

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND ROGER D. NAIL, D.D.S.**

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

Pursuant to the terms of § 536.060, RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline Nail's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

Nail acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to seek attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Nail knowingly and

¹ All statutory references are to Missouri Revised Statute 2000, unless otherwise indicated.

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.

Nail acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining that there was cause to discipline his license.

For the purpose of settling this dispute, Nail stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that his license, numbered 2005-004797 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2006 and Chapter 332, RSMo.

Joint Stipulation of Facts

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. Nail is licensed by the Board as a dentist, License No. 2005-004797. Nail's Missouri license was at all times relevant herein, and is now, current and active.
3. Under § 332.261, RSMo Cum. Supp. 2006, and 20 CSR 2110-2.240, every Board licensed dentist must obtain fifty (50) hours of continuing education for each renewal period. A renewal period is a two-year period from December 1 of even-numbered years, and runs through November 30 of even-numbered years.

4. Under 20 CSR 2110-2.240(2)(A), each dentist is required to maintain complete records of all approved continuing education credits earned pursuant to 20 CSR 2110-2.240. These records must verify completing the appropriate number of continuing education hours for each renewal period, and must be kept a minimum of six (6) years.

5. The Board received Nail's license renewal application on or about September 9, 2004. On this application, Nail stated that he had not completed the 50 continuing education hours required by statute for renewal. The Board rejected Nail's application for renewal.

6. On or about November 10, 2004, Nail submitted another license renewal application. On this application, Nail had notated that he had completed the requisite 50 hours of continuing education. This notation was next to an original notation stating that he had not completed the requisite hours, followed by a note stating, "by Nov. 30, 2004."

7. Nail's license was renewed by the Board on November 17, 2004 based upon the November 10, 2004 renewal application.

8. Pursuant to 20 CSR 2110-2.240(2)(A), the Board may conduct an audit of licensed dentists to verify that the mandatory number of continuing education hours have been completed. A licensed dentist must provide to the Board at its request such documentation verifying that the continuing education hours have been completed.

9. On or about March 7, 2005, the Board conducted a random audit of dentists to verify that their continuing education hours had been completed. Nail was one of the dentists audited by the Board.

10. The Board contacted Nail, by letter dated March 7, 2005, informing him that he had been selected for a random audit of his continuing education hours. He was to respond to this audit by April 11, 2005. Nail requested additional time to provide his continuing education documents. The Board granted this request.

11. On or about July 18, 2005, Nail provided documentation to the Board for 12 hours of continuing education for the 2002-2004 renewal period. Nail also provided documentation of 10 hours of continuing education that had been obtained after November 30, 2004.

12. Nail had a duty to submit satisfactory evidence of completing the requisite 50 hours of continuing education and has failed to do so.

13. Nail had a duty to maintain documentation of his completed continuing education hours and has failed to do so.

14. Nail's failure to submit satisfactory evidence of completing the mandatory number of continuing education hours and to maintain documentation showing the completion of those hours, constitutes a violation of Section 332.181.4 and Section 332.321 of the Revised Statutes of Missouri.

Joint Stipulation of Law

15. 20 CSR 2110-2.240 states in pertinent part:

(2) In order to renew a license, each dentist shall submit satisfactory evidence of completion of fifty (50) hours of continuing education during the two (2)-year period immediately preceding the renewal period....

(A) For the licensure renewal form due November 30, 2004, and each subsequent renewal period after that, the licensee shall report the number of hours obtained for the two (2)-year period just completed and shall attest to those hours by signing the form. Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document licensee's attendance at the continuing education course including, but not limited to, retaining the titles of the courses taken, dates, locations, receipts, course sponsors, agendas and number of hours earned. The Board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries.

16. Based upon the above mentioned facts, cause exists to discipline Nail's dental license pursuant to § 332.321.2(6) and (11) RSMo, as amended, 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:

* * *

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

* * *

- (11) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo 2000:

1. The terms of discipline shall include that Nail's dental license, license number 2005-004797 be placed on PROBATION for a period of fifteen (15) months ("disciplinary period"). During the probationary period, Nail shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

- A. Nail shall make up the thirty-eight (38) approved continuing education hours that he was delinquent within the first twelve (12) months of the effective date of this Agreement.
- B. Nail shall earn an additional thirty-eight (38) hours of approved continuing education within the first twelve (12) months of the effective date of this Agreement.

- C. The 38 make-up hours and the 38 additional hours are in addition to those hours required by law for renewal and must be classroom/out of office hours (NO correspondence or internet courses.) These additional continuing education hours cannot carry over into the next reporting period.
- D. Nail shall take and pass the Board's jurisprudence examination.
- E. Nail shall provide the Board with proof of attendance of the continuing education hours no later than thirty (30) days after attending the course. Failure to attend the required continuing education programs and/or submit the required documentation to the Board will result in a violation of the terms of discipline.

II. GENERAL REQUIREMENTS

- A. Nail 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. Nail shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.
- C. Nail shall keep the Board apprised of his current home and work addresses and telephone numbers. Nail shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. Nail shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- E. During the disciplinary period, Nail shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Nail's license in a current and active state.
- F. If at any time during the disciplinary period, Nail removes himself from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts

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shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.

- G. During the disciplinary period, Nail shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.
- H. If Nail 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, up to and including revocation.
- I. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Nail not specifically mentioned in this document.

III. ADDITIONAL REQUIREMENTS

- A. Nail shall not allow his license to lapse.
 - B. The terms of discipline apply even if Nail places his license on inactive status.
 - C. Nail 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 Nail practices or has privileges of Nail's disciplinary status. Notification shall be in writing and Nail shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.
2. The Board will maintain this settlement agreement as an open and public record of the Board as provided in Chapters 332, 610, and 620, RSMo. This is a disciplinary action against Nail's license. This document shall be disclosed to the public upon proper request.
3. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement

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

4. Upon the expiration of said discipline, Nail's license as a dentist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Nail has violated any term or condition of this settlement agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Nail's license.

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

6. If the Board determines that Nail has violated a term or condition of this settlement agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this settlement agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this settlement agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose

further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this settlement agreement has occurred.

7. Licensee, together with his heirs and assigns, and his attorney(s), 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 its settlement. Licensee acknowledges 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 void or unenforceable.

8. Licensee understands that he may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

9. If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

MISSOURI DENTAL BOARD


Roger D. Nail, D.D.S.


Brian Barnette
Executive Director

Date 2/20/08

Date 2/20/08


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