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**SETTLEMENT AGREEMENT BETWEEN  
MISSOURI DENTAL BOARD AND MARK MEYERS, D.D.S.**

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Come now Mark Meyers, 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 were violated.

The Board acknowledges that this Settlement Agreement applies to all complaints in the possession of the Board as to Licensee at the time of the execution of this Settlement Agreement. The Board agrees that no additional discipline will be issued against Licensee for complaints in the possession of the Board at the time of the Execution of this Settlement Agreement or arising prior to the Execution of this Settlement Agreement.

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 013134, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 332, RSMo.

### **STIPULATION OF FACT AND CONCLUSIONS OF LAW**

#### **ALLEGATIONS COMMON TO ALL COUNTS**

1. On or about October 5, 2009, the Missouri Dental Board ("Board") filed a Complaint with the Administrative Hearing Commission alleging cause to discipline Mark Meyer's dental license, Case No. 09-1380DB.
2. The parties wish to resolve the AHC Case No. 09-1380DB by way of this Settlement Agreement.
3. The Board is an agency of the State of Missouri created and established pursuant to § 332.031, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 332, RSMo.
4. Mark Meyers ("Licensee") is licensed by the Board as a dentist, License No. 013134. Licensee's Missouri license was at all times relevant herein, and is now current and active.

5. Licensee practices dentistry at 11678 Baptist Church Road, St. Louis, Missouri (“the office”).

6. Licensee has an “on-site” denture laboratory in the same building where his office is located.

7. Prior to March 2010, Licensee’s denture laboratory was located in an area connected to Licensee’s dental office by a window. In March 2010, a doorway was installed between Licensee’s dental laboratory and Licensee’s dental office.

8. The practice of dentistry is defined in section 312.071, which states a person or other entity “practices dentistry” within the meaning of this chapter who:

1. Undertakes to do or perform dental work or dental services or dental operations or oral surgery, by any means or methods, including the use of lasers, gratuitously or for salary or fee or other reward, paid directly or indirectly to the person or to any other person or entity;
2. Diagnoses or professes to diagnose, prescribe for or professes to prescribe for, treats or professes to treat, any disease, pain, deformity, deficiency, injury or physical condition of human teeth or adjacent structures or treats or professes to treat any disease or disorder or lesions of the oral regions;
3. Attempts to or does replace or restore a part or portion of a human tooth;
4. Attempts to or does extract human teeth or attempts to or does correct malformations of human teeth or jaws;
5. Attempts to or does adjust an appliance or appliances for use in or used in connection with malposed teeth in the human mouth;
6. Interprets or professes to interpret or read dental radiographs;
7. Administers an anesthetic in connection with dental services or dental operations or dental surgery;
8. Undertakes to or does remove hard and soft deposits from or polishes natural and restored surfaces of teeth;
9. Uses or permits to be used for the person’s benefit or for the benefit of any other person or other entity the following titles or words in connection with the person’s name: “Doctor”, “Dentist”, “Dr.”, matter which directly or indirectly indicated or imply that the person is willing or able to perform any type of dental service for any person or persons, or uses or permits the use of for the person’s benefit or for the benefit of any other person or other entity any card, directory,

poster, sign or any other means by which the person indicates or implies or represents that the person is willing or able to perform any type of dental services or operation for any person;

10. Directly or indirectly owns, leases, operates, maintains, manages or conducts an office or establishment of any kind in which dental services or dental operations of any kind are performed for any purpose; but this section shall not be construed to prevent owners or lessees of real estate from lawfully leasing premises to those who are qualified to practice dentistry within the meaning of this chapter;
11. Controls, influences, attempts to control or influence, or otherwise interferes with the dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder or physical condition except that any opinion rendered by any health care professional licensed under this chapter or chapter 330, 331, 334, 335, 336, 337, or 338, RSMo, regarding the diagnosis, treatment, disorder, or physical condition or any patient shall not be construed to control, influence, attempt to control or influence or otherwise interfere with a dentist's independent professional judgment;
12. Constructs, supplies, reproduces or repairs any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except when one, not a registered and licensed dentist, does so pursuant to a written uniform laboratory work order, in the form prescribed by the board, of a dentist registered and currently licensed in Missouri and which the substitute in this subdivision described is constructed upon or by use of casts or models made from an impression furnished by a dentist registered and currently licensed in Missouri;
13. Attempts to or does place any substitute described in subdivision (12) of this section in a human mouth or attempts to or professes to adjust any substitute or delivers any substitute to any person other than the dentist upon whose order the work in producing the substitute was performed;
14. Advertises, solicits, or offers to or does sell or deliver any substitute described in subdivision (12) of this section or offers to or does sell the person's services in constructing, reproducing, supplying or repairing the substitute to any person other than a registered and licensed dentist in Missouri;
15. Undertakes to do or perform any physical evaluation of a patient in the person's office or in a hospital, clinic, or other medical or dental facility prior to or incident to the performance of any dental services,

dental operations, or dental surgery;

16. Reviews examinations finding, x-rays, or other patient data to make judgments or decisions about the dental care rendered to a patient in this state.

9. "Dental Assistant" is defined in section 332.011(5) as an employee of a duly registered and currently licensed dentist in Missouri, other than either a dental hygienist or a certified dental assistant.

10. Under section 332.011(6) and "Expanded-functions dental assistant" is any dental assistant who has passed a basic dental assisting skills mastery examination or a certified dental assistant, either of whom has successfully completed a board- approved expanded functions course, passed a competency examination, and can show proof of competency in a specific expanded function to the Board.

11. Pursuant to section 332.093, a currently registered and licensed dentist may delegate to a dental assistant, certified dental assistant or expanded functions dental assistant, under their direct supervision, such reversible acts that would be considered the practice of dentistry provided such delegation is done pursuant to the terms and conditions of a rule adopted by the Board.

12. Pursuant to 20 CSR 2110-2.120(1)(D), direct supervision is defined as:

- A. The dentist is in the dental office or treatment facility;
- B. The dentist has personally diagnosed the condition to be treated;
- C. The dentist has personally authorized the procedures;
- D. The dentist remains in the dental office or treatment facility while the

procedures are being performed by the dental auxiliary; and

E. The dentist evaluates the performance of the dental auxiliary before the dismissal of the patient.

13. Pursuant to Board rule 20 CSR 2110-2.120, a currently licensed dentist may delegate, under direct supervision, the following functions listed in subsection (4)(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 fabrication on the 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.

14. At all times relevant herein, Wendy Summers was employed by Dr.

Meyers as a dental assistant.

15. At no time prior to April 10, 2010 did Ms. Summers possess an expanded functions certificate as that term is defined in section 332.011(6), RSMo. At all times since April 10, 2010, Ms. Summers has possessed an expanded functions certificate for prosthetics.

16. At all times relevant herein, Nancy Beers was employed by Dr. Meyers as a dental assistant.

17. At no time prior to April 10, 2010 did Ms. Beers possess an expanded functions certificate as that term is defined in section 332.011(6), RSMo. At all times since April 10, 2010, Ms. Beers has possessed an expanded functions certificate for prosthetics.

18. At all times relevant herein, ending on August 1, 2008, Karen Strothkamp was employed by Dr. Meyers as a dental assistant.

19. At no time did Ms. Strothkamp possess an expanded functions certificate as that term is defined in section 332.011(6), RSMo.

20. Pursuant to Board rule 20 CSR 2110-2.120(2), under no circumstances may a dentist delegate the following.

- (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 securing 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.

21. To diagnose means to ascertain the cause or nature of a disorder, malfunction, problem, etc. from the symptoms, to diagnose a disease or condition in a patient; to

analyze the cause or nature of the patient's problem.

22. After December 2008, at dates certain known only to Licensee, Licensee delegated the diagnosis of patients to his dental assistant(s), including treatment planning in violation of 20 CSR 2110-2.120(2) in that Licensee's dental assistant(s) diagnosed the patient's problem by signs and symptoms, diagnosed a condition in a patient and/or analyzed the cause or nature of the patient's denture problem(s) and the adjustment(s) necessary to correct the problem.

23. After December 2008, at dates certain known only to Licensee, Licensee delegated the adjustment of dentures to his dental assistant(s) in violation of 20 CSR 2110-2.120(4)(D) in the following particulars:

- A. Licensee's dental assistant(s) marked sore spots on patient dentures;
- B. Licensee's dental assistant(s) diagnosed the problem/condition with the patient's denture;
- C. Dr. Meyer performed adjustment(s) on dentures as instructed by his dental assistant without speaking to the patient and without conducting an independent observation/diagnosis of the patient;
- D. Licensee's dental assistant(s) returned the newly adjusted denture to the patient and the patient left the office without review by Dr. Meyer.

24. Pursuant to 20 CSR 2110-2.120(6) Licensee 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

competence is required.

25. On or about April 28, 2009, Board investigator Joseph Sears presented at Dr. Meyer's office for a routine inspection.

26. While at the office on April 28, 2009, Investigator Sears requested and received true and accurate copies of several patient records randomly selected for documentation review.

27. On or about April 28, 2009, patient RL's record was among those patient records randomly selected for documentation review by Investigator Sears.

28. On or about April 28, 2009, patient RL's records did not contain any notation that the patient brought his own x-rays and was not charged for any x-rays.

29. Pursuant to Board statute 332.052(3), RSMo, any correction, addition, or change in any patient record made more than 48 hours after the final entry is entered in the record as an addendum shall be clearly marked and identified as such, and the date, time, and name of the person making the correction, addition, or change shall be included, as well as the reason for the correction, addition, or change.

30. On or about May 20, 2009, the Board requested and received a second copy of patient RL's records from Dr. Meyer.

31. RL's record contained a notation that was made between April 28, 2009 and May 20, 2009 which stated "Patient brought own x-rays and not charged for any."  
("Notation")

32. The notation was not clearly marked and identified as a correction, addition or change in RL's record, did not contain the date, time and name of the person making the notation, nor did it contain the reason for the notation in violation of 332.052(3) RSMo.

33. Licensee failed to use that degree of skill and learning that a dentist ordinarily uses under the same or similar circumstances.

34. Licensee's conduct as alleged herein constitutes a deviation from that degree of skill and learning that a dentist ordinarily uses under the same or similar circumstances.

35. At the time of the events alleged herein, Licensee had formed a relationship of professional trust and confidence with his patients in that the patients relied upon the professional expertise of Licensee to ensure that all laws and regulations governing the practice of dentistry were followed.

36. Licensee's conduct as alleged herein violates patients' professional trust and confidence.

37. Licensee's conduct constitutes assisting or enabling in the performance of his functions and duties as a licensed dentist in violation of § 332.321.2(10), RSMo

38. Licensee's conduct constitutes violation of professional trust in the performance of his functions and duties as a licensed dentist in violation of § 332.321.2(13) RSMo.

39. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(6), (10), and (13) RSMo, which states in 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 of any combination of the following causes:

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

- (10) Assisting, or enabling any person to practice or offer to practice, by lack of supervision or in any other manner, any profession licensed or regulated by this chapter who is not registered and currently eligible to practice pursuant to this chapter;
- (13) Violation of any professional trust or confidence;

### **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:

1. The terms of discipline shall include that Licensee's dental license numbered 013134 be on **PROBATION for a period of TWO (2) YEARS** ("Disciplinary Period"). During the probationary 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 Disciplinary Period shall be:

#### **EDUCATIONAL REQUIREMENTS**

- A. Licensee shall take and pass the Board's designated jurisprudence examination within twelve (12) 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 twelve (12) months of the disciplinary period shall constitute a violation of this Agreement.

**I. GENERAL REQUIREMENTS**

- A. Licensee shall provide to the Board affidavits from his assistants to confirm that they do not work beyond the scope of their training and certification.
- B. 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.
- C. 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.
- D. 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.
- E. 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" which includes the state of Missouri and all other states and territories of the United States.
- F. 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.
- G. If at any time during the disciplinary period, Licensee 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 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.

- H.. 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.
- I. 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.
- J 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.

### **III. 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.
- D. 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 324, 332, 610, RSMo.

- E. Upon the expiration of said discipline, Licensee's license to practice dentistry in Missouri shall be fully restored if all other requirements of law have been satisfied; provided however, that in the event the Board determines that the Licensee has violated any material term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline the Licensee.
- F. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.
- G. If the Board determines that Licensee has violated a material term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the Disciplinary Period, the Board may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.
- H. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this

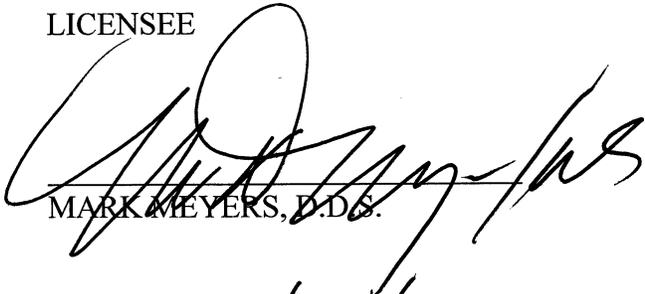
settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

- I. 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.
- J. 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.**

- K. 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

  
MARK MEYERS, D.D.S.

Date 1/14/12

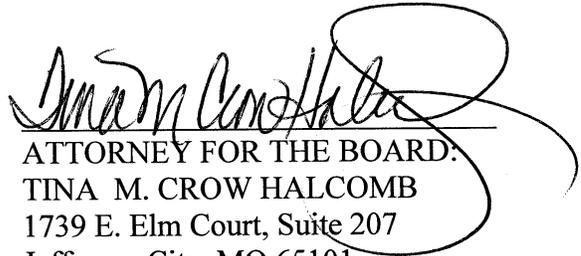


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BOARD

  
BRIAN BARNETT  
Executive Director  
Missouri Dental Board

Date 2/2/12



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