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SEP 29 2011

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND BERNARD T. HENEHAN, D.D.S.**

MISSOURI DENTAL BOARD

Come now Bernard T. Henehan, 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 011950 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 Bernard T. Henehan, D.D.S. is licensed by the Board as a dentist, License No. 011950. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On August 16, 2010, the Board received information regarding an employee of Licensee. The information indicated that an employee of Licensee is practicing dental hygiene without an active license and that Licensee delegated tasks to dental assistants that should not be delegated to assistants including using ultrasonic scaling instruments and metal scaling instruments. The information specified that Licensee delegated the above mentioned tasks to employee and dental assistant Stacey Hallier and employee Hallier was not a licensed dental hygienist in the State of Missouri.

4. As a result of the information, the Board initiated a complaint and an investigation of Licensee's practice and delegation to employees.

5. As a part of the Board's investigation, on September 2, 2010, Board Investigator Joseph Sears traveled to employee Hallier's registered home address in Odessa, Missouri to conduct an interview of Hallier. Hallier confirmed that she had failed the national boards, but planned to retake them. Hallier also stated that she was employed by Dr. Henehan from August 3 through August 24, 2010, her employment was subject to passing the national boards, and she was terminated because she had failed her national boards. While Hallier was employed by Licensee she worked as a dental assistant and Licensee restricted her work to that of a dental assistant. Hallier is trained as a dental assistant and provided a copy of her training certificate upon Investigator Sears' request. Hallier admitted that she is neither an Expanded Function Dental Assistant (EFDA) nor a Dental Assisting National Board (DANB) certified assistant. Hallier stated that her job duties for Licensee included seating patients, set up and infection control clean up of operatories, chairside assist, prophies on both children and adults utilizing a "slow hand piece," educate patients on brushing and flossing, floss teeth, polish teeth, and take x-rays. Hallier stated that she did not scale teeth.



6. As a part of the Board's investigation, on September 3, 2010, Investigator Sears conducted a phone interview with Licensee. Licensee confirmed that Hallier was employed by his practice and that she had been terminated because she did not pass her boards. Licensee also confirmed that he allowed Hallier to perform the following tasks: take x-rays, remove super gingival calculus, polish super gingival stains, provide oral hygiene instructions, apply fluoride, infection control of operatories, seat patients and limited chairside assisting.

7. Due to the information provided by Licensee and as a part of the Board's investigation, on September 8, 2010, Investigator Sears traveled to Licensee's practice in Clinton, Missouri to further discuss what Licensee delegates to his assistants. Licensee confirmed that, as of September 8, 2010 he employed two dental assistants.

8. As a part of the Board's investigation, on September 8, 2010, Investigator Sears interviewed Jenny Wilson, an employee of Licensee. Wilson stated that she was neither an EFDA nor a DANB certified assistant. Wilson also stated that she had worked for Licensee for the past ten years. Wilson stated that her duties for the Licensee included set-up operatories, seating patients, chairside assist, prophies on both children and adults, polish teeth, take x-rays, complete infection control work on operatories and pack cord. Wilson stated that she does not scale teeth.

9. As a part of the Board's investigation, on September 8, 2010, Investigator Sears interviewed Sharron Henehan, who is both an employee of Licensee and wife of Licensee. Ms. Henehan confirmed that she is neither an EFDA nor a DANB certified assistant and that she has worked for Licensee for the past twenty years. Ms. Henehan stated that her duties include set-up operatories, seat patients, chairside assist and complete infection control work on operatories. Ms. Henehan stated that she does not scale teeth.

10. As a part of the Board's investigation, on January 21, 2011, the Board interviewed Licensee in person at its January 2011 meeting to further discuss Stacey Hallier's employment and her duties. During the meeting Licensee confirmed that employee Hallier's duties included taking x-rays, cleaning and polishing teeth including supragingival scaling, and other oral hygiene instructions "as needed." Licensee also admitted that he was not informed of current changes regarding dentistry practices and that he had not informed the board of his newly hired dental hygienist, Stacey Criswell.



11. 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.

12. Licensee's delegation of duties including scaling of teeth to any of his non-EFDA or DANB dental assistants as described in paragraphs 2 through 10 above is improper delegation in violation of regulation 20 CSR 2110-2.120.

13. Licensee allowing non-EFDA or DANB dental assistants to scale teeth as described in paragraphs 2 through 10 above constitutes misconduct and/or misrepresentation in the performance of the functions or duties of a licensed dentist.

14. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6) and (12) 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;

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 not allow his license to lapse.
- 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.



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



Bernard T. Henahan, D.D.S.

Date

9/9/11

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date

9/29/11

