

# Missouri Court of Appeals

## WESTERN DISTRICT

April 27, 2010

### IMPORTANT NOTICE

To: All Attorneys of Record

Re: DAVID L MOORE, D.D.S., APPELLANT

vs.

MISSOURI DENTAL BOARD, RESPONDENT

WD71065

Please be advised that Appellant's motion for Rehearing is **OVERRULED** and motion for transfer to Supreme Court is **DENIED**. See Rule 83.04.



Terence G. Lord  
Clerk

cc: AUDREY HANSON MCINTOSH (573) 636-2564  
LORETTA LYNN SCHOUTEN (573) 875-5603

**DAVID MOORE,  
D.D.S.**

**Western District  
Court of Appeals  
DECISION  
UPHOLDING REVOCATION  
BY BOARD**



## Missouri Court of Appeals

WESTERN DISTRICT  
1300 OAK STREET

KANSAS CITY, MO. 64106-2970

TERENCE G. LORD  
CLERK

AREA CODE 816-889-3600  
FAX 816-889-3668

March 9, 2010

IN RE: David L. Moore, D.D.S. vs. Missouri Dental Board  
WD 71065

TO THE ATTORNEYS OF RECORD:

Be advised that the enclosed Opinion was handed down on the above date. MOTION FOR REHEARING AND/OR TRANSFER TO THE SUPREME COURT IS DUE 15 (FIFTEEN) DAYS FROM THE DATE THE OPINION WAS FILED AND MUST BE SERVED ON THE ADVERSE PARTY WITHIN THAT TIME. See Rule 84.07 and 84.17. Rule 44.01(e) does not apply to extend the time for filing Motions for Rehearing and/or Transfer to the Supreme Court.

Our Court requires an **ORIGINAL AND FIVE COPIES** of same. (See Missouri Rules of Court, Western District, Special Rules XII(A)(3).) Please **attach** any **SUGGESTIONS IN SUPPORT** to the Motion.

See Rule 84.17(c) concerning the filing of Suggestions in Opposition.

Papers and Documents which are not presented in the proper form, content and number required by these rules cannot be accepted for filing and will be returned. (Missouri Rules of Court, Western District Special Rules, XII(E).)

Please feel free to call upon us should you need further assistance.

TERENCE G. LORD  
Clerk

nss

cc: Audrey Hanson McIntosh  
Loretta Lynn Schouten

In the  
**Missouri Court of Appeals**  
**Western District**

**NOTICE**  
THIS OPINION IS NOT FINAL UNTIL  
ALL POST-HANDDOWN MOTIONS HAVE  
BEEN DISPOSED OF AND THE MANDATE  
ISSUED AND RECEIVED.

DAVID L. MOORE, D.D.S., )  
 )  
 Appellant, ) **WD71065**  
 )  
 v. ) **OPINION FILED:**  
 ) **March 9, 2010**  
 MISSOURI DENTAL BOARD, )  
 )  
 Respondent. )

**Appeal from the Circuit Court of Cole County, Missouri**  
The Honorable Richard G. Callahan, Judge

Before Division Four: Thomas H. Newton, Chief Judge, Karen King Mitchell, Judge and  
Cynthia L. Martin, Judge

David L. Moore ("Moore") appeals from a disciplinary order ("Order") issued by the Missouri Dental Board ("Board") revoking Moore's dental license and barring reapplication for a period of not less than one year. The Order imposed additional discipline pursuant to section 324.042, formerly section 620.153,<sup>1</sup> as Moore was found to have violated a previous disciplinary agreement. Moore complains that the Order is not supported by competent and substantial evidence because the Board improperly took official notice of records from the earlier disciplinary proceeding and relied on those records to enter the Order. Moore also complains that the additional discipline imposed by the Order is not supported by competent and substantial evidence. We affirm.

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<sup>1</sup>All statutory references are to RSMo 2000 as supplemented unless otherwise indicated. In 2008, portions of the Missouri Revised Statutes were renumbered. Section 620.153 was repealed and renumbered as section 324.042. Section 324.042 and former section 620.153 are identical.

## Factual and Procedural History

Moore is a licensed dentist in the State of Missouri. The Board filed a Probation Violation Complaint ("Complaint") after Moore tested positive for cocaine following a drug test on August 31, 2007. The drug test had been required by the Board as a part of the discipline imposed on Moore following an earlier disciplinary proceeding.

Moore received the Complaint along with a Notice of Probation Violation Hearing ("Notice"). The Notice advised Moore that the Board would conduct a hearing on January 19, 2008, to determine whether Moore violated a previous disciplinary order, and if so, whether additional discipline should be imposed. Moore did not file an answer contesting the allegations in the Complaint. Moore attended the hearing with legal counsel. At the hearing, the Board's President opened the proceedings by noting:

This is a hearing in the matter of the Missouri Dental Board versus David L. Moore, DDS, Case No. DB-08-028. The purpose of this hearing is to determine whether or not Dr. Moore violated the terms of his discipline as contained in the waiver of hearing, joint stipulation, request for consent order filed on January 16th, 2007, by the Missouri Dental Board and the consent order issued by the Administrative Hearing Commission on or about January 17, 2007, and if so, what discipline, if any, to impose on Dr. Moore's dental license.<sup>2</sup>

The proceedings were then turned over to the Board's counsel. Counsel stated: "The parties have reached an agreement regarding the allegations in this case that are outlined in the Probation Violation Complaint . . . ." Moore's counsel did not contest this representation. Moore was then examined by the Board's counsel. The extent of that questioning was as follows:

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<sup>2</sup>For ease of reference, the waiver of hearing, joint stipulation, request for consent order filed on January 16, 2007, will be referred to as "2007 Stipulation," and the consent order issued by the Administrative Hearing Commission on January 17, 2007, will be referred to as "2007 Consent Order."

Q. And Dr. Moore let me ask you we have reached an agreement regarding the allegations in the probation violation complaint; is that correct?

A. Correct.

Q. Okay. Specifically that on August 31, 2007, you submitted to a urine drug screen for the board --

A. Yes.

Q. -- pursuant to the terms of discipline?

A. Uh-huh.

Q. And that -- and that you tested positive for cocaine; is that correct?

A. Correct.

Counsel for the Board then rested.

The proceedings were turned over to counsel for Moore. Moore's counsel admitted three exhibits. Two of the exhibits related to rehabilitation efforts Moore had undertaken since his positive drug test on August 31, 2007. The third exhibit was a character reference. Moore's counsel then examined Moore. Moore admitted his cocaine use and characterized the use as a "relapse."<sup>3</sup> Moore testified about the circumstances of his relapse and described the voluntary rehabilitation efforts he had undertaken since his relapse.

Moore's counsel called Ira Davis, who runs the Missouri Dental Well Being Program, as a witness. Davis testified about Moore's experience in the program prior to his relapse, about the relapse, about Moore's rehabilitation efforts since the relapse, and

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<sup>3</sup>Moore used the term "relapse" throughout his testimony, suggesting the incident which brought him before the Dental Board was not his first involving the use of cocaine.

about Moore's voluntary cessation of his dental practice subsequent to his relapse.<sup>4</sup> Davis opined that Moore should be permitted to return to the practice of dentistry.

Moore presented no evidence contesting the representation that the parties had reached an agreement regarding the allegations outlined in the Complaint. Rather, the evidence submitted by Moore was relevant to the issue of what additional discipline, if any, the Board should impose on Moore.

On April 4, 2008, the Board issued its Order. The Order revoked Moore's license for a period of at least one year. On April 17, 2008, Moore filed a Petition for Judicial Review ("Petition") in the Circuit Court of Cole County, alleging that the Order was unsupported by competent and substantial evidence.

At Moore's request, the trial court issued a Stay Order ("Stay") suspending the revocation of Moore's license pending a decision on the Petition. The Stay directed Moore to conduct his practice in accordance with the probationary terms contained in the 2007 Stipulation and the 2007 Consent Order. Moore thereafter resumed his dental practice.

On July 9, 2008, Moore filed an Amended Petition. The Amended Petition added the assertion that the Board abused its discretion and utilized unlawful procedures resulting in its decision being unsupported by competent and substantial evidence upon the whole record because the Order took official notice of the 2007 Stipulation and the 2007 Consent Order though that did not occur on the record according to the transcript.

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<sup>4</sup>At Davis's suggestion, Moore voluntarily ceased practicing dentistry after his failed drug test.

On May 7, 2009, the trial court entered its Judgment ("Judgment") affirming the Order. Anticipating this appeal, the Judgment extended the Stay until further order of the court and again directed Moore to comply with the probationary terms contained in the 2007 Stipulation and the 2007 Consent Order, both of which were incorporated by reference into the Judgment. This appeal follows.

### **Standard of Review**

In an action involving initial license discipline, the Board assesses an appropriate level of discipline after the Administrative Hearing Commission ("AHC") has independently determined, "on the law and the evidence submitted by both the Board and the licensee, that cause for discipline exists." *Lacey v. State Bd. of Reg. for the Healing Arts*, 131 S.W.3d 831, 836 (Mo. App. W.D. 2004). In such a case, section 621.145 directs that we review the "AHC's decision as to the existence of cause and the Board's subsequent disciplinary order 'as one decision,' and proceed to review that combined decision, not the circuit court's judgment." *Id.* (quoting *Dorman v. State Bd. of Reg. for the Healing Arts*, 62 S.W.3d 446, 453 (Mo. App. W.D. 2001)).

This case does not involve initial license discipline, however. This case involves the Board's imposition of additional discipline pursuant to section 324.042, which authorizes the Board to determine *both* whether a licensee "has violated any disciplinary terms previously imposed or agreed to pursuant to settlement," and what, if any, additional discipline to impose. As no statute specifically addresses the standard of review to be applied to administrative agency action under section 324.042, our standard of review is controlled by section 536.100, which authorizes judicial review of "a final

decision in a contested case . . . as provided in sections 536.100 to 536.140, unless some other provision for judicial review is provided by statute." Section 536.100; *Lacey*, 131 S.W.3d at 836. Thus, we review the Board's Order, and not the judgment of the trial court. Section 536.140; *Lacey*, 131 S.W.3d at 837. "The Board's decision is presumed valid, and the burden is on the party attacking it to overcome that presumption." *Lacey*, 131 S.W.3d at 837 (citing *Dorman*, 62 S.W.3d at 453). We make a "single determination whether, considering the whole record, there is sufficient competent and substantial evidence to support" the agency's decision. *Albanna v. State Bd. of Reg. for Healing Arts*, 293 S.W.3d 423, 428 (Mo. banc 2009) (quoting *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220, 223 (Mo. banc 2003)). If the "agency's decision involves a question of law, the court reviews the question *de novo*." *Id.* (citing *State Bd. of Reg. for Healing Arts v. McDonagh*, 123 S.W.3d 146, 152 (Mo. banc 2003)).

### **Analysis**

Moore raises two points on appeal. Moore first contends that the Order was not supported by competent and substantial evidence because, although the Order states that the Board took official notice of the 2007 Stipulation and the 2007 Consent Order, neither document was properly made a part of the record in the manner required by either section 536.070(5) or section 536.070(6). Moore next contends that the revocation of his license for a period of at least one year was not supported by competent and substantial evidence in light of Moore's voluntary rehabilitation efforts and cessation of his dental practice following the failed drug test.

## **Point I**

Imposition of additional discipline under section 324.042 required the Board to find that Moore violated the disciplinary terms previously agreed to pursuant to the 2007 Stipulation and the 2007 Consent Order. Moore contends that the 2007 Stipulation and the 2007 Consent Order were not properly made a part of the record pursuant to either section 536.070(5) or section 536.070(6), which describe the manner in which an administrative agency can either place its records or documents into evidence or take official notice of matters. Moore claims that the Order is not supported by competent and substantial evidence, because the documents essential to establish a prior agreed disposition of a disciplinary proceeding--the predicate to the Board's ability to act under section 324.042--were not made a part of the record.

The Board claims that it properly admitted the 2007 Stipulation and the 2007 Consent Order pursuant to section 536.070(5) by reference to both documents at the outset of the disciplinary hearing, or pursuant to section 536.070(6) by noting in the Order that the Board had taken official notice of its own records, specifically the 2007 Stipulation and the 2007 Consent Order. The Board also argues that the Order is otherwise supported by the admitted allegations in the Complaint and by Moore's testimony at the hearing.

### ***Section 536.070 (5) and (6)--The 2007 Stipulation and the 2007 Consent Order***

Sections 536.070(5) and (6) describe the means by which an administrative agency can incorporate matters into the record:

In any contested case:

....

(5) Records and documents of the agency which are to be considered in the case shall be offered in evidence so as to become a part of the record, the same as any other evidence, but the records and documents may be considered as a part of the record by reference thereto when so offered.

(6) Agencies shall take official notice of all matters of which the courts take judicial notice.

Section 536.070(5) thus permits an agency's records and documents<sup>5</sup> to be treated as a part of the record "by reference thereto *when so offered*." (Emphasis added.) There is no dispute that the Board referenced the 2007 Stipulation and the 2007 Consent Order at the beginning of the hearing to explain the purpose of the hearing. The Board did not, however, indicate that its reference to the 2007 Stipulation and the 2007 Consent Order was for the purpose of offering the documents into evidence.

In *Hilke v. Firemen's Retirement System of St. Louis*, 441 S.W.2d 730 (Mo. App. 1969), medical reports prepared at the behest of an administrative body charged with determining disability were referred to informally throughout an evidentiary proceeding, and were used to question the licensee by his own counsel. Though never formally offered into evidence or referred to as being offered by reference, the court concluded that the multiple references to, and use of, the reports throughout the proceeding sufficed to comport with section 536.070(5), as there was a generalized sense that both parties were treating the referenced records as a part of the evidence. *Id.* at 733. In contrast,

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<sup>5</sup>The phrase "records and documents" is not defined. As will be seen, there may be permissible overlap in the scope of section 536.070(5) permitting admission of an agency's records and documents by reference and the scope of section 536.070(6) permitting an agency to admit certain evidence by official notice (which evidence may include agency records or documents).

there is no indication in the brief transcript of Moore's proceedings that the parties, in putting on their evidence, referenced the 2007 Stipulation and the 2007 Consent Order at all, let alone in a manner sufficient to permit us to develop a generalized sense that the parties were treating the documents as a part of the evidence before the Board.

In *Missouri State Highway Patrol v. Robertson*, 648 S.W.2d 644, 645 (Mo. App. S.D. 1983), a hearing officer stated at the outset of the hearing that he would be taking "official notice of all records pertaining to the permits issued to the respondent." Our Southern District concluded that "[t]he announcement of the Hearing Officer was tantamount to compliance with section 536.070(5)."<sup>6</sup> *Id.* The hearing officer's specific statement of intent to make the permits a part of the record by reference is obviously distinguishable from the Board's general reference to the 2007 Stipulation and the 2007 Consent Order where no intent to admit the documents in evidence was mentioned. This distinction is material. It was influential to the Southern District that the hearing officer's specific pronouncement of an intent to treat the permits as a part of the record gave the licensee "the right to production and inspection of the records referred to and, upon proper grounds, to object to the admission of all or any part thereof." *Id.*

In this case, Moore could not be reasonably expected to interpret the Board's general reference to the 2007 Stipulation and the 2007 Consent Order as an indication of the Board's intent to treat the documents as admitted in evidence by reference. The Board's mention of the 2007 Stipulation and the 2007 Consent Order did not fairly alert

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<sup>6</sup>It is unclear why the Southern District treated the hearing officer's statement as an offer by reference under section 536.070(5) instead of an attempt to take official notice of agency records under section 536.070(6). The explanation, though elusive, is not material to our discussion.

Moore to a right or need to object to their admission in evidence. We conclude that neither document was properly made a part of the record in the manner required by section 536.070(5).

Section 536.070(6) permits an administrative agency to "take official notice of all matters of which the courts take judicial notice." The 2007 Stipulation and the 2007 Consent Order were pleadings generated as a result of the disposition of an earlier disciplinary proceeding involving Moore. "It has long been the law that courts may (and should) take judicial notice of their own records in prior proceedings which are (as here) between the same parties on the same basic facts involving the same general claims for relief." *Hardin v. Hardin*, 512 S.W.2d 851, 854 (Mo. App. 1974); *see also Schrader v. State*, 561 S.W.2d 734, 735 (Mo. App. 1978) (court permissibly referenced untranscribed notes of sentencing imposed at an earlier guilty plea hearing). Judicial notice of records from other related proceedings involving the same parties can be on the court's own motion or at the request of a party. *Hardin*, 512 S.W.2d at 854 (citing *Arata v. Monsanto Chem. Co.*, 351 S.W.2d 717, 721 (Mo. 1961)) (other citations omitted).

Moore concedes a court can take judicial notice of its records from other related proceedings but discounts the applicability of *Hardin*, arguing the case refers only to courts and not to administrative agencies. This ignores that section 536.070(6) expressly permits administrative agencies to take official notice *when and as courts are permitted to take judicial notice*. Thus, cases defining the parameters where a court can permissibly take judicial notice necessarily define the parameters where an administrative agency can permissibly take official notice. We conclude, therefore, that the 2007 Stipulation and

the 2007 Consent Order were eligible for admission in evidence by official notice as the documents related to a prior proceeding between the same parties on the same basic facts involving the same general claims for relief.

This does not conclude our inquiry, however. We must determine whether the Board took official notice of the 2007 Stipulation and the 2007 Consent Order in a manner sufficient to place those documents in evidence. Though the Order states that the Board took official notice of the 2007 Stipulation and the 2007 Consent Order, its intent to do so was not announced on the record. The Board contends that section 536.070(6) does not require official notice of an agency's file, including a file from a prior proceeding, to be taken on the record. We disagree.

In *State ex rel. Callahan v. Collins*, 978 S.W.2d 471 (Mo. App. W.D. 1998), the trial court's judgment in a criminal forfeiture action included a finding that the defendant had been found guilty of the felony offense of possession of a controlled substance and unlawful use of a weapon in a specified prior proceeding. *Id.* at 473. The prior conviction was a necessary predicate to the forfeiture action. "[W]hen the record in another case forms an essential element of a party's claim or defense, the record itself must be introduced in evidence, absent an admission of its contents by the opposing party." *Id.* at 473-74 (quoting *Meiners Co. v. Clayton Greens Nursing Ctr., Inc.*, 645 S.W.2d 722, 724 (Mo. App. E.D. 1982)). "The introduction of the other court file into evidence may . . . be accomplished by the court taking judicial notice of the file *if it is physically before it.*" *Id.* at 474-75 (emphasis added) (quoting *State v. Hurst*, 845 S.W.2d 669, 670 (Mo. App. E.D. 1993)). Similar to the argument advanced by Moore,

defendant contended "that there is no evidence to support the trial court's finding that he was guilty of the underlying felonies" because the trial court's docket entry did not note admission of the prior file or that official notice had been taken of same. *Id.* at 473. This court disagreed. The defendant had not provided a transcript of the proceedings. *Id.* at 474. Given the presumption that a trial court's judgment is correct, this court was "not prepared to conclude that, by omission no additional evidence was received" other than the exhibit noted on the court's docket entry. *Id.* "The trial court identified the court case file by its number. Thus it is apparent that the court's file regarding Collin's underlying felonies *was before the trial court.*" *Id.* (emphasis added). In *Chandler v. Hemeyer*, 49 S.W.3d 786 (Mo. App. W.D. 2001), this court, citing *Callahan*, reemphasized that the record in a prior proceeding necessary to establish an essential element of a claim may be judicially noticed *if the file is physically before the court.* *Chandler*, 49 S.W.3d at 792 (citing *Callahan*, 978 S.W.2d at 474-75).

In *State v. Dillon*, 41 S.W.3d 479 (Mo. App. E.D. 2000), another criminal forfeiture case, the records which evidenced conviction on the predicate criminal offense were not made a part of the forfeiture record, though the trial court found the defendant had pleaded guilty to the predicate offense. *Id.* at 482. The State filed a timely motion to supplement the record on appeal with a copy of the records from the prior proceeding. *Id.* The State argued the trial court had effectively taken judicial notice of the records from the previous proceeding during the forfeiture proceeding, and that the records of the prior proceeding should therefore be made a part of the record on appeal. *Id.* The Eastern District noted that "[t]he issue here is the degree of specificity that must be

articulated by the trial judge to indicate that judicial notice of a previous proceeding has been taken." *Id.* "We are mindful of the general rule that a court will take judicial notice of its own records." *Id.* (citing *State v. Pennick*, 364 S.W.2d 556, 559 (Mo. 1963)). "Further, a court will be presumed to have taken judicial notice of previous cases before it if justice required that [the] court take such judicial notice and there was no showing that [the] court refused to do so." *Id.* at 483. In *Dillon*, the trial court made three specific references to the previous motion hearing on the record, including a reference at the outset of the forfeiture hearing that "there were two files," a reference to an interpleader's testimony "through both of these cases," and a reference when the State offered to put the defendant's prior charges in evidence to the that fact this information was "in the other file." *Id.* at 483. Based on the number and specificity of the trial court's references to the records from the prior proceeding, the Eastern District concluded that "[w]hile the forfeiture action transcript is not as clear as we would like it to be, it is sufficient to demonstrate that the trial judge had and took judicial notice of the previous proceedings, and, therefore, they were part of the record below." *Id.* (footnote call number omitted). However, the Eastern District noted that "[t]he better practice is for the State to still offer the previous record into evidence and/or formally request that the trial judge take judicial notice of the previous proceeding." *Id.* n.4 (citing *Pennick*, 364 S.W.2d at 559).

Unlike *Callahan*, we have the benefit of a transcript. It leaves no question that the Board did not take official notice on the record of its records from the prior proceeding with Moore. The presumption of a correct judgment afforded the trial court in *Callahan* offers no recourse to the Board, as the transcript rebuts the presumption as it relates to

official notice having been taken on the record. Moreover, there was no mention on the record of the case number for Moore's prior proceeding as to permit us to surmise that the prior file was even before the Board--a requirement for taking official notice of records from a prior proceeding. Unlike *Dillon*, the Board's single reference to the 2007 Stipulation and the 2007 Consent Order was not sufficiently specific to warrant treating the reference as the functional equivalent of taking official notice. We cannot conclude that the Board took official notice of the 2007 Stipulation or the 2007 Consent Order in the manner required by section 536.070(6). Thus, neither document was permissibly before the Board for its consideration in determining whether to impose additional discipline pursuant to section 324.042.<sup>7</sup>

#### ***Other Competent and Substantial Evidence Supporting the Order***

Though we conclude that the 2007 Stipulation and the 2007 Consent Order were not admitted in evidence by the Board pursuant to either section 536.070(5) or section 536.070(6), we are not bound to summarily accept Moore's premise that the Order is not supported by competent and substantial evidence. If the Order is supported by other

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<sup>7</sup>It is revealing that the 2007 Stipulation and the 2007 Consent Order were not included in the record filed in the trial court and certified by the Board as required by section 536.130. Section 536.130.1(3) requires the certified record to include the "transcript of the entire record, proceedings and evidence before the agency." If the Board believed it had admitted by reference or by official notice the 2007 Stipulation and the 2007 Consent Order in evidence, it is inexplicable that neither document would have been made a part of the certified record prepared by the Board. The same certified record was included as a part of the Record on Appeal filed by Moore in this court. The Board did not seek to file a Supplemental Record on Appeal to add the 2007 Stipulation and the 2007 Consent Order pursuant to Rule 81.12(c) or (e). The Board did attach the 2007 Stipulation and the 2007 Consent Order as an Appendix to its brief. As we have concluded that the 2007 Stipulation and the 2007 Consent Order were not admitted in evidence pursuant to either section 536.070(5) or section 536.070(6), we similarly conclude the documents would not have been properly a part of the Record on Appeal and should not have been attached as an Appendix to the Board's brief. We have, therefore, disregarded the Board's Appendix, rendering moot Moore's Motion to Strike which was taken with the case.

competent and substantial evidence found in the uncontested record, the Order will be affirmed. *Albanna*, 293 S.W.3d at 428.

The Board's certified record, assimilated for submission to the trial court as required by section 536.130, and then included by Moore as a part of the Record on Appeal, is very brief. Excluding the Order and a letter dated March 20, 2008, directing a copy of the Order to Moore, the Board's record includes: (i) the transcript of the disciplinary hearing conducted on January 19, 2008, (ii) the three exhibits offered during the disciplinary hearing by Moore, (iii) a December 14, 2007 letter from the Board to Moore enclosing a copy of the Notice, (iv) a November 27, 2007 letter from the Board to Moore enclosing a copy of the Notice, (v) the Notice, and (vi) the Complaint.

We note that Moore did not complain about the Board's inclusion of the Notice or the Complaint in the certified record assimilated for submission to the trial court. Section 536.130 permits inclusion in an agency record assimilated for submission to the reviewing court "[s]uch parts of the record, proceedings and evidence before the agency as the parties by written stipulation may agree upon." Section 536.130.1(1). Though not a written stipulation, Moore did confirm on the record that the parties had reached an agreement about the allegations in the Complaint. If Moore disagreed with the Board's treatment of the allegations in the Complaint as admitted, Moore should have timely objected to inclusion of the Complaint in the record certified by the Board as permitted by section 536.130.3. Moore did not do so. Instead, Moore has perpetuated the absence of any objection to inclusion of the Notice and the Complaint in the record certified by the Board and submitted to the trial court by his inclusion of both pleadings in the Record

on Appeal. It is true that the Board did not formally offer by reference into evidence the Notice or the Complaint pursuant to section 536.070(5). Moreover, the Board did not take official notice of these pleadings during Moore's disciplinary hearing pursuant to section 536.070(6). Unlike the 2007 Stipulation and the 2007 Consent Order, however, we are comfortable concluding that the Notice and Complaint were appropriately before the Board for its consideration, particularly given the absence of any objection by Moore, and given Moore's acquiescence on the record to the fact that the allegations in the Complaint had been agreed upon. Though the better practice would have been for the Board's counsel to introduce the Complaint into evidence at the point Moore confirmed by his testimony that the parties had reached an agreement on the allegations in the Complaint,<sup>8</sup> we conclude that Moore's testimony, coupled with the uncontested representation by the Board's counsel that the allegations in the Complaint had been agreed to, were sufficiently specific to warrant treating the Complaint as effectively admitted in evidence by stipulation.<sup>9</sup> We are thus permitted to consider the admitted allegations of the Complaint as we make a "single determination whether, considering

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<sup>8</sup>Moore did not contest the Board's counsel's statement at the beginning of the disciplinary hearing that "agreement had been reached" regarding the allegations in the Complaint. When asked generally, Moore confirmed that an agreement had been reached regarding the allegations in the Complaint. That general question was followed by three specific questions where Moore confirmed (i) submitting to a urine test on August 31, 2007, (ii) pursuant to the terms of discipline, and (iii) testing positive for cocaine in the Complaint. Moore argues the specific follow up questions effectively limited the scope of Moore's general acknowledgement that agreement had been reached to just those allegations in the Complaint about which specific inquiry was made. We do not agree. We easily conclude that Moore's collective testimony, which followed almost immediately after the Board's counsel's representation to the Board, confirmed that the parties had reached an agreement stipulating to each of the allegations in the Complaint.

<sup>9</sup>The Board contends that Moore also admitted the allegations in the Complaint by not filing an Answer to the Complaint. Though section 536.068 advises any responsive pleading, including an Answer, "shall be filed within the time limits specified for filing an answer under the rules governing civil practice in circuit courts in Missouri," section 536.063(1) provides "that no answering instrument shall be required unless the notice of institution of the case states such requirement." The Notice in this case did not advise Moore that an Answer was required. Therefore, Moore's failure to file an Answer admitted nothing.

the whole record, there is sufficient competent and substantial evidence to support" the Board's Order. *Albanna*, 293 S.W.3d at 428 (citation omitted).

In Finding of Fact One, the Board concludes Moore was licensed, his license number, that his license is current and active. This corresponds with an almost verbatim allegation in paragraph 2 of the Complaint.

Finding of Fact Two concludes that the parties reached an agreement regarding the allegations in the Complaint at the hearing and, specifically, that Moore admitted that on August 31, 2007, he submitted to a urine drug screen which tested positive for cocaine in violation of the 2007 Joint Stipulation. With the exception of the phrase "in violation of the 2007 Joint Stipulation," this finding of fact is drawn nearly verbatim from Moore's testimony at the disciplinary hearing. The phrase "in violation of the 2007 Joint Stipulation" is found in paragraph 6 of the Complaint, where the Dental Board alleged that "on August 31, 2007, Dr. Moore tested positive for cocaine in violation of the parties January 16, 2007 Stipulation."

Finding of Fact Three concludes that Moore relapsed by consuming cocaine approximately three to four days prior to the August 31, 2007 drug screen. This finding of fact is drawn directly from the examination of Moore by his own counsel during the disciplinary hearing.

Findings of Fact Four and Five summarize Moore's conduct following his relapse with respect to seeking assistance from Davis and temporarily ceasing the practice of dentistry, and notes this was Moore's second time for treatment for chemical dependency.

These findings are drawn directly from the examination of Moore conducted by Moore's counsel during the disciplinary hearing.

Finding of Fact Six concludes that Moore's original clean and sober date was April 27, 2004, and that since his relapse, Moore's clean and sober date is September 15, 2007. This finding is taken nearly verbatim from Moore's response to questions from a member of the Board during the disciplinary hearing.

Findings of Fact Seven, Eight, and Nine reference and summarize, respectively, sections 195.017, 195.005 to 195.425, 195.202.1, and section 620.151. Section 490.080 states: "Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States." Section 536.070(6) permits administrative agencies to "take official notice of all matters of which the courts take judicial notice." The Board's findings were thus supported by taking official notice of the referenced statutes.

Finding of Fact Ten states as follows:

Cause exists to impose additional discipline on Dr. Moore's dental license pursuant to paragraph 26 of the 2007 Joint Stipulation and Section 620.153, RSMo 2000, which states '. . . in the event the Board determines Licensee has violated any term or condition of this 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 Licensee.'

The internally quoted text in this Finding of Fact is taken directly from section 324.042 (formerly section 620.153). As we have noted, the Board was entitled, and was in fact required, to take official notice of Missouri statutes. Section 490.080. Moore contests the corollary reference to paragraph 26 of the 2007 Joint Stipulation. However, though

the 2007 Stipulation was not in evidence, paragraph 26 of the 2007 Stipulation was set forth as an allegation in the Complaint and was thus admitted by Moore. Specifically, paragraph 12 of the Complaint alleged:

12. Paragraph 26 of the January 16, 2007 Stipulation states:

[I]n the event the Board determines that Licensee has violated any term or condition of this 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 Licensee.

Paragraph 26 of the 2007 Stipulation was nothing more than a restatement of Section 324.042.

Other admitted allegations in the Complaint, though not recited in the Board's Order, are nonetheless relevant to our review to determine whether the record as a whole reflects that the Order is supported by competent and substantial evidence. Those admitted allegations included the following:

3. On January 16, 2007, the Board filed its First Amended Complaint at the Administrative Hearing Commission ('AHC') seeking to discipline Dr. Moore's dental license based on Dr. Moore's chemical dependency and related impairment, Case No. 05-1149DB.

4. On January 16, 2007, the Board also filed a Waiver of Hearing, Joint Stipulation and Request for Consent Order ('Stipulation') wherein the parties stipulated that cause to discipline Dr. Moore's dental license existed based on violations of section 332.321.2(20), RSMo related to Dr. Moore's chemical dependency and related impairment.

5. On January 17, 2007, the AHC issued its Consent Order finding cause to discipline Dr. Moore's dental license. Dr. Moore's dental license was suspended for 90 days immediately followed by 5 years probation with certain terms and conditions, including abstention from the possession and consumption of controlled substances unless pursuant to a valid prescription.

....

11. Prior to August 31, 2007, at a date certain known only to Dr. Moore, Dr. Moore relapsed and consumed cocaine in violation of Paragraphs 9 and 21 of the January 16, 2007 Stipulation which states:

9. During the period of probation, Licensee shall comply with all provisions of Chapter 332, RSMo; all rules and regulations of the Missouri Dental Board and all federal and state laws, rules and regulations. 'State' here includes state of Missouri and all other states and territories of the United States.

21. 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 . . . . The presence of any controlled substance whatsoever in a biological fluid and/or hair follicle and/or breath sample for which Licensee does not hold a valid prescription or for a prescription or for a prescription that Licensee has not forwarded documentation to the Board as required herein shall constitute a violation of this Order.

13. Cause exists to impose additional discipline in Dr. Moore's dental license pursuant to paragraph 26 of the January 16, 2007 Stipulation and section 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 a 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.'

14. Licensee's conduct is in violation of the terms and conditions of the January 16, 2007 Stipulation, thus entitled the Board to impose additional discipline.

These admitted allegations establish the circumstances giving rise to Moore's prior disciplinary proceeding, the nature of the prior disciplinary proceeding, the disposition of the prior disciplinary proceeding, and the prior terms of discipline imposed.

We conclude that the Order is supported by competent and substantial evidence drawn from the transcript and the admitted allegations in the Complaint. The 2007 Stipulation and the 2007 Consent Order were not the only evidence of the predicate disciplinary proceeding, such that their absence from the record necessitates a conclusion that the Order is without record support. Moore's complaint that the Board did not properly admit either the 2007 Stipulation or the 2007 Consent Order in evidence, though correct, is a technical complaint that has no impact on our conclusion that the Order is supported by other competent and substantial evidence. Point One is denied.

### **Point II**

Moore next contends that the Order's imposition of additional discipline in the form of revocation of Moore's license for at least one year is not supported by competent and substantial evidence as the Board failed to take into consideration the evidence of Moore's rehabilitation subsequent to his relapse and Moore's voluntary cessation of his practice following his relapse.<sup>10</sup> The essence of Moore's complaint is that the Board did not afford due weight to the testimony of Moore or Davis relating to Moore's rehabilitation efforts following his admitted relapse, and his commitment to continued monitoring.

---

<sup>10</sup>As previously noted, Moore resumed his dental practice following entry of the Order pursuant to the terms of the Stay entered by the trial court.

Moore argues that the only evidence the Board had to support discipline was Moore's testimony at the hearing of one positive drug test. The premise underlying Moore's second point on appeal is that Moore did not admit all of the allegations in the Complaint but only those allegations in the Complaint about which he was specifically asked. We have concluded otherwise. As a result, we are afforded a record that permits us to easily discard Moore's objection to the discipline imposed by the Order.

We note again our standard of review is "whether, considering the whole record, there is sufficient competent and substantial evidence to support the [agency's decision]. This standard would not be met in the rare case when the [agency's decision] is contrary to the overwhelming weight of the evidence." *Albanna*, 293 S.W.3d at 428 (quoting *Lagud v. Kansas City Bd. of Police Comm'rs*, 136 S.W.3d 786, 791 (Mo. banc 2004)). Here, Moore admits he was previously subject to discipline for cocaine use. He admits he relapsed. Moore admits that he violated the terms of probation previously imposed. Moore admits his use and/or possession of cocaine provides a statutory basis for discipline of his license. Notwithstanding, Moore suggests that the Board was bound to follow the recommendation of Davis, who opined that Moore was being successfully rehabilitated and should be permitted to continue practicing. We disagree.

Section 324.042 permits the Board to "impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing." Moore does not contend the Board would have been unable to revoke his license in response to the initial disciplinary proceeding. Moore does not contend, therefore, that the additional discipline imposed in this case, revocation of Moore's license, is unlawful. Moore simply

disagrees with the Board's decision to impose additional discipline--at least to the extent the additional discipline involves revocation of his license.

The role of the Board is not to punish misconduct but, rather, to protect the public. *Johnson v. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 645 (Mo. App. W.D. 2004). Moore was given an opportunity following his first disciplinary proceeding to show that he could conform his conduct to probationary terms that would satisfy the Board Moore was not a threat to the public. Moore failed to satisfy the terms of his probation and expressly violated the most compelling term of his probation--to remain drug free. He had previously received treatment for his cocaine use following his first disciplinary proceeding, yet he relapsed. Though Moore, commendably, sought other rehabilitation after his relapse, little time had passed between the relapse and Moore's hearing. The Board was not obliged to believe that Moore would not relapse again and, given its obligation to protect the public, acted prudently in revoking Moore's license for at least one year. Though the Board could have elected not to impose additional discipline, or to impose additional discipline less punitive than revocation of Moore's license, it was not obligated to do so. The Board had the authority to revoke Moore's license for at least one year as additional discipline for Moore's second involvement with illegal narcotics. The Board's decision to impose additional discipline by revocation of Moore's license is supported by competent and substantial evidence. Point two is denied.

### **Conclusion**

Pursuant to section 536.070(5) or section 536.070(6), the Board did not properly admit in evidence either the 2007 Stipulation or the 2007 Consent Order from Moore's

prior disciplinary proceeding, the predicate for the Board's ability to consider imposing additional discipline on Moore's license pursuant to section 324.042. However, the Board's Order revoking Moore's license for a period of not less than one year was nonetheless supported by other competent and substantial evidence on the whole record given Moore's testimony and his admission of the allegations in the Complaint which asserted violation of 2007 Stipulation and the 2007 Consent Order. The Board's decision to revoke Moore's license as additional discipline for Moore's second disciplinary action involving the use of cocaine was supported by competent and substantial evidence, notwithstanding competing evidence of Moore's voluntary attempts at rehabilitation and suggesting that Moore should be permitted to continue practicing dentistry. **The Board's Order is affirmed.**

---

Cynthia L. Martin, Judge

All concur



# Missouri Court of Appeals

WESTERN DISTRICT  
1300 OAK STREET

KANSAS CITY, MO. 64106-2970

TERENCE G. LORD  
CLERK

AREA CODE 816-889-3600  
FAX 816-889-3668  
E-MAIL [wdcoa@courts.mo.gov](mailto:wdcoa@courts.mo.gov)

June 2, 2009

LORETTA LYNN SCHOUTEN  
7970 S TOMLIN HILL RD  
COLUMBIA, MO 65201

In Re: WD71065

Circuit Court No: 08AC-CC00327

DAVID L MOORE, D.D.S., APPELLANT

vs.

MISSOURI DENTAL BOARD, RESPONDENT

## TO ALL PARTIES OF RECORD:

I hereby acknowledge receipt of the Notice of Appeal in the above cause. If the Record on Appeal consists of a Legal File and Transcript, it is due 90 days from the date of filing of the Notice of appeal in the Circuit Court. Rule 81.19. If the Record on Appeal consists only of a Legal File, it is due 30 days from the date of filing the Notice of Appeal in the Circuit Court. .

The Legal File and Transcript on Appeal should be prepared pursuant to Rules 81.12, 81.14, 81.15 and 81.17. These should be filed simultaneously in this Court. Pursuant to rule 81.19, this Court may either lengthen or shorten the time for filing of the Record on Appeal, but will do so only upon good cause shown.

We will not acknowledge receipt of the filing of Motions or exhibits with this Court. Please include your office and fax number on all pleadings.

The persons listed above are considered the Attorney of Record for a party or a party representing himself/herself in this case. Therefore, the Attorney of Record for any party with more than one counsel has the responsibility of notifying co-counsel of any action. Designation of an Attorney of Record will be changed only upon written agreement of the current attorney. Only the Appellant and Respondent are considered parties to this appeal.

If you believe this designation is incorrect or if you are not a party to this appeal, please notify this office immediately.

Terence G. Lord, Clerk

cc: Clerk of COLE COUNTY CIRCUIT COURT  
AUDREY MCINTOSH  
LORETTA SCHOUTEN

**THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

1300 Oak Street  
Kansas City, MO 64106

Phone (816)-889-3600  
Fax (816)-889-3668  
E-mail wdcoa@courts.mo.gov

(When making telephone inquiries about a case, please refer to the WD #)

**IMPORTANT NEW INFORMATION**

**Effective January 1, 2009 Rule XLI – Limitations on Length of Briefs**

All briefs shall be prepared in accordance with Rule 84.06, provided however that the following page limitations shall apply to briefs prepared pursuant to Rule 84.06(a) or (d):

1. Appellant's initial brief and all briefs in a cross appeal shall not exceed 15,500 words or, if a mono-spaced text face is used, 1100 lines of text.
2. Respondent's brief shall not exceed 13,950 words or, if mono-spaced text face is used, 990 lines of text.
3. Any reply brief shall not exceed 5115 words or, if mono-spaced text face is used, 363 lines of text.

The following page limitations shall apply to typewritten briefs prepared pursuant to Rule 84.06(e):

1. Appellant's brief and all briefs in a cross appeal shall not exceed 50 pages.
2. Respondent's brief shall not exceed 45 pages.
3. Any reply brief shall not exceed 15 pages.

A party may file a motion requesting this court permit the party's brief to exceed the limits set forth in this rule. Such motion shall be filed at least ten (10) days before the due date on which the brief is due. The court may grant such request only on a showing of good cause.

In calculating the limits set forth in this rule, this court shall not count the words on lines of text of a brief's table of contents, table of authorities or appendix.

**FOR FORMS AND NUMBER OF COPIES TO BE FILED, PLEASE REFER TO SPECIAL RULE XII.**

**SERVICE**

All briefs, records, supplemental records and pleadings must show a certificate of service on adverse parties, and in fact be served, faxed, or mailed prior to presentation to this court for filing. See Rule 84.07, 30.07, 84.05(a) and 84.06(g).

## **MISCELLANEOUS INFORMATION**

If you want a file stamped copy of your filing returned to you send an extra copy along with a self-addressed stamped envelope. Extra copies will not be returned unless a self-addressed envelope is included.

If you place a filing in the drop box, prior to 8:00 am, it will be filed with the date of the previous business day. If you leave extra copies either leave a self addressed stamped envelope or a note attached stating they will be picked up. Copies are held for one week only.

**THE LEGAL FILE AND THE TRANSCRIPT (IF ANY) WHICH CONSTITUTES THE RECORD ON APPEAL SHOULD BE FILED TOGETHER AT THE SAME TIME.**

### **LEGAL FILE:**

Please follow these guidelines when preparing a Legal File:

- (1) The Legal file shall be labeled with a Cover Page and contain clearly reproduced exact copies of pleadings and other portions of the trial record previously reduced to written form. Rule 81.12(a) and 81.12(c) or 30.04 and 30.04(g). Effective April 1, 2004 Special Rule XIX requires all legal files to have a red cover.
- (2) The contents of the Legal File shall be in chronological order. Rule 81.12(a) or 30.04(a). (The first pleading filed in the Circuit Court should be at the beginning or on the top, etc.) See Special Rule XIX.
- (3) The pages of the Legal File Shall be numbered and a complete index shall be included at the front of the file. Rule 81.14(b) or 30.04(d).
- (4) A volume of legal file shall not exceed two hundred pages. Rule 81.18(d) or 30.04(e).
- (5) The Legal File MUST BE CERTIFIED BY THE CIRCUIT COURT CLERK OR HAVE THE APPROVAL SIGNATURES OF THE PARTIES INVOLVED. Rule 81.15 or 30.04(g). These must be the ORIGINAL SIGNATURES OF THE PARTIES OR THE CIRCUIT CLERK. The original certified copy of the legal file and the original signed transcript is all our court requires for filing. We need no additional copies.
- (6) The Legal File shall be securely bound at the top or on the side. It should be on 8 ½" x 11" paper. It should be bound inside a red cover, with the case style and WD number on the cover. The name and address of the attorney filing same must also appear on the cover.

### **TRANSCRIPT:**

See Western District Special Rule XXVII and XXVIII for rules for preparing transcripts.

Rule XXVII will require all transcripts be prepared in reduced page format. Form 4 and Form 5 will be repealed.

### **SUPPLEMENTAL LEGAL FILES:**

Guidelines for preparing a legal file apply to supplemental legal files.

**BRIEFS**

Please follow these guideline when preparing a brief:

- (1) Seven copies of all briefs shall be filed. (Special Rule XII)
- (2) The Appellant's brief is due within 60 days after the date the Record on Appeal is filed with this Court. Rule 84.05 and 30.06.
- (3) The Respondent's brief is due 30 days after the date the Appellant's brief is filed in this court. Rule 84.05 and 30.06.
- (4) The Appellant's Reply Brief (optional) is due 15 days after the Respondent's brief is filed in this Court.
- (5) Rule 84.06(f) requires briefs in the Court of Appeals to have a specific color cover page. They are:

Appellants (Relator)..... White  
 Respondent..... Gray  
 Reply Briefs..... Light Orange

For cross-appeals the colors are:

Initial Appellants..... White  
 Respondent/Appellant..... Gray  
 Respondent/Reply..... Light Brown  
 Final Reply..... Orange

Special brief colors:

Amicus Curiae..... Red

- (6) All briefs should be securely bound along the left-hand side, in book fashion. Spiral binding is preferred. If you use staples in binding your brief, please cover the staples with heavy tape on both sides. Briefs bound improperly will not be accepted for filing. All briefs must contain a certificate of service on opposing counsel. See Special Rule XII(b).
- (7) For specific instructions regarding briefs on cross-appeals, refer to 84.04(j) or 30.06(f).
- (8) Rule 84.04 or 30.06 designated what must be included in briefs filed with the Missouri Court of Appeals. Failure to be in compliance with this rule will result in your brief being struck.
- (9) A Brief shall contain an appendix, unless the materials have been included in a prior brief. See Rule 84.04(h). Effective April 1, 2004 see Special Rule XXXVIII.

**WRITS**

On all Petitions for Original Writs and in the presentation of any documents regarding writs, the ORIGINAL AND THREE COPIES are required for filing. Please place copies of all papers to be filed in three complete sets to expedite consideration by the Writ Division. If a writ goes to a briefing schedule, seven copies of all briefs are required.

Effective January 1, 2007 Parties are required to submit writ pleadings on CD or floppy disk with hard copies; or may file electronic copy at or before hard copy is submitted. Electronic copy should be sent to: [wdcoa@courts.mo.gov](mailto:wdcoa@courts.mo.gov) See Western District Special Rule XXXIV.

Effective April 1, 2004 Motions on Writs will require only an original.

## **MOTIONS AND SUGGESTIONS**

On all motion and suggestions, the court requires only the **ORIGINAL**. No additional copies are required. This excludes motion for rehearing and or transfer to the Supreme Court.

## **MOTIONS FOR REHEARING/TRANSFER**

An **Original plus five (5) copies** are required for all motions for rehearing and or transfer to the Supreme Court. See Western District Special Rule XII(c).

## **STIPULATIONS**

On all Stipulations only the **ORIGINAL** is required to be filed.

## **EXHIBITS**

All exhibits should be placed inside of an envelope with a complete index typed or taped on the outside along with the style and WD Number of the case. If the exhibit is too large to fit inside the envelope, label the exhibit with the style and the WD number, indicate on the index if that exhibit is separate from the rest of the exhibits. A separate index of the exhibits must be provided to be filed and placed in the court file. See Special Rule IV and Supreme Court Rule 81.16 or 30.05 for further information.

Effective July 1, 2006 On civil cases exhibits are due on or before the day the Appellant's Reply Brief is due. See Rule 81.16

- 566.226**
1. After August 28, 2007, any information contained in any court record, whether written or published on the Internet, that could be used to identify or locate any victim of sexual assault, domestic assault, stalking, or forcible rape shall be closed and redacted from such record prior to disclosure to the public. Identifying information shall include the name, home or temporary address, telephone number, social security number or physical characteristics.
  2. If the court determines that a person or entity who is requesting identifying information of a victim has a legitimate interest in obtaining such information, the court may allow access to the information, but only if the court determines that disclosure to the person or entity would not compromise the welfare or safety of such victim.



IN THE 19th JUDICIAL CIRCUIT COURT, COLE COUNTY

**FILED**  
MISSOURI

**MAY 27 2009**

Judge or Division: Richard G. Callahan	Case Number: 08AC-CC00327	
Plaintiff/Petitioner: David L. Moore, DDS	Appellate Number:	<input type="checkbox"/> Filing as an Indigent
	Court Reporter: n/a	<input type="checkbox"/> Sound Recording Equipment
	Reporter's Telephone: n/a	Number of Days of Trial: n/a
Defendant Respondent: Missouri Dental Board	Date of Judgment/Sentence: May 7, 2009 (Attach a copy)	Date Post Trial Motion Filed: n/a
	Date Ruled Upon:	Date Notice Filed:

**BRENDA A. UMSTATTD  
CLERK CIRCUIT COURT  
COLE COUNTY, MISSOURI**

**Notice of Appeal**

Supreme Court of Missouri Court of Appeals:  Western  Eastern  Southern

Notice is given that David L. Moore, DDS appeals from the judgment/decree entered in this action on May 7, 2009 (date).

**Complete if Appeal is to Supreme Court of Missouri**

Jurisdiction of the Supreme Court is based on the fact that this appeal involves:

(Check appropriate box)

- The validity of a treaty or statute of the United States       The title to any state office in Missouri  
 The punishment imposed is death       The construction of the revenue laws of Missouri  
 The validity of a statute or provision of the Constitution of Missouri

If the basis of jurisdiction is validity of a United States treaty or statute, the validity of a Missouri statute or Constitutional provision or construction of Missouri revenue laws, a concise explanation, together with suggestions, if desired, is required. This may be filed as part of or with this notice of appeal or, in the alternative, may be filed within ten days after the notice of appeal is filed by filing it directly with the Clerk of the Supreme Court. See Rule 81.08(b) and (c) and Rule 30.01(f) and (g).

Appellant's Attorney/Bar Number Audrey Hanson McIntosh Missouri Bar #33341	Respondent's Attorney(s)/Bar Number(s) (If multiple, list all or attach additional sheets) Loretta Schouten Missouri Bar #52290	
Address P.O. Box 1497 612 E. Capitol Avenue Jefferson City, MO 65102	Address 7970 S. Tomlin Hill Road Columbia, MO 65201	
Telephone 573-635-7838      Fax 573-636-2564	Telephone 573-875-7169      Fax 573-875-5603	
Appellant's Name David L. Moore	Respondent's Name Missouri Dental Board	
Address 2600 Choteau Ave. St. Louis, MO 63103	Address 3605 Missouri Blvd. Jefferson City, MO 65102	
Telephone 314-337-5045	Telephone 573-751-2570	
Brief Description of Case This is an appeal from a Petition of Review from the Findings of Fact, Conclusions of Law and Decision of the Missouri Dental Board that revoked Dr. Moore's license to practice dentistry.		
Date of Appeal Bond n/a	Amount of Bond n/a	<input type="checkbox"/> Bond Attached
Signature of Attorney or Appellant <i>Audrey Hanson McIntosh</i>		Date May 27, 2009

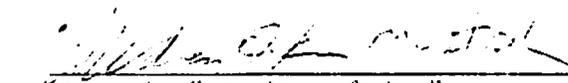
**Notice to Appellant's Attorney**

Local rules may require supplemental documents to be filed. Please refer to the applicable rule for the district in which the appeal is being filed and forward supplements as required.

**Certificate of Service**

I certify that on May 27, 2009 (date), I served a copy of the notice of appeal on the following parties, at the following address(es), by the method of service indicated.

Missouri Dental Board by serving a copy of the notice of appeal on its attorney, Loretta Schouten at her address as set forth above, by placing a copy of the notice in the U.S. Mail, postage prepaid.

  
Appellant or Attorney for Appellant  
Audrey Hanson McIntosh

**Directions to Clerk**

Serve a copy of the notice of appeal in a manner as prescribed by Rule 43.01 on the attorneys of record of all parties to the judgment other than those taking the appeal and on all other parties who do not have an attorney. (A copy of the notice of appeal is to be sent to the Attorney General when the appeal involves a felony.) Transmit a copy of the notice of appeal to the clerk of the Supreme Court/Court of Appeals. If a party does not have an attorney, mail the notice to the party at his/her last known address. Clerk shall then fill in the memorandum below. (See Rules 81.08(d) and 30.01 (h) and (i).) Forward the docket fee to the Department of Revenue as required by statute.

**Memorandum of the Clerk**

I have this day served a copy of this notice by  regular mail  registered mail  certified mail  facsimile transmission to each of the following persons at the address stated below. If served by facsimile, include the time and date of transmission and the telephone number to which the document was transmitted.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have also transmitted a copy of the notice of appeal to the clerk of the

Supreme Court  Court of Appeals, \_\_\_\_\_ District

Docket fee in the amount of \$ \_\_\_\_\_ has been received by this clerk which will be disbursed as required by statute.

A copy of an order granting leave to appeal as indigent.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk

FORMS

FORM 1 - GENERAL DOCKET ENTRY

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI  
19<sup>TH</sup> JUDICIAL CIRCUIT  
DIVISION II

David L. Moore, D.D.S.

Petitioner.

vs.

Missouri Dental Board

Respondent.

Case No. 08AC-CC00327

Date of Proceeding: May 7, 2009

Nature of Proceeding: Petition for Review

Appearances:  
Audrey Hanson McIntosh  
Loretta Schouten

Attorney For:  
Petitioner  
Respondent

Docket Sheet Entry     Order     Judgment     Stipulation     Other

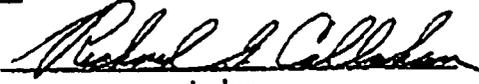
As Follows     Attached Hereto     Agreed to By:

Case called, heard, argued and submitted. Order Affirmed. Petitioner's request for Stay of Revocation granted. Petitioner shall comply with the probationary terms contained in the Waiver of Hearing, Joint Stipulation and Request for Consent Order dated January 15, 2007, and approved by the Administrative Hearing Commission January 17, 2007 and incorporated by reference. Stay shall remain in effect until further order of the Court.

Submitted By:  
Audrey Hanson McIntosh  
Loretta Schouten

Attorney For:  
Petitioner  
Respondent

SO ORDERED this 7th day of May, 2009.

  
Judge  
Richard G. Callahan

FORM 1. CIVIL CASE INFORMATION FORM SUPPLEMENT

MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

No. WD \_\_\_\_\_

[Please type or neatly print the information requested. This form must be filed with the Notice of Appeal (form 8-A) with the Circuit Clerk.]

David L. Moore, D.D.S.  
Plaintiff

Audrey Hanson McIntosh  
Attorney's Name  
P.O. Box 1497, 612 E. Capitol Ave.  
Street Address  
Jefferson City, MO 65102  
City Zip Code

vs.

Missouri Dental Board  
Defendant

Loretta Schouten  
Attorney's Name  
7970 S. Tomlin Hill Road  
Street Address  
Columbia, MO 65201  
City Zip Code

Date Notice filed in Circuit Court May 27, 2009

The Record on Appeal will consist of a:

\_\_\_\_\_ Legal File Only or X Transcript and Legal File. (This will include records filed pursuant to Rules 81.13 and 81.16)

FACTUAL BACKGROUND: (Events Giving Rise to Cause of Action) The Missouri Dental Board revoked Dr. Moore's license to practice dentistry following a probation violation hearing. Dr. Moore filed a Petition for Review in the Circuit Court of Cole County, which affirmed. Dr. Moore appeals.

ISSUE(S):

(Anticipated to be Presented by the Appeal; Appellant is Not Bound by this Designation)  
See attached.

[Two (2) typewritten pages maximum]  
(Added June 25, 1987, effective Dec. 1, 1987. Amended effective June 23, 1988)

## I.

The Dental board acted arbitrarily, capriciously and unreasonably, abused its discretion, used unlawful procedures, and its decision is unsupported by competent and substantial evidence upon the whole record in that the dental board failed to take official notice of its records or reference those records in such a manner to be considered as part of the record or to offer into evidence the 2007 stipulation and consent order or to adduce those terms by other means such as requesting Dr. Moore to acknowledge the specific probationary terms that were alleged to be violated, and therefore, the board violated section 536.070 (5) and (6) which requires the board to offer into evidence or reference when offered or take official notice of those records and documents of the agency seeks to be considered as a part of the record.

## II.

The Dental Board acted arbitrarily, capriciously and unreasonably, abused its discretion, and its decision is unsupported by competent and substantial evidence upon the whole record in that the uncontroverted record before the dental board established that Dr. Moore had been sufficiently rehabilitated to practice dentistry and the dental board failed to make any findings regarding

Dr. Moore's rehabilitation to justify revocation and the uncontroverted evidence before the Dental Board was that Dr. Moore was fit to return to the practice of dentistry.

IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI

DAVID L. MOORE, D.D.S.,	)	
	)	
PETITIONER,	)	
	)	
VS.	)	CASE NO. 08AC-CC00327
	)	
MISSOURI DENTAL BOARD,	)	
	)	
RESPONDENT.	)	

**STAY ORDER**

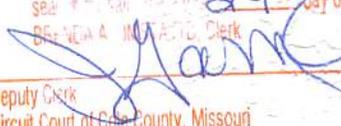
The Court has before it a Stipulation for a Stay Order entered into between Petitioner and Respondent agreeing to a Stay of the Disciplinary Order entered by the State Dental Board revoking Petitioner's license as a dentist as well as Petitioner's Petition for Review and Motion for Stay Order. Based upon the stipulation of the parties, it is HEREBY ORDERED, ADJUDGED AND DECREED that:

The Order entered by the State Dental Board effective April 4, 2008 that revoked the Petitioner's license as dentist, license number 013409, is hereby stayed until further order of the Court. Consistent with the parties' stipulation, Petitioner has agreed that he will only practice as a dentist in accordance with the probationary terms contained in Waiver of Hearing, Joint Stipulation and Request for Consent Order dated January 16, 2007 and approved by the Administrative Hearing Commission on January 17, 2007, which this Court incorporates by reference into this Order. Also consistent with the parties' stipulation, Respondent has agreed that it will not take steps to disseminate information regarding the revocation order and will not provide information, except as required by law including but not limited to the Sunshine Law, regarding this disciplinary action to

any other person, group, organization, or data bank, or publishing the Findings, Conclusions, and/or disciplinary order herein in any trade publication or publication of the Respondent and to the extent that the providing of such information or publication or both has been done to immediately notify the entity of the stay order until this case is finally resolved. To the extent that information must be disclosed under the Sunshine law, Respondent has further agreed that it will affirmatively state that the discipline is stayed by order of the court during the pending Petition for Review.

SO ordered this 24 day of April, 2008.

  
\_\_\_\_\_  
Richard G. Callahan, Judge

STATE OF MISSOURI } SS  
COUNTY OF COLE }  
I, BRENDA A. UMSTATTO, Clerk of the Circuit Court of Cole County, Missouri,  
hereby certify that the above and foregoing is a full true and correct copy of  
Stay Order  
as fully as the same remains of record in my said Office.  
IN WITNESS WHEREOF I have hereunto set my hand and affixed the  
seal of said office this 24 day of April 2008.  
BRENDA A. UMSTATTO, Clerk  
  
\_\_\_\_\_  
Deputy Clerk  
Circuit Court of Cole County, Missouri

**BEFORE THE  
MISSOURI DENTAL BOARD  
STATE OF MISSOURI**

<b>MISSOURI DENTAL BOARD</b>	)	
	)	
	)	
v.	)	<b>Case No. DB-08-02</b>
	)	
<b>DAVID L. MOORE, D.D.S.</b>	)	
	)	
	Respondent. )	

**FINDINGS OF FACT, CONCLUSIONS OF LAW**  
**and**  
**DISCIPLINARY ORDER**

On January 19, 2008, the Missouri Dental Board held a hearing on the Notice of Probation Violation Hearing in the above-styled cause. The hearing was held at the Courtyard Marriott, 3301 LeMone Industrial Boulevard, Columbia, Missouri, for the purpose of determining if David L. Moore, D.D.S. is in violation of the terms and conditions of his probation, and if so, what, if any, additional discipline should be imposed to address the conduct. The Missouri Dental Board was represented by Loretta Schouten. Nanci R. Wisdom, outside counsel for the Missouri Dental Board, advised the Board on legal matters. Dr. Moore was present and was represented by Audrey Hanson McIntosh, 612 East Capitol Avenue, Jefferson City, Missouri. The Board received into evidence Respondent's Exhibits A, B and C. The Board took notice of its own records, specifically the Consent Order issued by the Administrative Hearing Commission on January 17, 2007 and the Waiver of Hearing, Joint Stipulation, and Request for Consent Order dated January 16, 2007 ("2007 Joint Stipulation"). The Board heard testimony from Ira Davis and David L. Moore, D.D.S. The

Board went into closed session to deliberate and make its determination on whether Dr. Moore was in violation of the terms and conditions of his probation.

### **FINDINGS OF FACT**

1. Dr. Moore is licensed by the Board to practice dentistry, license No. 013409. Dr. Moore's license is current and active and was so at all times relevant herein.

2. At hearing, the parties reached an agreement regarding the allegations in the probation violation complaint filed in this case. Specifically, Dr. Moore admits that on August 31, 2007, he submitted to a urine drug screen which tested positive for cocaine in violation of the 2007 Joint Stipulation.

3. Dr. Moore relapsed by consuming cocaine approximately three to four days prior to the August 31, 2007 drug screen.<sup>1</sup>

4. Following Dr. Moore's relapse, Ira Davis directed Dr. Moore to report to Healthcare Connections in Tampa, Florida for an evaluation. Ira Davis also instructed Dr. Moore to cease practicing dentistry until further notification.<sup>2</sup>

5. Dr. Moore complied with Ira Davis' requests and ceased practicing dentistry and reported to Healthcare Connections for an evaluation.<sup>3</sup> This was Dr. Moore's second time through treatment for chemical dependency. Dr. Moore previously attended MARS in Atlanta, Georgia for a very short time.<sup>4</sup>

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1 Transcript, pg. 8.

2 *Id.*

3 *Id.*

4 Transcript, pg. 11.

6. Dr. Moore's original clean and sober date was April 27, 2004. Since this relapse, Dr. Moore's clean and sober date is September 15, 2007.<sup>5</sup>

7. Pursuant to section 195.017, RSMo, cocaine is a controlled substance.

8. Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance. *Section 195.202.1, RSMo.*

9. For the purpose of determining whether cause for discipline exists under the statutes of any board within the division of professional registration, any licensee that tests positive for a controlled substance, as defined in chapter 195, RSMo, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state or the federal government unless he has a valid prescription for the controlled substance. The burden of proof that the controlled substance was not unlawfully possessed in violation of the drug laws or rules and regulations of this state, any other state or the federal government is upon the licensee. *Section 620.151, RSMo.*

10. Cause exists to impose additional discipline on Dr. Moore's dental license pursuant to paragraph 26 of the 2007 Joint Stipulation and § 620.153, RSMo 2000, which states "... in the event the Board determines Licensee has violated any term or condition of this 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 Licensee."

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<sup>5</sup> Transcript, pg. 21.

## CONCLUSIONS OF LAW

11. The Missouri Dental Board has jurisdiction to take additional disciplinary action against the dental license of Dr. David L. Moore, D.D.S. pursuant to the provisions of sections 620.153 and 332.321, RSMo, and paragraph nos. 26 and 28 of the 2007 Joint Stipulation.

12. Respondent's conduct is such that he has violated the terms of discipline as contained in the 2007 Joint Stipulation.

13. Dr. Moore violated section 195.202.1, RSMo 2000, which is a drug law of the state of Missouri, and which states: "Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance."

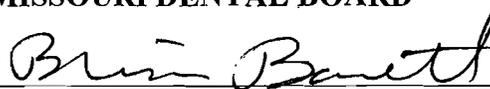
14. Under the terms of the 2007 Joint Stipulation, cause exists for the Board to impose additional discipline on Dr. Moore's dental license.

## ORDER

15. It is the Order of the Missouri Dental Board that the dental license of David L. Moore, D.D.S. is **REVOKED and Dr. Moore shall not apply for licensure for a period of not less than one year following the effective date of this Order of revocation.** Dr. Moore shall immediately return all indicia of licensure to the Missouri Dental Board.

This ORDER becomes effective on the 4<sup>th</sup> day of April, 2008.

MISSOURI DENTAL BOARD



**Brian Barnett**  
Executive Director

BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

MISSOURI DENTAL BOARD, )  
P.O. Box 1367 )  
3605 Missouri Blvd. )  
Jefferson City, Missouri 65102 )  
Petitioner. )

CAUSE NO. 05-1149 DB

DAVID L. MOORE, D.D.S. )  
2600 CHOUTEA AVENUE )  
ST. LOUIS, MO 63103 )  
Respondent. )

**FILED**  
JAN 16 2007  
ADMINISTRATIVE HEARING  
COMMISSION

WAIVER OF HEARING, JOINT STIPULATION, AND  
REQUEST FOR CONSENT ORDER

COMES NOW Petitioner, Missouri Dental Board, (hereinafter "Board") by and through its attorney, Nancy R. Wisdom, and Respondent, David L. Moore, D.D.S., (hereinafter "Licensee") in person and by and through his attorney, Audrey McIntosh, and pursuant to the provisions of 4 C.S.R. 20-2.130 and Missouri Revised Statutes Section 536.060 as applicable to this Commission by the provisions of Section 621.135 RSMo, and jointly state that the parties waive their right to a hearing before the Administrative Hearing Commission in the above-referenced cause, enter this Joint Stipulation consistent with the content of this document. In support of their motion, the board and Licensee, hereby stipulate and agree to the following:

1. Licensee acknowledges that he is familiar with the various rights and privileges afforded by operation of law, including the right to a hearing on the charges against him; the right to appear and be represented by counsel; the right to have all charges against him proved 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; the right to appeal a decision in favor of the Board, by the Administrative Hearing Commission on the basis if said decision is not supported by substantial and competent evidence. Being familiar with these and other attendant rights provided Licensee, by operation of law, he knowingly and voluntarily waives each and every one of these rights and fully and freely enters into this "Waiver of Hearing, Joint Stipulation and Request for Consent Order" and consents and agrees to abide by the terms and conditions of this document.

2. The Board, is an agency of the State of Missouri created and established pursuant to Missouri Revised Statutes Section 332.021, as applicable to this matter for the purpose of administering and enforcing the provisions of Chapter 332, Dentistry.

3. Licensee is and at all times relevant to this cause was, the holder of a current and valid license to practice dentistry and certificate of registration issued by The Board.

4. That the First Amended Complaint of the Board in the above-styled cause is attached hereto as Exhibit A and made a part hereof by reference.

5 Licensee admits the allegations contained in the First Amended Complaint of the Board in cause number 05-1149 DB and further admits that said conduct falls within the intentment of Section 332.321 RSMo as applicable to each allegations contained in the First Amended Complaint and further admits that said conduct subjects his license to discipline under the provisions of Section 332.321 RSMo as applicable to the allegations contained in the First Amended Complaint.

6. Based on the foregoing, the parties mutually agree that this document will be filed with the Administrative Hearing Commission and that the parties request that the Administrative Hearing Commission issue its order finding cause for discipline of the license of Licensee, pursuant to the provisions of Section 332.321 RSMo as alleged in the First Amended Complaint heretofore filed in the above-styled cause and further referring this matter to the Missouri Dental Board for discipline.

#### JOINT AGREED DISCIPLINARY ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under authority of §621.045.3. RSMo Supp.

7. Licensee shall have his license suspended for 90 days. The suspension shall be served as follows. The suspension will begin on February 1, 2007 2006 for a period of 60 days. Subsequently Licensee shall begin a five (5) year period of probation. Licensee shall serve thirty days of his probation and his license shall be suspended for a period of 30 days. Subsequently, Licensee's period of probation shall resume. 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 Joint Agreed Disciplinary Order

8. During the period of probation, Licensee shall keep the Missouri Dental Board apprised at all times in writing of his current home and work addresses and telephone numbers at each place of employment. Licensee shall notify the Board within ten (10) days of any change in this information.

9. During the period of probation, Licensee shall comply with all provisions of Chapter 332, RSMo, all rules and regulations of the Missouri Dental Board, and all federal and state laws, rules and regulations. "State" here includes the state of Missouri and all other states and territories of the United States.

10. During the period of probation, Licensee shall appear before the Board or one of its representatives for a personal interview upon the Board's request.

11. Pursuant to section 332.331.6, RSMo, if at any time during the period of probation Licensee removes himself from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 332, or fails to keep the Missouri Dental Board advised of his current place of business and residence, the time of his absence, or unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.

12. During the period of probation, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this agreement.

13. Licensee shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City or its equivalent offered by a Board approved sponsor. This continuing education shall be in addition to the continuing education required by law for licensure renewal by the Board. This course must be taken within the first twelve (12) months of the effective date of this Joint Agreed Disciplinary Order. Licensee shall provide the Board with proof of attendance from the sponsor of the program no later than thirty (30) days after attending the course. Failure to obtain the required additional continuing education hours and/or submit the required documentation to the Board will result in a violation of the terms of discipline.

14. Within one hundred and eighty (180) days of the beginning of the probation period, Licensee shall take and successfully complete the jurisprudence exam for dentists in the state of Missouri.

15. Licensees shall maintain a contract with the Well Being Program during his probation and follow all recommendations of the Well Being Committee.

16. If treatment is recommended through the Well Being Program, Licensee shall execute a medical release or other appropriate release that shall remain in effect for the entire period covered by this Joint Agreement Disciplinary Order 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.

17. Licensee shall cause a letter of ongoing treatment evaluation from the treating professional to be submitted to the Board by January 1, April 1, July, and

October 1 during each year of the disciplinary period beginning the effective date of this Settlement Agreement.

- (a) 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.
- (b) 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.

18 If the treatment of Licensee is successfully completed at any time during the period covered by this Joint Agreed Disciplinary Order, 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 a 12-step program. If continuance in a 12-step program is recommended, Licensee shall comply with terms of documentation as outlined in paragraph 17 herein.

19 If attendance is recommended, Licensee shall submit evidence of weekly (or recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support groups meetings to the Board by January 1, April 1, July 1 and October 1 during each year of the disciplinary period beginning the effective date of this Joint Agreed Disciplinary Order. 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.

20. During the disciplinary period, Licensee shall abstain completely from the use or consumption of alcohol. The presence of any alcohol whatsoever in a testing sample shall constitute a violation of Licensee's discipline.

21. 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 (10) 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 and/or hair follicle and/ or breath 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.

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

23. During the disciplinary period, Licensee shall, at Licensee's costs, submit to biological fluid testing and/or hair follicle testing and/or breath 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/or hair follicles and/or breath 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 and/or hair follicle and/or breath sample for which Licensee does not hold a valid prescription shall constitute a violation of Licensee's discipline. The Board may in its sole discretion choose the method of obtaining a sample for testing.

24. During the probationary period, Licensee shall not engage in the practice of dentistry in a solo practice setting.

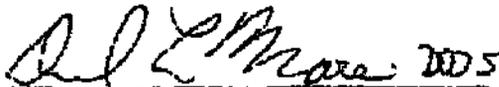
25. The parties to this Joint Agreed Disciplinary Order understand that the Board will maintain this Joint Agreed Disciplinary Order as an open and public record of the Board as provided in Chapters 332, 610 and 620, RSMo.

26. Upon the expiration and successful completion of the disciplinary period, Licensee's license to practice dentistry in the State of Missouri, shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Licensee has violated any term or condition of this 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 Licensee.

27. No order shall be entered by the Board pursuant to the preceding paragraph of this agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

28 If the Board determines that licensee has violated a term or condition of this 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 agreement in its determination of appropriate legal actions concerning such violation.

WHEREFORE, based upon the foregoing, the parties mutually request that the Administrative Hearing Commission issue a Consent Order embodying the terms and conditions of this "Waiver of Hearing, Joint Stipulation, and Request for Consent Order" in the above-styled cause, and that case number 05-1149 DB be closed.

  
DAVID L. MOORE, D.D.S.

15 JAN 2007  
Date

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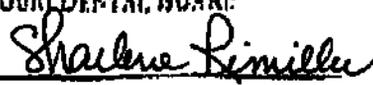
  
Audrey Hanson McIntosh  
Attorney for Respondent

1/15/07  
Date

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Nancy R. Wisdom #30359  
Attorney for Petitioner

01-16-07

MISSOURI DENTAL BOARD  
By:   
SHARLENE REMICK, R.  
EXECUTIVE DIRECTOR

RECEIVED  
JAN 16 2007  
Administrative Hearing Commission

**BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI**

**MISSOURI DENTAL BOARD,** )  
P.O. Box 1367 )  
3605 Missouri Blvd. )  
Jefferson City, Missouri 65102 )  
**Petitioner,** )

v. )

**CAUSE NO.:** 05-1149DB

**DAVID L. MOORE, D.D.S.** )  
2600 Chouteau Avenue )  
St. Louis, MO 63103 )  
**Respondent.** )

**FIRST AMENDED COMPLAINT**

**ALLEGATIONS COMMON TO ALL COUNTS**

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney Nanci R. Wisdom and for its Allegations Common to All Counts in this Complaint in the above-referenced matter states and alleges as follows:

1. The Missouri Dental Board is an agency of the State of Missouri, created and established pursuant to Missouri Revised Statute sections 332.021 to 332.061 for the purpose of executing and enforcing the provisions of Chapter 332 Dentistry.
2. Respondent is and at all times herein relevant, has been a licensed and certified dentist in the State of Missouri.
3. This Commission has jurisdiction to hear this Complaint pursuant to the provision in the Missouri Revised Statute section 621.045.

## COUNT I

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney, Nanci R. Wisdom, and for its cause of action in Count I herein states and alleges as follows:

10. Petitioner incorporates by reference and realleges as though set forth fully herein the statements and allegations contained in Petitioner's Allegations Common to All Counts.

11. On or about August, 2003 Respondent performed partial dental work on Mr. Kasim Kafedzic. Respondent did not complete the work on this patient due to respondent's controlled substance related impairment.

12. On or about September 19, 2003 Respondent began a root canal on Ms. Mevlida Pajazetovic. Respondent did not complete the root canal work on this patient due to respondent's controlled substances related impairment.

13. On or about October 20, 2003 Respondent began to perform crown work on Emina Racic. Respondent did not complete the root canal work on this patient due to respondent's controlled substances related impairment.

14. On or about October 24, 2003 Respondent began a root canal on Ms. Monica Schuh. Respondent did not complete the root canal work on this patient due to respondent's controlled substance related impairment.

15. On or about November 4, 2003 Respondent began a root canal on Ms. Sandra Smith. Respondent did not complete the root canal work on this patient due to respondent's controlled substance related impairment.

16. On or about the Fall of 2003 Respondent began tooth removal for dentures on Ms. Joanie Compion. Respondent did not complete the root canal work on this patient due to respondent's controlled substance related impairment.

17. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

. . . (20) Being unable to practice as a dentist, specialist or hygienist with reasonable skill and safety to patients by reasons of professional incompetency, or because of illness;

14. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332.321.2.

15. That Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has cause to take disciplinary action against Respondent in Count II or, in the alternative, this matter be set for an evidentiary hearing.

## COUNT II

COMES NOW Petitioner, Missouri Dental Board, by and through its attorney, Nanci R. Wisdom, and for its cause of action in Count II herein states and alleges as follows:

16. Petitioner incorporates by reference and realleges as though set forth fully herein the statements and allegations contained in Petitioner's Allegations Common to All Counts.

17. On or about September 19, 2003 Respondent received full payment from Ms. Mevlida Pajazetovic to perform a root canal. Respondent never completed the root canal work paid for by Ms. Pajazetovic due to respondent's controlled substance related impairment. Respondent has since refunded the full payment to Ms. Pajazetovic.

18. On or about October 20, 2003 Respondent received full payment from Ms. Hatidza Racic to do crown work on Ms. Racic daughter. Respondent never completed the crown work paid for by Ms. Racic due to respondent's controlled substance related impairment. Respondent has repeated attempted to contact Ms. Racic to refund full payment, but has not been able to locate her.

19. On or about October 24, 2003 Respondent received full payment from Ms. Monica Schuh to perform a root canal. Respondent never completed the root canal work paid for by Ms. Schuh causing her to incur further dental expenses due to respondent's controlled substance related impairment. Respondent has since refunded full payment to Ms. Schuh.

20. On or about November 4, 2003 Respondent received full payment from Ms. Sandra Smith to perform a root canal. Respondent never completed the root canal work paid for by Ms. Smith due to respondent's controlled substance related impairment. Respondent has since refunded full payment to Ms. Smith.

21. Missouri Revised Statute section 332.321.2 provides that the Missouri Dental Board file a Complaint against a dentist licensed to practice in Missouri under the following circumstances:

...(20) Being unable to practice as a dentist, specialist or hygienist with reasonable skill and safety to patients by reasons of professional incompetency, or because of illness;

22. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332.321.2.

23. That Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the State of Missouri for violations enumerated in Missouri Revised Statute section 332.321.2.

WHEREFORE, based on the foregoing, Petitioner prays this Commission to enter an order finding that it has cause to take disciplinary action against Respondent in Count III or, in the alternative, this matter be set for an evidentiary hearing.

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BY:

  
\_\_\_\_\_  
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