

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND GARY W. HARRIS, D.D.S.**

Comes now Gary W. Harris, 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 to practice dentistry 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 014164, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 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. Gary W. Harris ("Licensee") is licensed by the Board as a dentist, License No. 014164. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. At all times relevant herein, Licensee practices dentistry at 1806 W. 11<sup>th</sup> Street, Sedalia, Missouri ("the office").

4. On or about June 8, 2006, Licensee was impaired while on duty at the office. Patient K.M. telephoned the Sedalia Police Department requesting assistance out of the office after being locked in after hours. K.M. had presented at Licensee's office for an appointment earlier in the day and was taken back to an examination room where she was briefly greeted by Licensee. Licensee never returned. After assisting K.M. out of the office, Licensee was located by Sedalia Police in the basement of the office, intoxicated.

5. From April 2006 and continuing through June 19, 2006, Licensee consumed 8 to 12 ounces of vodka per day.

6. Licensee's conduct as referenced herein constitutes the use of an alcoholic beverage to an extent that such use impaired his ability to perform the work of a dentist in violation of § 332.321.2(1), RSMo.

7. Licensee's conduct in reporting to work impaired by alcohol constitutes misconduct and incompetency in the performance of his functions and duties as a dentist in violation of § 332.321.2(5), RSMo.

8. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with K.M. in that she relied upon the professional expertise of Licensee to ensure that when Licensee reported for work, he was fit to practice and not under the influence of alcohol or other drugs of abuse that would impair his ability to perform the work of a dentist.

9. Licensee's conduct as alleged herein violated K.M.'s professional trust and confidence.

10. Licensee's conduct as referenced herein constitutes a violation of §332.321.2(20), RSMo.

11. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(1), (5), (13), and (20) RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

....

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

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

....

(13) Violation of any professional trust or confidence;

....

(20) Being unable to practice as a dentist, specialist or hygienist with reasonable skill and safety to patients by reasons of professional incompetency, or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any mental or physical 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. Licensee's dental license numbered 014164 is immediately placed on PROBATION for a period of five (5) years ("disciplinary period"). During the disciplinary period, 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. The terms of the probation shall be:

**I. EMPLOYMENT RESTRICTIONS**

- A. During the disciplinary period, Licensee shall not own or operate a solo or private dental practice. Licensee shall only practice dentistry as an employee and shall not be involved in the billing, bookkeeping, or management of a dental practice. This provision does not prohibit Licensee from providing contract dental services.

**II. REQUIREMENTS REGARDING CONTINUING EDUCATION**

- A. Licensee shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City or its equivalent. 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 Licensee's disciplinary period. Licensee 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 result in a violation of the terms of discipline.
- B. Licensee shall take and pass the Board's designated jurisprudence examination within six (6) months of the start of the disciplinary period. 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 six (6) months of the disciplinary period shall constitute a violation of this Agreement.

**II. REQUIREMENTS REGARDING THE MISSOURI DENTAL WELL-BEING COMMITTEE**

- A. During the disciplinary period, Licensee shall participate in the Missouri Dental Well-being Committee ("Committee"). Within fifteen (15) days of the effective date of this agreement, Licensee shall cause the Committee to send written notification to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, confirming that Licensee has joined the program. Licensee shall also direct the Committee to forward an evaluation report to the Board detailing the treating professional's findings, specification of DSM IV diagnosis/es, prognosis, and treatment recommendations within 15 days of entering this agreement. Licensee shall follow all recommendations for treatment or aftercare made by the treating professional and/or Committee.

- B. Licensee shall execute a medical release or other appropriate release that shall remain in effect for the entire disciplinary period authorizing the Board to obtain records of Licensee's treatment for chemical dependency. Licensee shall not take any action to cancel this release. Licensee shall take any and all steps necessary to continue the release in effect and shall provide a new release when requested.
- C. Licensee shall cause a letter of ongoing treatment evaluation from the treating professional to be submitted to the Board by January 1 and July 1 during each year of the disciplinary period beginning the effective date of this disciplinary agreement.
- (1) The letter shall include an evaluation of Licensee's current progress and status related to the treatment recommendations/plan and Licensee's current prognosis and treatment recommendations/plan.
  - (2) The letter shall be sent by the treating professional and/or the Committee addressed to: Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102.
- D. If the treatment of Licensee is successfully completed at any time during the disciplinary period, Licensee shall cause the treating professional and/or the Committee to submit a letter of final evaluation/summary that includes a statement that Licensee has successfully completed treatment and indicates whether Licensee should continue in a 12-step program. If continuance in a 12-step program is recommended, Licensee shall comply with terms of documentation as outlined in paragraph E below.
- E. If attendance is recommended, Licensee shall submit evidence of weekly (or recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board by January 1 and July 1 during each year of the disciplinary period beginning the effective date of this disciplinary agreement. The documentation shall include the date, time and place of the meeting and shall bear a signature or abbreviated signature of another person verifying attendance.
- F. During the disciplinary period, Licensee shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless that use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Licensee has a bona-fide relationship as a patient. Licensee shall forward to the Board written documentation of any such prescription within ten (10) days of issuance of the prescription specifying the

medication prescribed, dosage prescribed, and the condition for which the substance was prescribed. Upon request, Licensee shall execute a medical release authorizing the Board to access all records pertaining to Licensee's condition, treatment and prescription maintained by the health care professional that prescribed the controlled substance.

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

### **III. GENERAL REQUIREMENTS**

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall 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 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 § 332.321.9, 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 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.

#### **IV. ADDITIONAL REQUIREMENTS**

- A. Licensee shall not allow his license to lapse.
  - B. The terms of discipline apply even if Licensee places his license on inactive status.
  - 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, 620, 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.

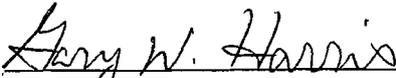
4. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability,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

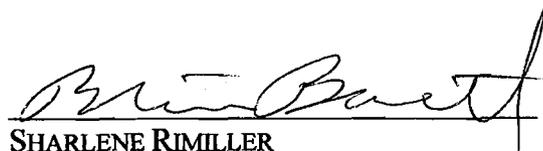
5. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining 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.**

6. 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 into effect fifteen (15) days after the document is signed by the Executive Director of the Board.

LICENSEE

BOARD

  
GARY W. HARRIS, D.D.S.

  
SHARLENE RIMILLER  
Executive Director  
Missouri Dental Board

Date 11-15-07

Date 11/20/07

  
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