed under the provisions of chapter 338, RSMo, and any amendments thereto, may fill any prescription of a duly registered and currently licensed dentist in Missouri for any drug necessary or proper in the practice of dentistry, provided that no such prescription is in violation of either the Missouri or federal narcotic act.

2. Any duly registered and currently licensed dentist in Missouri may possess, have under his control, prescribe, administer, dispense, or distribute a "controlled substance" as that term is defined in section 195.010, RSMo, only to the extent that:

(2) The dentist prescribes, administers, dispenses, or distributes the controlled substance in the course of his professional practice of dentistry, and for no other reason;

(3) A bona fide doctor-patient relationship exists[.]

22. Licensee's actions as described in paragraphs 3 through 19 above constitute use of any controlled substance to an extent that such use impairs a person's ability to perform the work of a licensed dentist for which the Board has authority to discipline Licensee's license.

23. Licensee's actions as described above in paragraphs 3 through 19 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 for which the Board has authority to discipline Licensee's license.

24. Licensee's actions as described in paragraphs 3 through 19 above constitute violation of provisions of Chapter 332, as described in paragraphs 20 and 21 above, for which the Board has authority to discipline Licensee's license.

25. Licensee's actions as described above in paragraphs 3 through 19 constitute violation of a professional trust or confidence, for which the Board has authority to discipline Licensee's license.

26. Licensee's actions as described in paragraphs 3 through 19 above constitute violations of Missouri drug laws, as described in paragraph 16 above, for which the Board has authority to discipline Licensee's license.

27. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(1), (5), (6), (13) and (15), 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:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

...

(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;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

...

(13) Violation of any professional trust or confidence;

...

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

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:

28. The terms of discipline shall include that the dental license, license number 015476, be placed on **PROBATION** for a period of five (5) 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. WELLNESS REQUIREMENTS

A. During the disciplinary period, Licensee shall continue to participate in the Missouri Dental Well Being Committee ("Committee"). Licensee shall follow all recommendations of the Committee or the Committee Administrator with regards to counseling, evaluations, any treatment deemed necessary by an evaluation, and any follow-up care. Failure to fully participate in the Well Being Committee shall constitute a violation of this Agreement.

- B. During the disciplinary period, Licensee shall, at Licensee's expense, submit to drug screens as required by the Board. Licensee shall, upon demand and without delay, provide a biological sample to the Board's designated representative, including allowing the Board's designated representative to obtain witnessed biological fluid samples and shall cooperate fully and completely with the Board's designated representative in providing such samples. The presence of any controlled substance, or any drug whatsoever in a drug screen for which Licensee does not hold a valid prescription shall constitute a violation of this Agreement.

II. 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.

III. 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.

IV. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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

BOARD

Thomas M. Gotsis DDS
Thomas M. Gotsis, D.D.S.

Date 5 DEC 2014

Brian Barnett
Brian Barnett,
Executive Director
Missouri Dental Board

Date 12/12/2014