

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND MICHAEL A. HANNA, D.D.S.**

Come now Michael A. Hanna, 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 015311 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 and Chapter 332, RSMo.

**RECEIVED**

**MAY 24 2010**

**MISSOURI DENTAL BOARD**

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 Michael A. Hanna, D.D.S. is licensed by the Board as a dentist, License No. 015311. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On or about October 17, 2008, the Board received a complaint against Licensee. The complaint alleged that Licensee had unlicensed people cleaning patients' teeth in his dental office.
4. Following receipt of the complaints against Licensee, the Board conducted an investigation of the complaint. On or about January 6, 2010, Board Investigator Joseph Sears traveled to Licensee's practice office in Knob Knoster, Missouri. Sears spoke with Licensee at his office. The investigation revealed:
  - a. Licensee owns dental practices in Knob Knoster and Warrensburg, Missouri. He works at his Knob Knoster practice on Monday and Tuesday and in Warrensburg on Wednesday and Thursday. Licensee's entire staff works solely with him and travels with him to both office locations.
  - b. Licensee confirmed that he employed four dental assistants, one of which is an expanded function dental assistant (EFDA) and "one other he trained himself." Licensee allowed Sears to speak with his dental assistants individually.
  - c. Licensee stated that his assistants are allowed to do the following: chair-side assist, take x-rays, call in prescriptions, take diagnostic impressions only, profiles on children and adults and scale above the gum line.
  - d. Licensee stated that his assistants are not allowed to do the following: perio root planning, assist with orthodontia work, place or seat crowns, monitor or administer nitrous oxide or remove prosthetics.
  - e. Licensee stated that "Jodie" is allowed to re-cement temporary crowns, but that he does check her work.
  - f. Licensee also informed Sears that if he is not in the office, patients are not seen.

5. On January 6, 2010, Sears interviewed Heidi Fox-Surls. Fox-Surls is a dental assistant. She is neither a certified expanded function dental assistant (EFDA) nor a Dental Assisting National Board (DANB) certified assistant. At the time of the interview, she had been with Licensee's practice for the last three years and also worked for Licensee from 1995 to 1997.

6. During the interview, Fox-Surls informed Sears that she performed the following duties as part of her work for Licensee: set up operatories, seat patients, take patient's blood pressure, profies on both children and adults, floss teeth, provide oral hygiene instructions, charting, scale above the gum line, chair-side assist, take x-rays and also complete infection control work on the operatories.

7. During the interview, Fox-Surls informed Sears that she did not perform the following duties as part of her work for Licensee: place filling, seat crowns, administer medications or see patients if Licensee is not in the office.

8. On January 6, 2010, Sears interviewed Jodie Kosmiski. Kosmiski is a dental assistant. She is neither an EFDA nor a DANB assistant. At the time of the interview she had been with Licensee's practice since 1995. Prior to working with Licensee she worked for Dr. John Hugo in Independence, Missouri, Dr. Logan Childers in Independence, Missouri, and Dr. Edward Robison in Warrensburg, Missouri.

9. During the interview, Kosmiski informed Sears that she performed the following duties as part of her work for Licensee: order supplies, set up operatories, seat patients, take alginate impressions, profies on children and adults, chair-side assist, take x-rays, scale teeth above the gum line and also complete infection control work on operatories.

10. During the interview, Kosmiski informed Sears that she did not perform the following duties as part of her work for Licensee: remove crowns, work with orthodontia patients, place or seat crowns or adjust dentures. Kosmiski also confirmed she does not work with patients when Licensee is not in the office.

11. On January 6, 2010, Sears interviewed Misty Hale. Hale is a dental assistant. She is neither an EFDA nor a DANB assistant. At the time of the interview she had been with Licensee's practice for one-and-a-half years.

12. During the interview, Hale informed Sears that she performed the following duties as part of her work for Licensee: set up operatories, seat patients, chair-side assist, complete profies on children and adults,

evaluate gum health, coronal polish, floss, apply fluoride, take x-rays, scale above the gum line and also complete infection control work on operatories.

13. During the interview, Hale informed Sears that she did not perform the following duties as part of her work for Licensee: remove crowns, seat crowns or bridges, take impressions, place fillings, administer medications or assist with orthodontia or denture patients. Hale also confirmed that she does not work with patients when Licensee is not in the office.

14. On January 6, 2010, Sears interviewed Becky Beckner. Beckner is a dental assistant. She is neither an EFDA nor a DANB assistant. She was trained by Dr. Hanna. At the time of the interview she had been with Licensee's practice since 2001. Prior to working for Dr. Hanna, Beckner worked for Dr. Cleveland in Warrensburg, Missouri.

15. During the interview, Beckner informed Sears that she performed the following duties as part of her work for Licensee: set up operatories, seat patients, chair-side assist, take x-rays, complete profiles on children and adults, polish teeth, floss, apply fluoride, scale above the gum line and also complete infection control work on operatories.

16. During the interview, Hale informed Sears that she did not perform the following duties as part of her work for Licensee: take impressions, administer medications or assist with orthodontia or denture patients. Hale also confirmed that she does not work with patients when Licensee is not in the office.

17. As a result of the investigation, on or about March 16, 2010, the Board invited Licensee, dental assistants Heidi Fox-Surles, Jodie Kosmiski, Misty Hale, Becky Beckner, and any other dental assistants he employs to the Board's April 15, 2010 Board meeting to discuss the allegations of the complaint.

18. On or about March 30, 2010, the Board received a letter requesting a continuance of the appearance date from Licensee's counsel. The letter stated that counsel was unavailable that day. Counsel's letter also discussed the investigative report and complaint, stating:

- a. "Dr. Hanna was taught in dental school that a dental assistant was able to work above the gum line and do supra gingival plaque removal. He understands that to be scaling."
- b. "In his practice he has permitted his dental assistants to do that scaling, that is above the gum line."

- c. "He did not believe they were able to do scaling below the gum line and he has not permitted that to happen."
- d. "Dr. Hanna also had the list of 70 dental assisting tasks that were developed by the ADA/DANB Alliance. In those 70 tasks are included item 9 which permits coronal polishing procedures and #20 which allows the assistants to perform supra gingival scaling."
- e. "After Dr. Hanna received your March 16 letter and the report from Mr. Sears, he became concerned. He has now learned that 20 CSR 2110-2.120 Dental Assistants Section (2)(F) prohibits 'the scaling of teeth' by a dental assistant or a certified dental assistant. Now that he has learned that information he has discontinued the practice of allowing his dental assistants to do supra gingival plaque removal/scaling."
- f. "Dr. Hanna wants to operate within the rules and to provide the best service that he can to his patients. He assures the Board that he has discontinued the practice of allowing dental assistants to do any scaling of teeth and that he will not allow it in the future. Had he been aware that all scaling by a dental assistant is prohibited by the rules he would certainly not have allowed it to have occurred."

19. 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.

20. Licensee's delegation of duties including scaling of teeth to any of his dental assistants is improper delegation in violation of regulation 20 CSR 2110-2.120.

21. Licensee's delegation of duties including scaling of teeth 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.

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

• • • •

(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;

(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 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 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 provide the Board a list of all employees and their positions within the office not later than thirty (30) days after the disciplinary period begins. Licensee shall provide the Board with an updated list no later than thirty (30) days after any change in employees occurs. Licensee shall require all present and future employees other than dentists and hygienists to execute a notarized statement indicating that he or she will not now or in the future perform duties that cannot be delegated to him or her. Said notarized statements shall be executed and Licensee shall provide the same to the Board no later than 30 days after the date the disciplinary period begins and not later than thirty (30) days after any future employee begins assisting in Licensee's practice.
- B. Licensee shall not allow his license to lapse.
- C. 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.

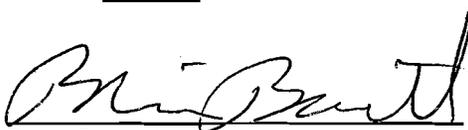
5. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties 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 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**

  
Michael A. Hanna, D.D.S.

**BOARD**

  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 5/21/10

Date 5/25/10