

NOV 07 2013

MISSOURI DENTAL BOARD

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND SAMUEL A. MILLER, D.D.S.**

Come now Samuel A. Miller, 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 additional discipline.

Pursuant to the terms of § 324.042, RSMo,¹ the parties hereto waive the right to a hearing by the Board regarding cause to take additional discipline against the Licensee's license.

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 concerning the charges pending against him and, subsequently, the right to 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 015292 is subject to additional disciplinary action by the Board in accordance with the provisions of Chapters 324 and 332, RSMo.

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

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. Licensee Samuel A. Miller, D.D.S. is licensed by the Board as a dentist, License No. 015292. Licensee's Missouri license was at all times relevant herein, and is now, current and active. Licensee's license is currently on probation.

3. On or about October 12, 2010, Licensee and the Board entered into a Settlement Agreement suspending Licensee's license for a period of three months followed by five years' probation (disciplinary period). The Settlement Agreement was effective October 27, 2010.

4. During the probationary period, Licensee was entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided that Licensee adhered to all the terms and conditions of the Settlement Agreement.

5. The Settlement Agreement, page 5, paragraph II.D. required that Licensee "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." Page 6, paragraph II.H. also stated that "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[.]"

6. In or around September 2013, Licensee was referred to Cedar Bridge for assessment by his therapist team based on a desire to determine Licensee's fitness to resume his dental practice. On or about September 16, 2013, Licensee arrived at Cedar Bridge and underwent an assessment battery including clinical interviews and psychometric testing. Licensee reported command hallucinations, severe depression and numerous fears. Cedar Bridge physician Dr. Kevin Clark noted that "borderline, dependent and antisocial personality features were readily apparent in [Licensee's] presentation[.]" Dr. Clark also stated that "it was unclear, however, if his psychosis is transient or the disorder has permanently morphed into schizophrenia." Dr. Clark stated that Licensee was "actively suicidal and hears voices." Dr. Clark stated that Licensee routinely "contracts for safety with his therapist." Dr. Clark noted a diagnosis of major depressive disorder, severe, with

psychotic features, Asperger disorder, Post Traumatic Stress Disorder. In conclusion, Dr. Clark stated "Dr. Miller currently exhibits a level of impairment making him unfit to return to [d]ental [p]ractice."

7. The Board has jurisdiction pursuant to the Settlement Agreement to determine whether Licensee has violated the terms and conditions of the Settlement Agreement.

8. The Board also has jurisdiction pursuant to § 324.042, RSMo, to determine whether Licensee has violated the terms and conditions of the Settlement Agreement. Section 324.042, RSMo, states, in pertinent part:

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

9. Section 332.321.2(20) RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

. . . .

(20) Being unable to practice as a dentist, specialist or hygienist with reasonable skill and safety to patients by reason of professional incompetency, or because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or as a result of any mental or physical condition[.]

10. Licensee's failure to be fit to practice due to mental condition constitutes cause to impose additional discipline against Licensee's license pursuant to the Settlement Agreement and § 324.042, RSMo, in that Licensee violated a provision of the dental practice act in that Licensee is not currently competent to practice in violation of § 332.321.2(20), RSMo.

11. The Settlement Agreement and § 324.042, RSMo, allow the Board to take such disciplinary action that the Board deems appropriate for failure to comply with the terms of the Settlement Agreement.

12. The Board has determined that this Order is necessary to ensure the protection of the public.

Joint Agreed Disciplinary Order

13. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the probation violation order entered by the Board in this matter under the authority of § 324.042, RSMo.

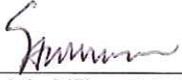
14. The terms of discipline shall include that the dental license shall be **VOLUNTARILY SURRENDERED in lieu of discipline** and Licensee shall return all indicia of licensure to the Board. Licensee shall not reapply for a license until Licensee obtains an evaluation from a Missouri licensed health or mental health professional approved by the Board that states that Licensee is fit to return to the practice of dentistry.

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. 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.

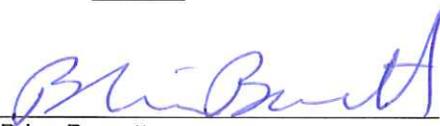
LICENSEE



Samuel A. Miller, D.D.S.

Date 31 Oct 2013

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date 11/7/13

RECEIVED

OCT 12 2010

MISSOURI DENTAL BOARD **SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND SAMUEL A. MILLER, D.D.S.**

Come now Samuel A. Miller, 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 015292 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 Samuel A. Miller, D.D.S. is licensed by the Board as a dentist, License No. 015292. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On or about January 25, 2008, the Board received information from the Office of the Attorney General's Medicaid Fraud Control Unit (MFCU) regarding Licensee. MFCU was in the process of investigating Licensee for making false or fraudulent claims regarding Medicaid patients.
4. On or about January 28, 2008, Board investigator Mark Dudenhoeffer requested a summary of all of Licensee's Medicaid claims from January 1, 2005 to December 31, 2007 from the Mo HealthNet Division (Medicaid). Dudenhoeffer reviewed Licensee's claims.
5. On or about March 20, 2008, Dudenhoeffer interviewed Licensee regarding the alleged false billing. During the investigation, Licensee stated that:
 - a. His practice consists of 40% Medicaid patients, mostly pediatric patients.
 - b. He completes a large number of pulpotomies and conducts almost all of them in a hospital setting so that the child can be sedated.
 - c. When he completes a pulpotomy, he debrides decay past the enamel and removes the pulp of the tooth.
 - d. It takes approximately two seconds to complete a pulpotomy on a tooth. Sometimes afterward, a crown is necessary and sometimes a simple filling is sufficient to seal the tooth.
 - e. Licensee personally completes and submits his Medicaid billing electronically. He reviews approximately 60% of the remittance advices he receives back from Medicaid as time permits.
 - f. He does not recall any "irregularities in his remittance advices."
6. Dudenhoeffer requested the thirteen patient files for which Licensee was alleged to have improperly billed Medicaid. Licensee provided the records on April 21, 2008. The records when compared with the billing records from Mo HealthNet demonstrate numerous patients for whom Licensee billed for services but has no record in the patient's file of treatment or x-rays. The records reveal a large number of pulpotomies on

Medicaid patients for which Licensee was paid \$41.50 each by Medicaid. The records reveal Licensee completed seventeen pulpotomies per patient in as little as seventeen minutes. The records also revealed that:

- a. For the thirteen patients:
 - i. Three had 10 or less pulpotomies;
 - ii. Two had 11 to 15 pulpotomies;
 - iii. Three had between 16 and 19 pulpotomies; and
 - iv. Five had pulpotomies in all 20 teeth.
- b. One patient had pulpotomies in all 20 teeth and then the pulpotomies were re-done for seven teeth.
- c. For one patient who received 20 pulpotomies, Licensee had no surgical or treatment notes regarding the 20 pulpotomies in patient's file.
- d. For three patients, there was no x-ray in the patient records.

7. Following his interview of Licensee, Investigator Dudenhoeffer also spoke with two dentists by telephone regarding the standard of care for a general dentist completing pulpotomies. The dentists provided the following information related to the standard of care:

- a. Dentist one performs approximately fifteen to twenty pulpotomies per year. Dentist one stated that completing pulpotomies on the anterior teeth of a small child, like Licensee's patients, is near impossible, the pulpotomies can last as little as six months, and it is often better to just remove the tooth. Dentist one stated a pre-operative x-ray is needed prior to performing pulpotomies.
- b. Dentist two, a pedodontist, stated it is not common to perform pulpotomies on all twenty teeth at one time. Dentist two also stated they are not commonly performed on anterior teeth; removal is a better standard. Dentist two also stated there is no need to redo a pulpotomy. If it fails, extraction of the tooth is the next option. Dentist two stated that a radiograph can detect whether a dentist performed a pulpotomy on a tooth.

8. On or about November 13, 2008, the Missouri Attorney General's Office, Medicaid Fraud Control Unit filed thirteen (13) counts of class D felony Violations involving health care payments, first offense against Licensee in the Circuit Court of Jasper County, Missouri. The charges stem from fraudulent or improper

billing for thirteen of his Medicaid patients between September 18, 2005 and June 30, 2006. Licensee was alleged to have billed Medicaid for services not performed in order to obtain the payments.

9. On or about December 8, 2009, Investigator Dudenhoeffer met with Licensee again regarding the criminal case filed in Jasper County. Licensee stated "he feels that he did not submit fraudulent claims and that he provided all the services that he billed." He also stated that he "felt that he was a convenient person for the new Attorney General to get media exposure with." Finally, he stated that he "plead guilty to save on the expense and trauma to himself, his family and his staff."

10. On or about March 22, 2010, Licensee pled guilty to the thirteen (13) counts of class D felony violations involving health care payments, first offense. The Court sentenced Licensee to four years incarceration in Missouri Department of Corrections, suspended execution of sentence. The Court then placed Licensee on five years probation, supervised by the State Board of Probation and Parole and payment of restitution in the amount of \$250,000.00 to be paid within sixty (60) days.

11. Licensee's plea of guilty and conviction to the thirteen felony counts of Violations involving health care payments occurred in a criminal prosecution by the State of Missouri and are related to the qualifications, functions and duties of a dentist in that proper billing is a duty of a dentist, are offenses for which an essential element is fraud or dishonest in that Licensee billed for services not provided in order to obtain payment and are offenses involving moral turpitude.

12. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(2) 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:

.....

(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[.]

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 shall be **SUSPENDED** for a period of **THREE (3) months** from the date of execution of this Agreement, followed immediately by a period of **PROBATION** for **FIVE (5) 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 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 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.

III. ADDITIONAL REQUIREMENTS

- A. Licensee shall provide one hundred (100) hours of community service dentistry at the Joplin Community Clinic or similar facility or institution during the first two (2) years of the disciplinary period. Licensee shall not provide any of the community service dentistry during the period of suspension, only during the period of probation. Licensee shall include a statement on the progress of this requirement in the reports to be filed no later than January 1 and July 1 (as set in paragraph II.B. above), until such service is completed.
- B. Licensee shall not allow his license to lapse.
- 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.

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. 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



Samuel A. Miller, D.D.S.

Date 2 OCT 2010

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date 10/12/10