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MISSOURI DENTAL BOARD

SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD AND GREGORY N. NEWTON, D.M.D.

Come now Gregory N. Newton, D.M.D. ("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,[1] 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 competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

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

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 013569 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621and 332, RSMo.

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

Joint Stipulation of Fact and Conclusions of Law

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

2. Licensee Greg Newton, D.M.D. is licensed by the Board as a dentist, License No. 013569. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about June 1, 2012, the Board received a medical malpractice claim report regarding a claim against Licensee by a patient, R.R. According to the report, R.R. alleged that during treatment, Licensee failed to give hyperbaric oxygen before and after a posterior tooth extraction in a radiated field in his mouth which resulted in osteoradionecrosis (bone death). The matter was settled for payment to R.R.

4. Based on the medical malpractice claim report for R.R., the Board investigated Licensee's treatment of R.R. The Board determined based on Licensee's records for R.R. that R.R. had undergone radiation therapy for oral cancer in the posterior right portion of his mouth. Licensee consulted with R.R.'s oncologist, Dr. W.T. on December 9, 2008. Dr. W.T. advised Licensee that R.R.'s right molars would be at risk to receive dental treatment as a result of the radiation. On December 30, 2008, Licensee extracted tooth number 31, R.R.'s bottom right second molar without complication. On June 11, 2009, Licensee extracted tooth number 2, R.R.'s upper right second molar. On September 3, 2009, Licensee extracted tooth number 30, R.R.'s bottom right first molar. On March 10, 2010, Licensee received treatment notes from R.R.'s physician, Dr. B.N., stating that he was treating R.R. for osteoradionecrosis (bone death) in his lower right mandible.

5. Licensee's records for R.R. also included Progress Notes from Dr. B.N. The first Progress Note was from March 10, 2010. The March 10, 2010 Progress Note states "[m]ost recently, the patient required treatment for osteoradionecrosis of the mandible that occurred after undergoing a right posterior mandibular molar extraction." The treatment included antibiotics and hyperbaric oxygen therapy. The March 10, 2010 Progress Note also states that the patient "continues to have a small amount of bone exposure in the right posterior mandibular area that has a small amount of purulence upon palpation of this area with a Q-tip[.]" Finally, the March 10, 2010 Progress Note states that "[t]the patient continues to have problems related to the mandibular osteoradionecrosis, and there is still some purulence on the examination today coming from this

site." The next Progress Note from Dr. B.N., dated October 13, 2010, states that the patient "is doing better at this time as related to the right mandible debridement site for the osteoradionecrosis." The October 13, 2010 Progress Note also stated that at his last appointment, October 1, 2010, he had a large wound in the region related to the previous mandibular debridement which required additional treatment of antibiotics. The final Progress Note, dated August 15, 2012, referenced his treatment for the "development of mandibular and soft tissue radionecrosis after a dental extraction." The Progress Note stated he had no new problems related to treatment and he was "clinically without any evidence for recurrent disease[.]"

6. On September 2, 2012, Licensee provided a written statement to the Board entitled "My testimony of events pertaining to [R.R.]." Licensee stated that R.R. was a dental patient from 1991 to 2010. Licensee stated that the majority of the 19 years was good and that they "battled advancing periodontal issues" and tried to "improve patient compliance, promote regular treatment and combat adverse behavior such as heavy smoking." Licensee stated in 2009 he was fully aware of R.R.'s pending treatment for throat cancer. He stated he cleared his dental condition to receive chemotherapy and radiation to R.R.'s oncologist, Dr. W.T., on December 29, 2007. Licensee stated that R.R. returned one year later after completing his cancer treatments. Licensee stated he spoke with Dr. W.T. on December 9, 2008. Licensee stated that Dr. W.T. advised him that the right parotid gland had negligible function and that R.R. was at low risk to receive dental treatment as a result of the cancer treatment, except for the back molars. Licensee stated that he then started to restore oral health issues including several filling, three hygiene appointments and "a couple of extractions." The records reflect the extractions were teeth #31 and #2. Licensee stated that R.R. presented on September 3, 2009 for a hygiene visit and stated he had a toothache on the lower right part of his mouth. Licensee stated he recalled that he recommended doing a root canal on tooth #30 but that R.R. stated "just pull it, doc." Licensee stated that the chart notes for that date do not reflect this discussion. Licensee stated "[t]his is where I made a serious mistake. Rather than referring him to an[] oral surgeon, I pulled the toot[h], uneventfully." Licensee stated that on March 10, 2010, he received a progress note from Dr. B.N. and "[a]fter reading that, I knew my actions on September 3, 2009 had caused Mr. [R.] harm. I realized taking that tooth out had probably caused the osteoradionecrosis. At that time I did not know about hyperbaric therapy but I did know the life long risk to the radiated patient's mandible." Licensee stated that "I can not defend my action of pulling tooth #30. I was not thinking. I made a grave mistake and words can not convey my sorrow and disappointment." He stated that he

has had a successful career and "suffice it to say I am sorry." Licensee stated that on September 29, 2010, R.R. called and requested his x-rays. Licensee stated that thirty minutes later, R.R.'s wife was at the front desk and Licensee told the receptionist to "go ahead and just give her the original films without taking time to copy them." He stated R.R.'s attorney refused to return the x-rays so he had none to provide with his response. Licensee stated that on October 26, 2010, he received notice of the lawsuit filed against him. He stated that as a result, in February 2011 he ordered a home study course entitled Oral Complications of Cancer Therapy to learn more about the subject. Licensee completed the course on June 20, 2011. Licensee stated that on June 8, 2011, with his consent, the lawsuit was settled and payment was made to R.R. Licensee stated he "just received" a progress note from Dr. B.N. stating that R.R. "has been cured of the cancer and the osteoradionecrosis and has returned to normal function and quality of life. Of this I am so thankful."

7. Licensee's actions as described above in paragraphs 3 through 6 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 in that Licensee failed to meet the minimum standard of care by failing to give hyperbaric oxygen before and after posterior tooth extraction in a radiated field which caused osteoradionecrosis, for which the Board has authority to discipline Licensee's license.

8. Licensee's actions as described above in paragraphs 3 through 6 constitute violation of a professional trust or confidence in that Licensee failed to meet the minimum standard of care by failing to give hyperbaric oxygen before and after posterior tooth extraction in a radiated field which caused osteoradionecrosis, for which the Board has authority to discipline Licensee's license.

9. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5) and (13), 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:
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> ...
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> (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;
>
> ...

(13) Violation of any professional trust or confidence[.]

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:

10. The terms of discipline shall include that the dental license, license number 013569, be placed on **PROBATION** for a period of two (2) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

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

II. GENERAL REQUIREMENTS

A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. Licensee shall 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.

III. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Gregory N. Newton DMD

Gregory N. Newton, D.M.D.

Date 4/2/13

BOARD

Brian Barnett

Brian Barnett,
Executive Director
Missouri Dental Board

Date 4/3/13