

SEP 13 2010

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND HAYWOOD L. HAMBRICK, D.D.S.** MISSOURI DENTAL BOARD

Come now Haywood L. Hambrick, 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 012136 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 Haywood L. Hambrick, D.D.S. ("Hambrick") is licensed by the Board as a dentist, License No. 012136. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

Practicing on a suspended license

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 March 9, 2010, Board Investigator Joseph Sears (Sears) visited Hambrick's practice to determine whether he was practicing with a suspended license (Visit).

5. During the Visit, Licensee informed Sears that he had been practicing while his license was suspended but only in Barbados.

6. During the Visit, Licensee stated that on February 11, 2010, he received a compliance letter from DOR and he "believed [it] meant that his license had been reinstated and that he could again practice in Missouri."

7. During the Visit, Sears asked Licensee if he provided the Board with a copy of the compliance letter. The compliance letter specifically states in bold all capital letters: "**PLEASE PROVIDE A COPY OF THIS LETTER TO YOUR LICENSING ENTITY.**" Licensee stated that he did not provide the Board a copy because "it was the Board's responsibility to update his license information."

8. On March 16, 2010, Licensee provided a copy of the February 11, 2010 compliance letter. The Board fully restored Licensee's license on March 17, 2010. Licensee's license was suspended for 92 days.

9. During the Visit, Sears requested copies of Licensee's patient calendars for November 12, 2009 through February 11, 2010. Sears also requested several patient records for individuals seen during the same period.

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.

10. Licensee's patient calendars for November 12, 2009 through February 11, 2010 demonstrate that Licensee had appointments on: November 23, 24, 25, 29 and 30; December 1, 2, 3, 4, 5, 7, 8, 11 and 12. Appointments were either marked through with a check mark or letters "NS."

11. Patient records for individuals listed on the patient calendars between November 12, 2009 and February 11, 2010 demonstrate that:

- a. Licensee provided dental services to patient V.O. on December 11, 2009.
- b. Licensee provided dental services to patient L.T. on December 11, 2009.
- c. Licensee provided dental services to patient V.L. on December 11, 2009 and January 16, 2010.
- d. Licensee provided dental services to patient B.S. on December 11, 2009, January 15, 2010 and February 8, 2010.
- e. Licensee provided dental services to patient T.S. on December 10, 2009 and January 16, 2010.
- f. Licensee provided dental services to patient J.M. on December 11, 2009, January 15, 2010 and February 8, 2010.
- g. Licensee provided dental services to patient A.W. on December 11, 2009.
- h. Licensee provided dental services to patient J.J. on December 11, 2009.

12. On December 3, 2008, the Board received Licensee's renewal application. In response to question number 5, Licensee answered "yes," he had earned 50 hours of Board-approved continuing education during the relevant time period. In response to question number 6, Licensee answered "no," he did not have current certification in either basic life support (BLS) or advanced cardiac life support (ACLS).

13. On December 3, 2008, the Board sent Licensee a letter stating that his license had been renewed but that because Licensee did not have current BLS or ACLS certification, he had not met all the requirements for renewal. Further, the Board stated that if he did not comply, Licensee could be subject to discipline.

14. On January 8, 2009, Licensee was selected for a random audit (Audit) of his continuing education hours and BLS or ACLS certification for the reporting period of December 1, 2006 through November 30, 2008 pursuant to 20 CSR 2110-2.240(2)(A), which states in pertinent part:

The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board

in its audit by providing timely and complete responses to the board's inquiries.

Licensee was asked to verify his continuing education and BLS or ACLS certification by February 15, 2009.

15. On May 4, 2009, the Board had not received a response to the Audit from Licensee. The Board sent a letter on May 4, 2009 requesting a response from Licensee within 10 days of the receipt of the letter. The May 4, 2009 letter was sent by certified mail to Licensee's practice location.

16. The Board received the return receipt from the May 4, 2009 letter on May 11, 2009. It was signed for and dated May 7, 2009.

17. In response to the Audit, on September 9, 2009 Licensee provided evidence of 31 of the required 50 hours of continuing education. Licensee was unable to verify the remaining 19 hours or proof of his approved BLS or ALCS course.

18. Board Investigator Mark Dudenhoeffer (Dudenhoeffer) contacted Licensee by telephone. Dudenhoeffer requested any additional continuing education verifications and proof of the BLS or ACLS certification. Licensee stated that he "would look for more."

19. Investigator Dudenhoeffer attempted to contact Licensee on September 15 and 25, 2009 and October 7, 2009. Dudenhoeffer spoke with Licensee's receptionist each time. Dudenhoeffer requested that Licensee return his call. As of October 8, 2009, Licensee did not return the call.

20. During Investigator Sears' March 9, 2010 Visit, Sears requested a record of the missing 19 continuing education hours and a record of Licensee's BLS or ACLS certification as a follow-up to Investigator Dudenhoeffer's investigation. Licensee stated that he was unable to provide either record during the visit. He stated he had no additional continuing education records to provide and he had not yet completed the BLS or ACLS certification. In response to Sears' question as to why he was not in compliance, Licensee stated that he had "numerous difficulties scheduling a BLS class," and that "he had so many [continuing education] records, he simply neglected to provide them all."

21. Sears requested that Licensee provide continuing education records no later than March 16, 2010. To date, the Board received no additional continuing education records.

22. Sears also requested records of Licensee's BLS certification as soon as he completed the course. Licensee registered for a course during Sears' visit scheduled for April 19, 2010. However, on March 17, 2010, the Board received a copy of Licensee's BLS certification which he took on March 15, 2010.

23. Licensee has a duty to maintain full and complete records of all approved continuing education credits earned pursuant to and as defined by 20 CSR 2110-2.240(2)(A), which states in pertinent part:

Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document the licensee's attendance at the continuing education course including, but not limited to, retaining the titles of the courses taken, dates, locations, receipts, course sponsors, agendas and number of hours earned.

24. Licensee's failure to obtain the required fifty (50) continuing education credits is a violation of section 332.261 and of Regulations 20 CSR 2110-2.240(2) and 20 CSR 2110-2.071 which requires continuing education for renewal of a license.

25. Pursuant to Regulation 20 CSR 2110-2.240(5), "a violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional, or any combination of these, in the performance of the functions, duties, or both, of a dentist or dental hygienist, depending on the license's conduct."

26. Licensee's failure to obtain BLS or ACLS certification is a violation of 20 CSR 2110-2.071 which requires BLS or ACLS as a component of renewal of a license.

27. Licensee's conduct in practicing dentistry while his license was suspended as described in paragraphs 3 through 11 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 he was aware his license was suspended between November 12, 2009 and February 11, 2010 but he provided dental services to patients throughout that time and in that he failed to report the notice of tax compliance to the Board.

28. Licensee's conduct in practicing dentistry while his license was suspended as described in paragraphs 3 through 11 constitutes violation of a professional trust or confidence.

29. Licensee's answer of "yes" to the question regarding completion of continuing education hours on his 2008 renewal when, in fact, he had not completed 50 hours of education constitutes the use of fraud,

deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issue pursuant to this chapter.

30. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(3), (5), (6), 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:

...

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

.....

(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;

(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 012136, be placed on **PROBATION** for a period of two (2) 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 make up the nineteen (19) approved continuing education hours that he was delinquent within the first twelve (12) months of the effective date of this Agreement.
- B. Licensee shall complete an additional nineteen (19) approved continuing education hours within the first twelve (12) months of the effective date of this Agreement.
- C. These hours that need to be made up and the additional hours are in addition to those hours required by law for renewal and must be classroom/out of office hours (NO correspondence or

internet courses.) These additional continuing education hours cannot carry over into the next reporting period.

- D. Licensee shall provide the Board with proof of attendance of the continuing education hours no later than thirty (30) days after attending the course. Failure to attend and/or provide the required documentation to the Board will result in a violation of the terms of discipline.
- E. 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.
- F. Licensee shall take and successfully complete a Board approved BLS/ACLS course within the first three (3) months of the disciplinary period. Licensee shall provide the Board with proof of attendance and successful completion of the course no later than thirty (30) days after attending and completing the course.

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).

- 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.

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 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 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.

LICENSEE

BOARD

Haywood L. Hambrick
Haywood L. Hambrick, D.D.S.

Brian Barnett
Brian Barnett,
Executive Director
Missouri Dental Board

Date 8 Sept 10

Date 9/13/10