

2. Licensee holds dentist license number 012392 issued by the Board.

Licensee's license was current and active at all relevant times. Licensee's license is currently on probation.

3. The Board issued an Order, effective December 26, 2008, granting Licensee a probated license (Order of Probation). The Order of Probation placed Licensee's license on probation for five years beginning January 9, 2009 (Disciplinary Period). The Board probated Licensee's license for his failure to conduct and report weekly spore testing to the Board.

4. During the Disciplinary Period, Licensee was entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided that Licensee adhered to all the terms and conditions of the Order of Probation.

5. The Order required that during the Disciplinary Period, Licensee keep and maintain documentary evidence of all required weekly spore tests. It also required that Licensee allow the Board's designated representative to obtain evidence of the weekly spore testing upon demand and without delay and that Licensee fully cooperate with the Board in providing the documentation. Order of Probation, page 7, paragraph H.

6. On or about December 22, 2010, an investigator for the Board requested that Licensee provide the Board a copy of his practice's spore testing records between January 1, 2010 and November 30, 2010. Licensee's records show that he was not in compliance with the Order of Probation. Licensee failed to demonstrate proof of weekly spore testing. According to the records Licensee produced, Licensee conducted spore testing on February 2 and 22, 2010; March 1 and 29, 2010; April 21, 2010; May 5, 2010; June 1 and 21, 2010; July 6 and 15, 2010; August 16, 2010; September 1 and 24, 2010;

October 18, 2010; and November 11 and 15, 2010. Thus, Licensee provided proof of 17 dates he conducted spore testing for a period of approximately 44 weeks.

7. Based on the spore test records Licensee provided, on or about February 10, 2011, the Board's investigator requested Licensee's patient schedule for 2010. Licensee's patient schedule showed he had patients scheduled all but six weeks of 2010: December 28, 2009 through January 3, 2010; January 4, 2010 through January 10, 2010; January 11 through January 17, 2010; January 18 through January 22, 2010; January 25, 2010 through January 31, 2010; and July 19 through July 25, 2010.

8. Licensee testified at the October 21, 2011 hearing. Licensee confirmed that his practice did not conduct weekly spore testing between January 1, 2010 and November 30, 2010. Licensee testified that the practice was not always open during that time period because he "semi-retired," took a cruise with his wife and experienced health issues. He testified he was not trying to hide anything from the Board by not doing the required weekly testing.

Conclusions of Law

9. The Board has jurisdiction in this proceeding, pursuant to the Probation Order to determine whether Licensee has violated the terms and conditions of the Probation Order.

10. The Board also has jurisdiction pursuant to § 324.042, RSMo to determine whether Licensee has violated the terms and conditions of the Probation Order. Section 324.042 states, in pertinent part:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to

pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

11. The Board also has jurisdiction pursuant to regulation 20 CSR 2110-2.160(7) to determine if Licensee has violated the terms and conditions of the Probation Order. 20 CSR 2110-2.160(7) states, in pertinent part:

(7) Any violation of a probationary agreement shall constitute grounds for the Missouri Dental Board to impose a further period of probation, a period of suspension, or to revoke the licensee's certificate of registration, license to practice dentistry, or both.

12. Licensee's violation, failure to conduct weekly spore tests, gives cause for the Board to impose further discipline upon Licensee's dental license pursuant to the Probation Order, § 324.042, RSMo, and 20 CSR 2110-2.160(7).

Decision and Order

It is the decision of the Board that Dr. Harper has violated the terms of the Probation Order, and that his license is, therefore, subject to further disciplinary action.

The Board orders that the dental license of Dr. Alphonza V. Harper, III, DDS, remain on **PROBATION** as ordered in the Probation Order. The period of probation shall end January 9, 2014. During the aforementioned probation, Licensee shall be entitled to practice as a licensed dentist subject to the following modified terms and conditions.

I. SPECIFIC REQUIREMENTS

- A. Licensee shall complete thirty (30) hours of education in infection control at Oral Health Enrichment in Cleveland, Ohio within the first one hundred eighty (180) days after the effective date of this Order. Following completion of the thirty (30) hours of education at Oral Health Enrichment, Licensee shall take and pass a written outcome assessment test on the education with a score of at least 80%. Failure to complete the education and pass the written

outcome assessment test on the education within 180 days shall constitute a violation of this Order.

- B. Licensee shall submit a copy of the results of his weekly spore tests to the Board each month during the period of probation. The first such report shall be due to the Board on December 1, 2011.

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 Order.
- H. If Licensee fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

- I. This Order 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.

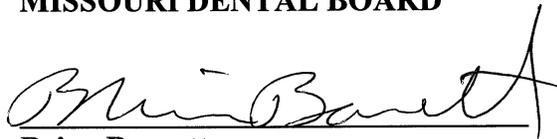
III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. Licensee shall notify, within 15 days of the effective date of this Order, 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.

This Order will be maintained as an open record of the Board as provided in Chapters 332, 610, 324, RSMo.

SO ORDERED this 2nd day of November, 2011.

MISSOURI DENTAL BOARD



**Brian Barnett,
Executive Director**

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND ALPHONZA HARPER III, D.D.S**

Comes now Alphonza Harper III, D.D.S. ("Licensee or Dr. Harper") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license to practice dentistry will be subject to additional discipline.

Pursuant to the terms of § 324.042, Cum. Supp. 2008, the parties hereto waive the right to a hearing by the Missouri Dental Board regarding whether there is cause to impose additional discipline on Licensee's license.

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 concerning the charges pending against him and, subsequently, 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 probation violation complaint and other documents relied upon by the Board in determining there was cause to impose additional discipline on his license, along with citations to the terms and conditions and the 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 012392 is subject to additional disciplinary action by the Board in accordance with the provisions of Chapter 324, as amended and Chapter 332, RSMo.

JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW

1. Petitioner, the Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to Section 332.021, RSMo¹ for the purpose of executing and enforcing the provisions of Chapter 332, RSMo.

2. Respondent, Alphonza Harper, III, D.D.S. ("Dr. Harper") holds dentist license number 012392 issued by the Board. This license was current and active at all times relevant.

3. Dr. Harper and the Board entered into a "Settlement Agreement Between Missouri Dental Board and Alphonza Harper III, D.D.S." (the "Settlement Agreement"). The Settlement Agreement was signed by Dr. Harper on May 15, 2007 and by the Board on June 14, 2007.

4. The Settlement Agreement went into effect, by its own terms, on June 29, 2007.

5. The Settlement Agreement suspended Dr. Harper's dentist license for 14 days followed by 5 years of probation, subject to certain terms and conditions.

6. On page 8, paragraph 1.I.A, of the Settlement Agreement, one of the terms and conditions of Dr. Harper's probation is:

¹ All statutory references are to the Revised Statutes of Missouri (2000) as amended, unless otherwise indicated.

I. EDUCATIONAL REQUIREMENTS

A. License shall, within one year of the effective date of this Agreement, attend the University of Missouri - Kansas City Dental Ethics course. Licensee shall provide the Board with proof of attendance from the ethics program no later than thirty (30) days after attending the course. Failure to attend the required ethics course and/or submit the required documentation to the Board will result in a violation of the terms of discipline.

7. Dr. Harper failed to attend the University of Missouri-Kansas City Dental Ethics course by June 29, 2008.

8. Dr. Harper failed to submit to the Board documentation showing proof of his attendance at the University of Missouri-Kansas City Dental Ethics course by June 29, 2008.

9. On page 8, Section II.B of the Settlement Agreement, one of the terms and conditions of Dr. Harper's probation is:

II. GENERAL REQUIREMENTS

B. License 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.

10. Dr. Harper failed to submit reports to the Board stating truthfully whether he has complied with all the terms and conditions of the Settlement Agreement by January 1, 2008 and July 1, 2008.

11. On page 10, Section III.A of the Settlement Agreement, one of the terms and conditions of Dr. Harper's probation is:

III. ADDITIONAL REQUIREMENTS

A. License shall return the \$24.00 payment to patient P.W.'s primary insurance company.

12. Prior to August 22, 2008, Dr. Harper failed to submit any documentation or other verification to the Board evidencing that he has returned the \$24.00 payment to patient P.W.'s primary insurance company.

13. On page 10, Section III.B of the Settlement Agreement, one of the terms and conditions of Dr. Harper's probation is:

III. GENERAL REQUIREMENTS

B. License shall submit copies of weekly spore testing to the Board.

14. Prior to August 22, 2008, Dr. Harper did not submit any copies of weekly spore testing to the Board.

15. Dr. Harper has violated the terms and conditions of his probation.

16. These violations give cause for the Board to impose further Discipline upon Licensee's dental license pursuant to paragraph 5 on page 11 of the Settlement Agreement which authorizes the Board to vacate the Settlement Agreement, after notice and opportunity for hearing before the Board, and to order such further or additional discipline as the Board deems appropriate.

17. Jurisdiction and venue are proper pursuant to Section 332.055, RSMo.

18. There is cause to impose further discipline on the dentist license held by Dr. Harper due to violations of the Agreed Disciplinary Order contained in the Settlement Agreement.

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 § 324.042, as amended.

Licensee's license to practice dentistry in the State of Missouri, License No. 012392 is immediately **SUSPENDED for a period of 14 DAYS, followed by PROBATION for a period of FIVE (5) years**, ("disciplinary period"). The period of suspension shall commence on the effective date of this Agreement. The term of suspension and probation shall constitute the disciplinary period. The terms of discipline shall be as follows:

1. Respondent shall return his dental license, wall-hanging certificate, pocket card, and all other indicia of licensure to the Board no later than the day before the first day of suspension to be held by the Board during the period of suspension. Failure to return the license, wall-hanging certificate, pocket card, and other indicia of licensure shall be a violation of this Agreement.

2. During Respondent's suspension, Respondent shall not engage in the practice of dentistry under Chapter 332, RSMo, nor shall Respondent hold himself out in any fashion as being authorized to engage in the practice of dentistry under Chapter 332, RSMo. The following activities are identified for illustrative or informational purposes only and are not intended to be an exhaustive listing of the activities that would constitute the practice of dentistry that Respondent shall not engage in during suspension.

3. During suspension, Respondent shall not engage in any gratuitous or occasional treatment of any person; shall not maintain an office; shall not provide consultation services or opinions of any kind concerning the dental care and treatment of any person; shall not charge or accept compensation for dental services from any person or entity unless the dental services were provided prior to the effective date of this Agreement; shall not provide testimony as an expert dental witness; and shall not endeavor in any manner to evaluate, test diagnose, or treat any person.

4. Following the period of suspension, Respondent's license shall be returned and shall be placed on probation as provided above. During Respondent's probation, Respondent shall be allowed to practice dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Agreement.

I. General Requirements

A. During the period of discipline, Respondent shall keep the Missouri Dental Board apprised at all times in writing of his current home and work addresses and telephone numbers at each place of employment. Respondent shall notify the Board within ten (10) days of any change in this information.

B. During the period of discipline, Respondent shall comply with all provisions of Chapter 332, RSMo, all rules and regulations of the Missouri Dental Board, and all federal and state laws, rules and regulations. "State" here includes the state of Missouri and all other states and territories of the United States.

C. During the period of discipline, Respondent shall appear before the Board or one of its representatives for a personal interview upon the Board's request

D. Pursuant to section 332.321.6, RSMo, if at any time during the disciplinary period Respondent removes himself from the state of Missouri, ceases to be licensed under the provisions of Chapter 332, or fails to keep the Missouri Dental Board advised of his current place of business and residence, the time of his absence, or unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.

E. During the period of discipline, Respondent shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this agreement.

II. Compliance Reports

F. 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.

III. Ethics Course

G. Respondent shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City. This continuing education shall be in addition to the continuing education required by law for licensure renewal by the Board. This course must be taken within the first twelve (12) months of Respondent's disciplinary period. Respondent shall provide the Board with proof of attendance from the sponsor of the program no later than thirty (30) days after attending the course. Failure to obtain the required additional continuing education hours and/or submit the required documentation to the Board will constitute a violation of the terms of discipline.

IV. Weekly Spore Testing

H. During the disciplinary period, Respondent shall keep and maintain documentary evidence of all weekly spore testing required. Respondent shall, upon demand and without delay, allow the Board's designated representative to obtain evidence of weekly spore testing and shall cooperate fully and completely with the Board's designated representative in providing such documentation.

V. Additional Requirements

I. Licensee shall not allow his license to lapse.

J. The terms of discipline apply even if Licensee places his license on inactive status.

K. 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 324, 332, 610, 620, RSMo.

3. Upon the expiration of said discipline, Licensee's license to practice dentistry in Missouri shall be fully restored if all other requirements of law have been satisfied; provided

however, that 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.

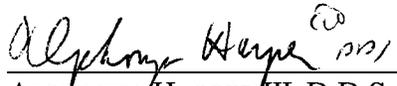
4. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

5. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

6. 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.

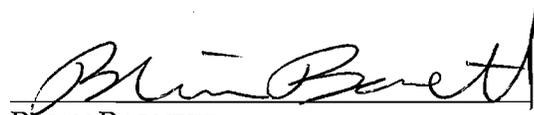
7. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, 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.

LICENSEE

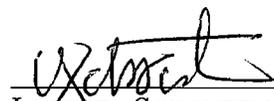

ALPHONZA HARPER III, D.D.S.

Date 11-25-08

BOARD


BRIAN BARNETT
Executive Director
Missouri Dental Board

Date 12/9/08


LORENTA SCHOUTEN
Missouri Bar No. 52290
7970 S. Tomlin Hill Road
Columbia, MO 65201
Telephone: 573-875-7169
Fax: 573-875-5603
Email - llschouten@yahoo.com
ATTORNEY FOR THE BOARD

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND ALPHONZA HARPER III, D.D.S.**

Come now Alphonza Harper III, 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 012392, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2005 and Chapter 332, RSMo.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in the Joint Agreed Disciplinary Order herein is based only on the agreement set out in the Joint Stipulation of Facts and Joint Conclusions of Law herein. Licensee understands that the Board may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that either now known to the Board or may be discovered.

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 Alphonza Harper III, is licensed by the Board as a dentist, License No. 012392. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

COUNT I

3. On or about June 11, 2005, Licensee examined patient P.W. for the purpose of having upper and lower partial dentures made.

4. On or about June 11, 2005, Licensee completed his examination, had some impressions made for patient P.W., and scheduled patient P.W. to return the following week.

5. Within a week of patient P.W.'s June 11, 2005, visit, Licensee billed patient P.W.'s primary and secondary dental insurance companies each for the amount of \$1,690.00.

6. The \$1,690.00 amount for which Licensee submitted to patient P.W.'s primary and secondary insurance, was submitted in part for services for which Licensee had not yet performed on patient P.W.

7. Patient P.W.'s primary dental insurance company subsequently issued Licensee a check in the amount of \$711.20 for services he allegedly rendered to patient P.W. on or about June 11, 2005.

8. Patient P.W.'s secondary dental insurance issued patient P.W. a check in the amount of \$61.00 for services Licensee allegedly rendered to patient P.W.

9. Patient P.W. returned the \$61.00 check to her secondary insurance along with a letter explaining that she believed Licensee submitted insurance claims for dental work that had not been performed.

10. After patient P.W. contacted her primary dental insurance company, it demanded its payment back from Licensee.

11. Licensee returned \$662.20 of the \$711.20 issued to him to patient P.W.'s primary insurance company. Licensee kept \$24.00 for ordering the dentures and having the lab work completed.

12. Licensee has a duty to submit insurance claims only for work he has completed.

13. Licensee's conduct in submitting insurance claims for work he had yet to complete constitutes unprofessional and unethical conduct.

14. As a result of the foregoing, cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(4), (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:

.....

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation; or increasing charges when a patient utilizes a third-party payment program; or for repeated irregularities in billing a third party for services rendered to a patient. For the purposes of this subdivision, irregularities in billing shall include:

(a) Reporting charges for the purpose of obtaining a total payment in excess of that usually received by the dentist for the services rendered;

(b) Reporting incorrect treatment dates for the purpose of obtaining payment;

(c) Reporting charges for services not rendered;

(d) Incorrectly reporting services rendered for the purpose of obtaining payment which is greater than that to which the person is entitled

...

(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;

...

(13) Violation of any professional trust or confidence;

COUNT II

15. On or about January 5, 2006, an investigator for the Board conducted an Infection Control inspection of Licensee's practice location pursuant to a complaint filed with the Board.

16. On or about January 5, 2006, the Board inspection revealed the following violations:

- a. Failure to properly test proper function of sterilization equipment in that Licensee never submitted a spore test sample as required for his autoclave.
- b. Failure to utilize an effective surface disinfectant.
- c. Failure to ensure that examination light handles are covered and that these covers are changed after every patient.

17. On or about January 30, 2006, an investigator for the Board traveled back to Licensee's practice location to verify Licensee had corrected the violations found during the January 5, 2006, inspection.

18. On or about January 30, 2006, Licensee was not in the office when the Board investigator arrived. Licensee's receptionist was able to contact him on his cell phone.

19. Licensee reported to the Board investigator that he submitted spore test samples for testing.

20. Licensee reported to the Board investigator that he now used a stronger surface disinfectant and had covers for the handles on his examination lights.

21. Licensee agreed to fax the information for the sterilization monitoring service that he was utilizing first thing on January 31, 2006.

22. On or about January 31, 2006, Licensee informed the Board investigator that he has submitted test cards to ConFirm Monitoring Systems, Inc ("ConFirm") and to Sterilizer Monitoring Service ("Sterilizer").

23. On or about January 31, 2006, the Board investigator contacted Tonya, a customer service representative for ConFirm. Tonya stated that ConFirm had not received a test card from Licensee as of that date.

24. On or about January 31, 2006, the Board investigator contacted Linda Foster, Officer Manager at Sterilizer. Ms. Foster reported that in order to submit a test card to Sterilizer, Licensee would have to contact Sterilizer to order test cards. Ms.

Foster reported that once the cards are ordered the ordering dentist's information is logged into their system. Ms. Foster reported that Sterilizer had not had any contact with Licensee as of that date.

25. Licensee has a duty to protect against the spread of contagious, infectious or communicable diseases or the spread thereof; and to maintain his office, laboratory, equipment and instruments in a safe and sanitary condition.

26. As a result of the foregoing, cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(6), (16) and (17), 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, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule of regulation adopted pursuant to this chapter;

...

(16) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof;

(17) Failing to maintain his or her offices, laboratory, equipment and instruments in a safe and sanitary condition;

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 is immediately **SUSPENDED** for two weeks (14 days), followed by **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 this Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

- A. License shall, within one year of the effective date of this Agreement, attend the University of Missouri - Kansas City Dental Ethics course. Licensee shall provide the Board with proof of attendance from the ethics program no later than thirty (30) days after attending the course. Failure to attend the required ethics course and/or submit the required documentation to the Board will result in a violation of the terms of discipline.
- B. Licensee shall submit the required registration fee, take and pass the Board's jurisprudence examination within one year of the effective date 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 the provisions of Chapter 332, or fails to advise the Board of her 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.
- 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 return the \$24.00 payment to patient P.W.'s primary insurance company.
- B. Licensee shall submit copies of weekly spore testing to the Board.
- C. Licensee shall not allow his license to lapse.
- D. The terms of discipline apply even if Licensee places his license on inactive status.
- E. 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, 620, RSMo.

3. Upon the expiration of said discipline, Licensee's license as a licensed dentist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that the Licensee has violated any term or condition of their 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.

4. No order shall be entered by the Board pursuant to the preceding paragraph of their settlement agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

5. If the Board determines that Licensee has violated a term or condition of their settlement agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by their settlement agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of their settlement agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of their settlement agreement has occurred.

6. 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.

7. 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. Licensee understands that he may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. 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

Alphonza V. Harper III
Alphonza Harper III, D.D.S.

Date 5/15/07

BOARD

Sharlene Rimiller
Sharlene Rimiller
Executive Director
Missouri Dental Board

Date 6/14/07

JEREMIAH W. (JAY) NIXON
Attorney General

Attorney for Alphonza Harper III

Amy E. Braudis
Amy E. Braudis
Assistant Attorney General
Missouri Bar No. 57685

7th Floor, Broadway State Office Bldg.
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-1444
Telefax: 573-751-5660

Attorneys for Missouri Dental Board