

**JOINT STIPULATION AND SETTLEMENT AGREEMENT BETWEEN  
MISSOURI DENTAL BOARD AND BRIAN H. JENKINS, D.D.S.**

COMES NOW, Brian H. Jenkins, D.D.S., (“Jenkins”) and the Missouri Dental Board (“Board”), personally and through counsel, and enter into this settlement agreement for the purpose of resolving the question of whether the Board shall issue Jenkins a Missouri dental license.

Pursuant to the terms of § 536.060, RSMo,<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 deny Jenkins a license and jointly stipulate to the facts, cause for denial and consent to the issuance of a probated license to Jenkins.

Jenkins acknowledges that he understands the various rights and privileges afforded him by law, including but not limited to the right to proceed with the hearing; the right to appear and be represented by legal counsel; the right to present evidence on his own behalf at the hearing; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the complaint; and the right to recover attorney’s fees incurred in prosecuting this action regarding the denial of a license. Being aware of these rights provided him by operation of law, Jenkins 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.

Jenkins acknowledges that he has received a copy of the February 24, 2014 denial letter and other documents relied upon by the Board in determining there was cause to deny his license, along with citations to law and/or regulations the Board believes supports that decision.

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<sup>1</sup> All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

For the purpose of settling this dispute, Jenkins stipulates that the factual allegations contained in this settlement agreement are true. The parties however, disagree as to whether the Board had cause to deny Jenkins a license in accordance with the provisions of Chapters 621 and 332, RSMo. Accordingly, the parties enter into this Settlement Agreement to resolve that controversy and issue Jenkins a Missouri dental license.

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, for the purpose of executing and enforcing the provisions of Chapter 332.
2. On or about October 3, 2013, Jenkins applied for a Missouri dental license.
3. On the application for licensure, question 3 asked whether or not the applicant has had a professional license disciplined. Question 5 asked whether or not the applicant has ever voluntarily surrendered or resigned any professional license, certification, registration or permit. On Jenkins’ application, Jenkins answered “yes” to questions 3 and 5. In a separate response to questions 3 and 5 on the application, Jenkins stated that he voluntarily surrendered his Kansas dental license in January 2003. He stated he had many tragic life events at that time including his father passing away and getting divorced. He stated “I turned to alcohol and was convicted of two DUIs and arson.” He stated he also “let my practice fall during this time frame. I showed up to work late and didn’t keep adequate records and waived insurance co-payments. I also allowed my assistant to clean teeth[.]” Jenkins stated he successfully completed alcohol rehabilitation and served time in prison for arson. Jenkins stated he was granted a restricted license in October 2007. He stated he was also required to enter into the impaired provider program.

4. On the application for licensure, question 9 asked whether or not the applicant has ever been convicted, adjudged guilty by a court, pled guilty or pled nolo contendere to any crime whether or not sentence was imposed. Question 10 asked whether or not the applicant has ever been convicted, adjudged guilty by a court, plead guilty or pled nolo contendere to any traffic offenses resulting from or related to the use of drugs or alcohol whether or not sentence was imposed. On Jenkins' application, Jenkins answered "yes" to questions 9 and 10. Jenkins also provided a separate response to questions 9 and 10 on his application in which he stated that regarding his October 2001 arson conviction in Lane County, Kansas "after my divorce I put all of ex-wife's and our personal memories in my garage next to my house and burned them. Our house was a half mile away from any other house out in the country. I was sentenced to 28 months and 3 years' probation. Sentence completed 7 years ago in August 2006." He also stated that he had October 2001 and June 2002 DUI convictions.

5. Records of the Kansas Dental Board reveal that:

- a. On or about January 18, 2003, the Kansas Dental Board issued its Stipulation and Final Agency Order placing Jenkins' Kansas dental license, license number 7100, on Indefinite Suspension.
- b. On or about October 4, 2007, the Kansas Dental Board issued its Final Agency Order regarding lifting the indefinite suspension on Jenkins' license. The Kansas Board's Final Agency Order stated that prior to lifting the suspension, Jenkins had to join the Kansas Dental Impaired Provider Program and take a Kansas Board approved clinical refresher course. On or about March 8, 2008, the Kansas Board issued its Lift of Suspension and Limitation of License. The Kansas Board lifted the suspension but provided Jenkins

could only practice at Grace Med Health Clinics in Wichita, Kansas. On or about November 29, 2009, the Board issued an additional order stating Jenkins could practice dentistry as an employee of Dr. Boe.

- c. On or about April 23, 2010, the Kansas Dental Board issued its Stipulation and Consent Order, ordering Jenkins to pay a \$500 fine, limiting him from performing extractions and ordering 8 hours of continuing education as a result of a care below the standard of care for two patients.
- d. On or about August 23, 2013, the Kansas Dental Board issued its Stipulation and Final Order, in which Jenkins consented to the voluntary surrender of his Kansas Dental license to the Board no later than December 31, 2013. The Final Order also stated Jenkins would not practice dentistry in Kansas after December 31, 2013.

6. Records of the Kansas Dental Board do not reveal any additional actions against Jenkins' Kansas dental license.

7. While investigating the criminal convictions reported on Jenkins' application for licensure, the Board learned that on or about June 20, 2002, Jenkins pled guilty to the class A misdemeanor of Assault in the third degree, in the Circuit Court of Clay County, Missouri, case number 7CR102001059. Jenkins failed to report this conviction on his application for licensure.

8. On or about February 11, 2014, the Board denied Jenkins' application for a dental license based on the discipline issued by the state of Kansas, his criminal convictions, and his failure to fully disclose information regarding his criminal convictions and license discipline history as detailed in paragraphs 3 through 7 above. The Board denied Jenkins' license pursuant to § 332.321.1 § 332.321.2 (2), (3),(8) and (13), RSMo.

9. On or about March 25, 2014, Jenkins filed a Complaint before the Missouri Administrative Hearing Commission, appealing the Board's February 11, 2014 decision to deny his license. The Board filed its Answer to Jenkins' Complaint on April 28, 2014.

10. The Board has authority to deny or refuse a license application pursuant to §332.321.1, RSMo, which provides:

The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

11. The Board has cause to deny or refuse Jenkins' application for a dental license pursuant to § 332.321.2 RSMo, which provides:

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 certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

...

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or any offense involving moral turpitude, whether or not sentence is imposed;

...

(3) Use of fraud, deception, misrepresentation or bribery in securing any permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

...

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter imposed by another state, province, territory, federal agency or country upon grounds for which discipline is authorized in this state;

...

(13) Violation of any professional trust or confidence[.]

12. As an alternative to refusing to issue a license, the Board may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1, RSMo, which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

13. The Board enters into this Settlement in lieu of denial of Jenkins' application for a dental license and Jenkins' appeal of said denial. The Board has determined that this Order is necessary to ensure the protection of the public.

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the order entered by the Board granting Jenkins a dental license.

14. Following the Board's Executive Director's execution of this agreement, Jenkins shall dismiss with prejudice the action currently pending at the AHC. Said dismissal shall occur no later than August 9, 2014. Immediately upon confirmation of the dismissal, the Board shall issue Jenkins a Missouri dental license, which is hereby placed on PROBATION for a period of five (5) years ("disciplinary period"). During Jenkins' probation, Jenkins 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, as follows:

I. EMPLOYMENT REQUIREMENTS

- A. During the first three years of the probation period, Jenkins shall not own or operate a solo or private dental practice. Jenkins 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 Jenkins from providing contract dental services.
- B. Prior to returning to the practice of dentistry, Jenkins shall submit to the Board a notice of his intent to return to the practice of dentistry. The notice shall include an explanation of the location where Jenkins intends to practice and the names of his potential employers and other licensed dentists working at that location. Jenkins shall notify the Board within 30 days of any change in this information.

II. DRUG TESTING REQUIREMENTS

- A. During the disciplinary period, Jenkins shall, at Jenkins' expense, submit to drug screens as required by the Board. Jenkins 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, or any drug whatsoever in a drug screen for which Jenkins does not hold a valid prescription shall constitute a violation of this Agreement.

III. GENERAL REQUIREMENTS

- A. Jenkins 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. Jenkins 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. Jenkins shall keep the Board apprised of his current home and work addresses and telephone numbers. Jenkins shall inform the Board within ten days of any change of home or work address and home or work telephone number.

D. Jenkins 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, Jenkins shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain his license in a current and active state. Jenkins shall not allow his license to lapse.

F. If at any time during the disciplinary period, Jenkins 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, Jenkins 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 Jenkins 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 Jenkins not specifically mentioned in this document.

15. 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 and 324, RSMo.

16. 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.

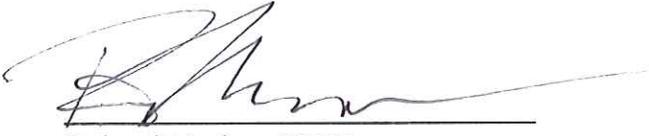
17. Jenkins, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability,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



Brian H. Jenkins, D.D.S.

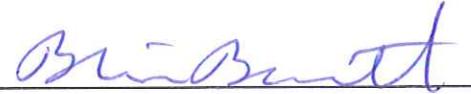
Date 8-8-14



Richard Merker, 40383  
Attorney for Petitioner

Date 8/8/14

BOARD



Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 8/12/14



Scott T. Evans, 63482  
Attorney for Respondent

Date 8/12/14