

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND KURT R. MORGESTER, D.D.S.**

Come now Kurt R. Morgester, D.D.S., ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes were violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 2002014619 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

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

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Kurt R. Morgester, D.D.S. is licensed by the Board as a dentist, License No. 2002014619. Licensee's Missouri license is current and active.

3. On or about January 22, 2013, the Board received a letter from Licensee's counsel representing him in civil and administrative matters. Licensee's counsel stated in the letter that Licensee had been in contact with the Missouri Dental Well Being Program and sought addiction treatment at the University of Florida Shands program. The letter stated that Licensee did not intend to practice dentistry until he was deemed fit to return to practice. Finally, the letter stated that Licensee surrendered his Drug Enforcement Administration (DEA) registration to prescribe controlled substances. As a result of the complaint, the Board initiated an investigation. As part of the investigation, the Board contacted the Missouri Bureau of Narcotics and Dangerous Drugs regarding Licensee's state registration to prescribe controlled substances. BNDD stated they were aware of Licensee surrendering his DEA registration and had requested information from DEA.

4. On or about April 19, 2013, Licensee was discharged from the University of Florida Shands Center recovery program. Licensee began treatment January 9, 2013. Licensee participated in individual therapy, the Missouri Dental Well Being program, Mutual Aid Meetings and monitoring. At discharge Licensee was instructed to participate in Dental Well Being and follow all recommendations and requirements thereof, establish a 12-step group, attend 90 AA/NA meetings in 90 days and three times a week thereafter, have daily contact with his sponsor, continue medications and attend individual and couples therapy.

5. On September 9, 2013, Board Investigator Tracey Pfaff spoke with DEA Agent Mike Bomarito. Investigator Bomarito stated the DEA had a diversion case against Licensee involving Licensee filling 15 mg Oxycodone prescriptions using patients' names and contact information. He stated the DEA began its investigation December 12, 2012. The DEA investigation revealed that between May 2012 and December 10, 2012, Licensee wrote nine prescriptions for 15 mg tablets Oxycodone for a total of 200 tablets. Licensee wrote them to two different patients, S.L. and N.S. at three different Walgreens pharmacies. Licensee's actions

constitute violations of Chapter 195, RSMo, and 19 CSR 30 including §§ 195.040, 195.070, 195.180, 195.201, RSMo, and 19 CSR 30-1.060 and 1.031.

6. On September 27, 2013, Investigator Pfaff met with Licensee and his attorney. Licensee stated that he had been addicted to opiates for quite a while and had "at one point taken someone else's prescriptions for his back issues" and he decided to start taking them on a very regular basis. He stated he started abusing opiate type drugs more and more in 2011-2012. He stated he was "relieved" to be arrested and that he is doing very well in recovery.

7. On October 16, 2013, Investigator Pfaff spoke with the United States Attorney's Office (USAO) regarding Licensee. The USAO confirmed a federal grand jury indicted Licensee on October 16, 2013 for knowingly and intentionally obtaining possession of a controlled substance, Oxycodone. The USAO stated that the indictment alleged that Licensee obtained Oxycodone between December 1 and December 31, 2012. The USAO later confirmed that on February 7, 2014, Licensee pled guilty to one felony count of possession of a controlled substance by subterfuge.

8. On February 7, 2014, Licensee pled guilty to possession of a controlled substance by fraud or subterfuge between December 2012 and January 2103, in the United States District Court, Eastern District of Missouri, case number 4:13-cr-00435-RWS. On May 8, 2014, the Court sentenced Licensee to three years' probation and ordered three drug screens per month for all three years of probation, monthly reporting, 80 hours of community service and to participate in and accept the recommendations of the Missouri Dental Well Being program.

9. During the Board's regularly scheduled October 2014 meeting, Licensee appeared before the Board. Licensee stated that he was truly sorry for the events that took place. He stated he "takes accountability and responsibility for what he did." He stated he is "dedicated to a life lived in recovery" and relies on Dental Well Being, his family and colleagues. He stated he was addicted to Oxycodone and it "took over his life." He stated he "got so desperate, he diverted drugs and wrote fraudulent prescriptions in patients' names and would go pick them up." He stated he was at the Florida Recovery Center for 99 days and was discharged April 19, 2013. He stated he attends AA, sees a therapist, attends Caduceus meetings and participates in Missouri Well Being. Specifically, Licensee attends the St. Louis monitoring group of the Well Being program twice a month, attends weekly Caduceus meetings, attends two or three 12-Step group meetings a week, works with a

sponsor, attends individual and couples therapy and regular toxicology screening 52 times a years. Licensee is in compliance with all requirements.

10. Section 332.361, RSMo, states, in relevant part:

1. Any duly registered and currently licensed dentist in Missouri may write, and any pharmacist in Missouri who is currently licensed under the provisions of chapter 338, RSMo, and any amendments thereto, may fill any prescription of a duly registered and currently licensed dentist in Missouri for any drug necessary or proper in the practice of dentistry, provided that no such prescription is in violation of either the Missouri or federal narcotic act.

2. Any duly registered and currently licensed dentist in Missouri may possess, have under his control, prescribe, administer, dispense, or distribute a "controlled substance" as that term is defined in section 195.010, RSMo, only to the extent that:

...

(2) The dentist prescribes, administers, dispenses, or distributes the controlled substance in the course of his professional practice of dentistry, and for no other reason;

(3) A bona fide doctor-patient relationship exists[.]

11. Licensee's actions as described in paragraphs 3 through 9 above constitute use of any controlled substance to an extent that such use impairs a person's ability to perform the work of a licensed dentist for which the Board has authority to discipline Licensee's license.

12. Licensee's actions as described in paragraph 8 above constitute a plea of guilty to an offense reasonably related to the qualifications, functions and duties of a licensed dentist, an offense an essential element of which is fraud and dishonesty and an offense involving moral turpitude, for which the Board has authority to discipline Licensee's license.

13. Licensee's actions as described above in paragraphs 3 through 9 constitute incompetency and misconduct in the performance of, or relating to one's ability to perform the functions or duties of any profession licensed or regulated by this chapter for which the Board has authority to discipline Licensee's license.

14. Licensee's actions as described in paragraphs 3 through 9 above constitute violation of provisions of Chapter 332, as described in paragraph 10 above, for which the Board has authority to discipline Licensee's license.

15. Licensee's actions as described above in paragraphs 3 through 9 constitute violation of a professional trust or confidence, for which the Board has authority to discipline Licensee's license.

16. Licensee's actions as described in paragraphs 3 through 9 above constitute violations of Missouri drug laws, as described in paragraph 5 above, for which the Board has authority to discipline Licensee's license.

17. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(1), (2), (5), (6), (13) and (15), RSMo, which states in pertinent part:

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

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

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

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

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

...

(13) Violation of any professional trust or confidence;

...

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

Joint Agreed Disciplinary Order

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

18. The terms of discipline shall include that the dental license, license number 2002014619, be placed on **PROBATION** for a period of five (5) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

I. WELLNESS REQUIREMENTS

- A. During the disciplinary period, Licensee shall continue to participate in the Missouri Dental Well Being Committee ("Committee"). Licensee shall follow all recommendations of the Committee or the Committee Administrator with regards to counseling, evaluations, any treatment deemed necessary by an evaluation, and any follow-up care. Failure to fully participate in the Well Being Committee shall constitute a violation of this Agreement.
- B. During the disciplinary period, Licensee shall, at Licensee's expense, submit to drug screens as required by the Board. Licensee shall, upon demand and without delay, provide a biological sample to the Board's designated representative, including allowing the Board's designated representative to obtain witnessed biological fluid samples and shall cooperate fully and completely with the Board's designated representative in providing such samples. The presence of any controlled substance, or any drug whatsoever in a drug screen for which Licensee does not hold a valid prescription shall constitute a violation of this Agreement.

II. EDUCATIONAL REQUIREMENTS

- A. Licensee shall take and pass the Board's jurisprudence examination within twelve (12) months of this Agreement becoming effective. Licensee shall contact the Board office to request a current law packet and permission to sit for the jurisprudence examination no less than thirty (30) days prior to the date Licensee desires to take the examination. Licensee shall submit the required re-examination fee to the Board prior to taking the examination. Failure to take and pass the examination during the first twelve (12) months of the disciplinary period shall constitute a violation of this Agreement.

III. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

C. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

D. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.

E. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.

F. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.

G. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

H. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

#### IV. ADDITIONAL REQUIREMENTS

A. Licensee shall not allow his license to lapse.

B. Licensee shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

19. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 332, 610 and 324, RSMo.

20. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

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

causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

22. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

23. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

  
Kurt R. Morgester, D.D.S.

Date 12-4-14

BOARD

  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 12/12/2014