

OCT 18 2012

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND WALTER A. HENDERSON, JR., D.D.S.**

Come now Walter A. Henderson, Jr., D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement ("Board 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<sup>1</sup>, 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 the Board Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in the Board Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 013112

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<sup>1</sup> Unless otherwise noted, all references to RSMo are to RSMo 2000.



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 Walter A. Henderson, Jr., D.D.S. was licensed by the Board as a dentist, License No. 013112, through November of 2010, when his license lapsed.

3. On April 30, 2010, the Board received a complaint against Licensee filed by Sergeant Mark Beardsley of the Holts Summit, Missouri Police Department.

4. Based on the Sergeant Beardsley's complaint, the Board initiated an investigation of Licensee.

5. During a September 28, 2010 visit to Licensee's dental office, Investigator Sears performed an infection control inspection of Licensee's office. Investigator Sears identified the following violations of the Centers for Disease Control Guidelines:

- a. The operatory light in the practice's only operatory was not cleaned between patients;
- b. The practice reported conducting spore testing monthly but Licensee was unable to provide documentation to confirm this;
- c. Licensee's cold sterilization tank was stained;
- d. Licensee reported that bloody gauze and extracted teeth were discarded in the practice's trash;
- e. Although protective eye gear was available, Licensee's staff reported that they do not always wear eye protection when working with patients; and
- f. Licensee and his staff did not cover their forearms when working with patients.

6. On October 13, 2010, Investigator Sears spoke with Licensee by telephone. Licensee stated he had decided to cease practicing, sell the practice and retire due to health concerns.

7. Licensee hereby acknowledges that he is unable to practice as a dentist because of a progressive illness.



8. Section 191.694.1, RSMo states

All health care professionals and health care facilities shall adhere to universal precautions, as defined by the Centers for Disease Control of the United States Public Health Service, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, to minimize the risk of transmission of HIV, HBV and other blood-borne infections to patients. Health care professionals and health care facilities shall comply with current guidelines, established by the Centers for Disease Control, for disinfection and sterilization of reusable devices used in invasive procedures.,

9. Licensee's actions as described in paragraph 5 through 7 above constitute cause to discipline Licensee's license.

10. As a result of Licensee's progressive illness, Licensee was unable to perform the duties of his dental practice, and Licensee's actions as described above constitute the failure to guard against contagious, infectious or communicable disease or the spread thereof for which the Board has cause to discipline Licensee's license.

11. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(16) 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:

...

- (16) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof;
- (20) Being unable to practice as a dentist...with reasonable skill and safety to patients because of illness[.]



Joint Agreed Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the order entered by the Board in this matter under the authority of § 621.045.3, RSMo 2000:

The terms of the Order shall include that Licensee's dental license be **VOLUNTARILY SURRENDERED** in lieu of discipline and Licensee shall return all indicia of licensure to the Board.

1. The parties to the Board Settlement Agreement understand that the Missouri Dental Board will maintain the Board Settlement Agreement as an open record of the Board as provided in Chapters 332, 610, 324, RSMo.
2. The terms of the Board Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither the Board 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 the Board Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Board Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems the Board Settlement Agreement or any portion thereof to be void or unenforceable.
4. By entering into this Settlement Agreement, the Board is not waiving its right or authority to deny or impair any future license based on these facts should Licensee attempt to regain his Missouri dental license.
5. If no contested case has been filed against Licensee, Licensee has the right, either at the time the Board Settlement Agreement is signed by all parties or within fifteen days thereafter, to submit the



Board Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Board Settlement Agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review the Board Settlement 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 Board Settlement Agreement sets forth cause for disciplining Licensee's license, the agreed upon order set forth herein shall go into effect.

**LICENSEE**

Walter A. Henderson, JR.  
Walter A. Henderson, JR., D.D.S.

Date 9-28-12

**BOARD**

Brian Barnett  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 10/29/12

