

BEFORE THE  
MISSOURI DENTAL BOARD  
STATE OF MISSOURI

MISSOURI DENTAL BOARD	)	
	)	
	)	Petitioner,
	)	
v.	)	Case No. DB-08-10
	)	
PHILIP JAYNES, D.D.S.	)	
	)	
	)	Respondent.

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**JOINT STIPULATION OF FACTS, CONCLUSIONS OF LAW, WAIVER OF HEARING  
BEFORE THE MISSOURI DENTAL BOARD AND DISCIPLINARY ORDER**

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Pursuant to the terms of sections 536.060 and 620.153, RSMo, the parties waive the right to a disciplinary hearing before the Missouri Dental Board and jointly stipulate that cause exists to impose additional discipline against the dental license of Respondent for violations set forth below.

Respondent acknowledges that he has received and reviewed a copy of the Complaint filed by counsel for the Missouri Dental Board in this case and the parties submit to the jurisdiction of the Missouri Dental Board.

Respondent acknowledges that he is aware of the various rights and privileges afforded him by law, including the right to appear and be represented by counsel; the right to have a copy of the Complaint served upon him by the Missouri Dental Board prior to the entering of its order; the right to have all charges against Respondent proven upon the record by competent and substantial evidence; the right to cross-examine any witness appearing at the hearing against Respondent; and the right to present evidence on Respondent's own behalf at the hearing. Being aware of these rights provided by law, Respondent, Philip Jaynes, knowingly and voluntarily waives each and every one of

these rights and freely enters into this Joint Stipulation of Facts, Conclusions of Law, Waiver of Hearings Before the Missouri Dental Board, and Disciplinary Order and agrees to abide by the terms of this document. Based upon the foregoing, Petitioner and Respondent jointly stipulate and request that the Missouri Dental Board adopt as its own the following Joint Stipulation of Facts, Conclusions of Law and Disciplinary Order.

#### JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW

1. The Missouri Dental Board ("Board") is an agency of the state of Missouri created and established pursuant to § 321.021, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 332, RSMo.

2. Respondent, Philip Jaynes ("Dr. Jaynes"), is licensed by the Board as a dentist, license No. 011954. Dr. Jaynes' license was current and active at all times relevant herein.

3. In 2004, Dr. Jaynes and the Board entered into a Settlement Agreement ("Agreement") suspending Dr. Jaynes' license for three months immediately followed by probation for a period of five (5) years. The Agreement became effective on August 27, 2004.

4. Pursuant to Section II of the August 27, 2004 Agreement, Respondent became a participant in the Dental Board's Well-Being Committee. Under the terms of the Agreement Respondent is required to comply with all treatment recommendations from the Well-Being Committee.

5. On or about January 23, 2008, Respondent was determined to be in violation of Section II in that he was not complying with all treatment recommendations of the Dental Board's Well-Being Committee.

6. Cause exists to impose additional discipline on Dr. Jaynes' license pursuant to paragraphs H and I of the Settlement Agreement and § 620.153, RSMo 2000, which states "Any

board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee [ . . . ] 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."

7. Licensee's conduct is in violation of the terms and conditions of the Settlement Agreement, thus entitling the Board to impose additional discipline.

#### DISCIPLINARY ORDER

8. 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 paragraphs H and I of the August 27, 2004 Settlement Agreement and section 620.153, RSMo.

9. Licensee's license to practice as a dentist in the State of Missouri, License No. 011954 is hereby VOLUNTARILY SURRENDERED. Licensee shall return all indicia of licensure to the Missouri Dental Board.

10. The parties to this Joint Stipulation understand that the Missouri Dental Board will maintain this Joint Stipulation as an open and public record of the Board as provided in Chapters 332, 610, and 620, RSMo.

11. In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation of Facts, Waiver of Hearing Before the Missouri Dental Board, and to the termination of any further proceedings before the Missouri Dental Board based upon the Complaint filed by counsel for the Petitioner in the above styled action.

12. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation 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.

13. Respondent hereby waives and releases the Board, its 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 litigation, or from the negotiation or execution of this settlement and release agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement and release agreement in that it survives in perpetuity even in the event that any court of law deems this settlement and release agreement or any portion thereof void or unenforceable.

RESPONDENT

PETITIONER

Philip C. Jaynes, DDS  
Dr. Philip Jaynes, D.D.S.

Brian Barnett  
Brian Barnett  
Executive Director  
Missouri Dental Board

Sept 18, 2008  
Date

9/22/08  
Date

*John L. Roark*

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**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND PHILIP C. JAYNES, D.D.S.**

Come now Philip C. Jaynes, 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.

**RECEIVED**

**AUG 12 2004**

**MISSOURI DENTAL BOARD**

Licensee acknowledges that he has received a copy of the draft complaint, the investigative report, and other documents relied upon by the Board in determining there was cause to discipline his license.

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 011954, 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. Licensee Philip C. Jaynes is licensed by the Board as a dentist, License No. 011954. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On March 28, 2003, officers from the Columbia, Missouri police department served a narcotics search warrant at Licensee's home and seized over one hundred plastic bags containing cocaine residue; three crack pipes; and other items believed to be drug paraphernalia.
4. Cocaine is a controlled substance under Chapter 195, RSMo.
5. Possession of a controlled substance without a valid prescription is unlawful in this State pursuant to § 195.202 RSMo 2000.
6. Licensee did not possess a valid prescription for cocaine.

7. Sometime between March 28, 2003 and April 7, 2003, an investigator for the Missouri Bureau of Narcotics and Dangerous Drugs (hereafter "BNDD") conducted an audit of prescriptions written by Licensee at a pharmacy located in the same building as Licensee's dental office.
8. The audit conducted by BNDD in 2003 disclosed four prescriptions written by Licensee for Acetaminophen with Codeine. Two of the prescriptions were written to Licensee's mother and the other two were written to Licensee's assistant/office manager.
9. On or about April 18, 2003, Licensee told an investigator for the Missouri Dental Board that he had written the prescriptions for Acetaminophen with Codeine to his mother for "some kind of female thing" and to his assistant/office manager for joint pain.
10. Acetaminophen with Codeine is a controlled substance pursuant to Chapter 195, RSMo.
11. On April 16, 2003, an investigator from the Missouri Dental Board examined prescriptions written by Licensee at the pharmacy located in the same building as Licensee's dental office.
12. In addition to the four prescriptions described in paragraph six (6) above, the Missouri Dental Board investigator found eight prescriptions that Licensee wrote for himself. Four of the prescriptions were for Diphenoxylate with Atropine, which is an anti-diarrhea medication.

13. On or about April 18, 2003, Licensee told an investigator for the Missouri Dental Board that he had written the prescriptions for Diphenoxylate with Atropine to himself for stomach problems or the flu.
14. Diphenoxylate is a controlled substance under Chapter 195, RSMo.
15. Sections 332.361 and 195.070.1, RSMo 2000 prohibit a dentist from prescribing a controlled substance outside the course of his professional practice of dentistry.
16. Section 195.070.4, RSMo 2000 prohibits a dentist from prescribing a controlled substance for his personal use except in a medical emergency.
17. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321 RSMo Supp. 2002, 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:

....

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

....

### 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:

19. The terms of discipline shall include that the dental license be **SUSPENDED** for a period of three (3) months to be followed by a period of **PROBATION** for five (5) years beginning immediately following the period of suspension ("disciplinary period"). The suspension may be served in three separate increments of thirty (30) days, with the entire period of suspension to be completed within one (1) year of the effective date of this Settlement Agreement. Licensee shall inform the Board as soon as practicable of the dates on which he shall serve his periods of suspension, but in no event later than seven (7) days before the period of suspension is to begin. Licensee 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 Settlement Agreement. During Licensee's suspension, Licensee shall not engage in the practice of dentistry under Chapter 332, RSMo, nor shall Licensee 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 and that Licensee shall not engage in during suspension. During suspension, Licensee 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 Settlement 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. During the interval between the periods of suspension, Licensee's license will be on probation and subject to the terms of probation outlined below. Following completion of the entire period of suspension, Licensee's license shall be returned and he shall serve the remaining time left in his period of probation as provided above. During Licensee's probation, Licensee shall be allowed to practice dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Settlement Agreement.

**I. 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 her 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.

**II. REQUIREMENTS REGARDING CHEMICAL DEPENDENCY TREATMENT AND REHABILITATION:**

- A. Licensee shall continue treatment for chemical dependency by a licensed or certified chemical dependency professional. The treating professional shall submit to the Board evidence that he or she is licensed or certified in the treatment of chemical dependency. Licensee shall show this Settlement Agreement to the treating professional.**
- B. Licensee shall execute a medical release or other appropriate release that shall remain in effect for the entire period covered by this Settlement Agreement 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/January 1, April 1, July 1, and October 1 during each year of the disciplinary period beginning the effective date of this Settlement 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 period covered by this Settlement Agreement, 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.
- E. If attendance is recommended, Licensee shall submit evidence of weekly (or as recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board by January 1 and July 1/January 1, April 1, July 1, and October 1 during each year of the disciplinary period beginning the effective date of this Settlement 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 use or consumption of alcohol. The presence of any alcohol whatsoever in a biological fluid sample shall constitute a violation of Licensee's discipline.
- G. 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 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. The presence of any controlled substance whatsoever in a biological fluid sample for which Licensee does not hold a valid prescription or for a prescription that Licensee has not forwarded documentation to the Board as required herein shall constitute a violation of Licensee's discipline.

- H. Licensee shall inform any professional preparing a prescription for Licensee that Licensee is chemically dependent.

### III. DRUG SCREENS

During the disciplinary period, Licensee shall, at Licensee's cost, submit to biological fluid testing as required by the Board. Licensee shall, upon demand and without delay, allow 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 whatsoever in a

biological fluid sample for which Licensee does not hold a valid prescription shall constitute a violation of Licensee's discipline.

**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 submit documents showing compliance with the requirements of this Settlement Agreement to the Board by no later than January 1 and July 1/January 1, April 1, July 1, and October 1 during each year of the disciplinary period.**
- D. 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.**
- E. Licensee shall not reapply for a new BNDD or DEA permit without the prior written consent of the Board.**
- F. In the event Licensee obtains a new BNDD or DEA permit during the disciplinary period, Licensee shall retain duplicate copies of all controlled substance prescriptions, written or authorized by the Licensee, including original telephone prescriptions or telephone authorizations for refills. These copies shall be kept in**

a file separate from patient charts or files and shall be maintained in chronological order. Retaining prescription copies only in patients' charts or files shall not be in compliance with this paragraph and shall be deemed a violation of this Settlement Agreement. Licensee shall immediately, and without delay, produce this file, containing duplicate copies of all controlled substance prescriptions, for inspection and copying upon request by the Board or its representative.

G. In the event Licensee obtains a new BNDD or DEA permit during the disciplinary period, Licensee shall maintain a record of all controlled substances prescribed, dispensed, ordered, or administered by Licensee, showing all the following:

- (1) the name and address of the patient,
- (2) the date,
- (3) the character and quantity of controlled substance involved, and
- (4) the diagnosis and purpose for which the controlled substance was furnished.

Licensee shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Board's designee upon request.

20. The parties to this Order/Agreement understand that the Missouri Dental Board will maintain this Order/Agreement as an open record of the Board as provided in Chapters 332, 610, 620, RSMo.

21. 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.

22. 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 AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE**

\_\_\_\_\_ REQUESTS

PCJ DOES NOT REQUEST

**THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING LICENSEE'S LICENSE AS A DENTIST.**

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 fact 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.

If Licensee has not requested review by the Administrative Hearing Commission, the agreement goes in to effect 15 days after the document is signed by the Executive Director.

LICENSEE

BOARD

  
Philip C. Jaynes, D.D.S.

  
Sharlene Rimiller  
Executive Director  
Missouri Dental Board

Date 7/20/04

Date 8-12-04

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