

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

APPEAL NO. . .

CIVIL CASE INFORMATION FORM

(This form must be filed with the Notice of Appeal with the Circuit Clerk)

List every party involved in the case, indicate the position of the party in the circuit court (e.g. plaintiff, defendant, intervenor) and in the Court of Appeals (e.g. appellant or respondent) and the name of the attorney of record, if any, for each party. Attach additional sheets to identify all parties and attorneys if necessary.

Party

Wayne D. Olson
1008 Country Club
St. Charles MO 63301

v.

Missouri Dental Board
3605 Missouri Blvd
Jefferson City MO 65102

Attorney

Michael K. Kielty 50434
Name Bar No.
201 N. Kings Highway
Address
St. Charles MO 63301
City, State, Zip Code
636 940-7771
Phone Number
Kielty Law Offices, LLC
Law Firm or Office

Nanci Wisdom 39359
Name Bar No.
107 West Fourth St
Address
Salem MO 65560
City, State, Zip Code
573 729-8630
Phone Number
Law Firm or Office

The Record on Appeal will consist of:
 Legal File only or Legal File and Transcript

ATTACH A COPY OF THE JUDGMENT OR ORDER APPEALED.

A BRIEF STATEMENT OR DESCRIPTION OF THE CASE (Any monetary awards shall be set forth. Attach one additional page, if necessary.)

Plaintiff appealed administrative license suspension for dental license.

ISSUES EXPECTED TO BE RAISED ON APPEAL (Attach one additional page, if necessary. Appellant is not bound by this list. Attach copy of post-trial motion, if one was filed.)

Abuse of discretion.

RECEIVED

SEP 22 '08 00:00

MISSOURI DENTAL BOARD

A COPY OF THIS FORM AND ATTACHMENTS MUST BE SERVED ON THE RESPONDENT.



IN THE 11th JUDICIAL CIRCUIT COURT, St. Charles County, MISSOURI

Judge or Division:	Case Number:	
Plaintiff/Petitioner: Wayne D. Olson	Appellate Number:	<input type="checkbox"/> Filing as an Indigent
	Court Reporter: Mike Peasel	<input type="checkbox"/> Sound Recording Equipment
vs. Defendant/Respondent: Missouri Dental Board	Reporter's Telephone: 636 949-7900 Ext.3688	Number of Days of Trial: 1
	Date of Judgment/Sentence: August 08, 2008 (Attach a copy)	Date Post Trial Motion Filed:
	Date Ruled Upon: August 08, 2008	Date Notice Filed:

(Date File Stamp)

Notice of Appeal

Supreme Court of Missouri Court of Appeals: Western Eastern Southern

Notice is given that <u>Wayne D. Olson</u> appeals from the judgment/decree entered in this action on <u>August 08, 2008</u> (date).	
<p>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)</p> <p><input type="checkbox"/> The validity of a treaty or statute of the United States <input type="checkbox"/> The title to any state office in Missouri <input type="checkbox"/> The punishment imposed is death <input type="checkbox"/> The construction of the revenue laws of Missouri <input type="checkbox"/> The validity of a statute or provision of the Constitution of Missouri</p> <p>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).</p>	
Appellant's Attorney/Bar Number Michael K. Kieilty 50434	Respondent's Attorney(s)/Bar Number(s) (If multiple, list all or attach additional sheets) Nanci Wisdom 39359
Address 201 N. Kingshighway, St. Charles, MO 63301	Address 107 West Fourth Street, Salem, MO 65560
Telephone 636 940-7771	Telephone 573 729-8630
Fax 636 916-4956	Fax 573 729-8640
Appellant's Name Wayne D. Olson	Respondent's Name Missouri Dental Board
Address 1008 Country Club, St. Charles, MO 63303	Address 3605 Missouri Blvd., Jefferson City, MO 65102
Telephone 636 723-2085	Telephone 573 751-0040
Brief Description of Case The Judgment being appealed is affirmation of the decision of the Administrative Hearing Commission to revoke Dr. Wayne D. Olson's license to practice dentistry.	
Date of Appeal Bond	Amount of Bond
<input type="checkbox"/> Bond Attached	
Signature of Attorney or Appellant 	Date 9/15/08

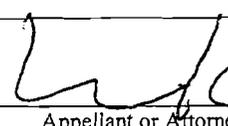
Notice to Appellant's Attorney

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 _____ (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.

Hand delivered to the St. Charles County Circuit Court, 300 N. Second Street, St. Charles, MO 63301; and mailed regular mail to Ms. Nanci Wisdom, Attorney for Respondent, 107 West Fourth Street, Salem, MO 65560.

 #50434
Appellant or Attorney for Appellant

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

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY
STATE OF MISSOURI

WAYNE D. OLSON, D.D.S.,)
)
Petitioner,)
)
v.)
)
MISSOURI DENTAL BOARD)
)
Respondent.)

CASE No.: 0711-CV03821

FILED

AUG 08 2008

JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.

Judgment and Order

NOW ON THE 16th day of May, 2008, Petitioner, Wayne D Olson, D.D.S., appeared in person and with attorney Michael J. Kielty. Respondent, Missouri Dental Board, appeared by attorney Nanci R. Wisdom. The parties announced ready to proceed with oral argument on the Petition for Judicial Review in the above-referenced matter. Argument was presented by both parties and briefs were reviewed by the Court. The Court took the case under submission.

IT IS NOW HEREBY ORDERED BY THIS COURT AS FOLLOWS:

The Decision of the Administrative Hearing Commission issued on January 19, 2007 finding cause exists to discipline the dental license of Petitioner, Wayne D. Olson, D.D.S., and the subsequent Disciplinary Order issued by Respondent, Missouri Dental Board, on April 26, 2007 revoking Petitioner, Wayne D. Olson's, D.D.S., license to practice dentistry is hereby affirmed by this Court. Costs taxed to Petitioner.

IT IS SO ORDERED ON THIS 8 DAY OF August, 2008.

Nancy Schneider
The Honorable Nancy Schneider *AVL*



Judy Zerr
2 Aug 08

IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

WAYNE D. OLSON, D.D.S.
Petitioner

Case # _____

v.

MISSOURI DENTAL BOARD

Division _____

PETITION FOR JUDICIAL REVIEW OF ADMINISTRATIVE DECISION
AND REQUEST FOR STAY ORDER

COMES now Petitioner Wayne Olson, D.D.S. and petitions this court for its Order for Judicial Review of Administrative Decision and in support of his petition, Petitioner states as follows:

1. This action is authorized by section 536.110 R.S.Mo.
2. Petitioner Wayne Olson is a natural person licensed by Respondent to practice dentistry having license number 011388.
3. In cause number 05-1519DB the administrative hearing commission issued a decision in *Missouri Dental Board v. Wayne Olson, D.D.S.* finding there was cause to discipline the Petitioner.
4. On April 21, 2007 the Missouri Dental Board held a hearing at which time the defendant appeared without counsel.
5. On April 26, 2007 the Missouri Dental Board issued a decision revoking the Petitioner's dental license to practice dentistry effective 15 days from the date of the order. The Petitioner did not receive the decision until May 1, 2007.
6. The above-described administrative decision is unsupported by competent and substantial evidence, is arbitrary, capricious and unreasonable. Furthermore, there was an abuse of discretion denying the Petitioner due process under law. The decision was based upon an unlawful procedure.
7. The Petitioner requests the court to issue a "Stay Order" to prevent the Respondent from enforcing its decision of April 26, 2007. The Petitioner will suffer irreparable mental anguish and economic loss if he is forced to close his practice while this Petition is pending. The Petitioner has a viable defense to the Board's action.

RECEIVED

MAY 18 2007

MAY 21 '07 10:00

Circuit Clerk
ST. CHARLES COUNTY

MISSOURI DENTAL BOARD

THEREFORE, the Petitioner requests this court to issue its order staying the order of the Respondent until such time as judicial review of the administrative order can be held. Also, Petitioner requests this court to review the Dental Board's order and decision and issue its order vacating said administrative order and for any other relief deemed proper and just.

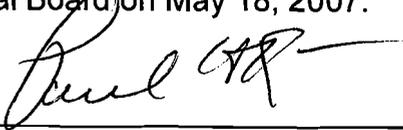
Respectfully submitted,



Paul H. Kaiser #23736
Attorney for Petitioner
1148 S. Benton Ave.
St. Charles, MO 63301
(636) 916-5300

CERTIFICATE OF SERVICE

I certify a copy of this Petition and Stay Order was sent by certified mail to the Missouri Dental Board on May 18, 2007.



IN THE CIRCUIT COURT OF ST. CHARLES COUNTY, MISSOURI

WAYNE D. OLSON, D.D.S.
Petitioner

Case # _____

v.

MISSOURI DENTAL BOARD
Respondent

DIVISION 2

STAY ORDER

NOW on this 18 day of May, 2007 this court takes up Petitioner's Motion for Stay of Administrative Order. This Court, advised of the circumstances finds the Petitioner will suffer irreparable damage if the Board enforces its order of April 26, 2007 and that the public interest will not be harmed by the issuance of this order.

THEREFORE, IT IS ORDERED the license revocation order of the Missouri Dental Board be stayed pending further review and order of this Court.

Wayne D. Olson 5/18/07

CIRCUIT JUDGE *Div 2*

FILED
MAY 18 2007

Circuit Clerk
ST. CHARLES COUNTY

BEFORE THE MISSOURI DENTAL BOARD
STATE OF MISSOURI

MISSOURI DENTAL BOARD,)	
)	
Petitioner)	
)	No.: DB 05-1519DB
v.)	
)	
WAYNE D. OLSON, D.D.S.)	
)	
Respondent)	

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

On April 21, 2007, the Missouri Dental Board held a hearing on the Notice of Disciplinary Hearing in the above-styled cause. The hearing was held at the Oasis Hotel and Convention Center, 2550 North Glenstone, Springfield, Missouri, for the purpose of determining what, if any, disciplinary action should be taken against the certificate of registration and license of Wayne D. Olson, D.D.S. The Missouri Dental Board was represented by Nanci R. Wisdom, outside counsel for the Missouri Dental Board. Amy Braudis, Assistant Attorney General, advised the Board on legal matters. Respondent, Wayne D. Olson, D.D.S., appeared without counsel. The Board heard evidence on the issue of what, if any, disciplinary action should be taken against the certificate of registration and license of Wayne D. Olson, D.D.S. The Board accepted into evidence Missouri Dental Board's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 and incorporated into evidence the record of proceedings before the Administrative Hearing Commission in the case Missouri Dental Board v. Wayne D. Olson, D.D.S., Cause Number: 05-1519 DB.

At the conclusion of the hearing, the Board went into closed session to make its determination.

FINDINGS OF FACT

1. The Missouri Dental Board is created by the provisions of chapter 332 RSMo, and has jurisdiction under the provisions of said chapter and Chapters 536 and 621 RSMo, to hear this case.

2. The Administrative Hearing Commission is an agency of the State of Missouri created and established pursuant to Section 621.105 RSMo for the purposes of conducting hearings and making findings of fact and conclusions of law in cases in which disciplinary action may be taken against the licensee by certain state agencies including the Missouri Dental Board.

3. Wayne D. Olson, D.D.S., holds a registration and license number 011387. The Administrative Hearing commission issued it's Decision in the matter of Missouri Dental Board vs. Wayne D. Olson, D.D.S., Cause No. 05-1519DB finding that there exists cause for the Missouri Dental Board to discipline Respondent's certificate of registration and license to practice dentistry under Section 332.321.2(5), (6) and (15) RSMo.

CONCLUSIONS OF LAW

1. The Missouri Dental Board has jurisdiction to take disciplinary action against the license and certificate of registration of Wayne D. Olson, D.D.S., pursuant to the provisions of Chapter 332, 536, and 621 RSMo.

2. Wayne D. Olson's, D.D.S., certificate of registration and license number 011387 are subject to discipline by the Missouri Dental Board pursuant to Section 332.321.2 and 332.321.3 RSMo.

ORDER

It is the Order of the Missouri Dental Board that the license and certificate of registration of Wayne D. Olson, D.D.S. is hereby revoked.

The provisions of this Order become effective on the fifteen (15) days from the date of this Order.

IT IS SO ORDERED THIS 26th DAY OF APRIL, 2007.

MISSOURI DENTAL BOARD

BY: Sharlene Rimiller
Sharlene Rimiller
Executive Director

Before the
Administrative Hearing Commission
State of Missouri



MISSOURI DENTAL BOARD,)	
)	
Petitioner,)	
)	
vs.)	No. 05-1519 DB
)	
WAYNE D. OLSON, D.D.S.,)	
)	
Respondent.)	

DECISION

Wayne D. Olson, D.D.S., is subject to discipline because he possessed, prescribed, and administered controlled substances without a valid registration; failed to safeguard against theft and diversion of controlled substances; and failed to maintain adequate records of controlled substance prescriptions.

Procedure

The Missouri Dental Board (“the Board”) filed a complaint on October 14, 2005, seeking this Commission’s determination that Olson’s dentist license is subject to discipline.

This Commission convened a hearing on the complaint on February 23, 2006. Nanci R. Wisdom represented the Board. Paul H. Kaiser, with Kaiser & Kaiser, represented Olson. The Board filed the last written argument on August 16, 2006.

Findings of Fact

1. Olson is licensed by the Board as a dentist. The license was current and active at all relevant times.

2. On August 27, 1987, the Board filed a complaint with this Commission asserting that Olson administered conscious sedation to dental patients without a permit of authorization from the Board. On January 4, 1988, Olson signed a joint stipulation and request for consent order admitting the allegations of the complaint and admitting that there was cause to discipline his license. This Commission issued a consent order on January 13, 1988, and the Board suspended Olson's license and placed him on probation.

3. On November 2, 1990, the Circuit Court of St. Charles County issued a temporary restraining order prohibiting Olson from administering intravenous conscious sedation.

4. On February 7, 1991, the Board charged that: Olson had violated the terms of his probation by engaging in incompetence and/or gross negligence in that he did not have a valid permit to administer conscious sedation at his facility; he administered Talwin and Scopolamine, which were contraindicated for a patient with a history of seizure disorder; and the patient suffered seizures on the way home and had to be admitted to the hospital for emergency treatment. On June 29, 1991, Olson signed an agreement and stipulation agreeing that he had violated the terms of his probation with the Board. Olson agreed to an extended term of probation for five years, and agreed that:

Respondent shall not violate any provision of Chapter 332 RSMo. 1986 (or by whatever number the Dental Practices Act shall be known), nor shall Respondent violate any rule or regulation adopted and promulgated by the Missouri Dental Board pursuant thereto.

5. On June 2, 1995, the Board charged that Olson had violated the terms of his probation by administering Talwin and Scopolamine to a patient with a history of seizure disorder. The

patient suffered respiratory distress and was required to undergo emergency hospitalization to save his life. On October 25, 1995, the Board found that Olson had violated the terms of his probation. The Board extended the term of probation and ordered that Olson would not practice conscious sedation until he had received additional instruction in conscious sedation, and that Olson would not use Talwin or Scopolamine. The Board further ordered that:

Olson shall comply with all provisions of Chapter 332, RSMo, all rules and regulations promulgated thereunder, and with all federal and state laws.

6. Olson has not had a registration from the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs (“BNDD”) to possess, prescribe or administer controlled substances since June 30, 2001.

7. Olson administered controlled substances, knowing that he did not have a valid registration from BNDD, as follows:

<u>Date</u>	<u>Patient</u>	<u>Controlled Substance</u>
11/12/01	K.B.	3cc Valium 1 cc Versed .75 cc Sublimaze
12/10/01	M.M.	3 mg. Ativan
12/19/01	K.F.	2 mg. Valium 2 mg. Versed 25 mg. Demerol
1/12/02	T.W.	3 cc Valium 1 cc Valium .75 cc Sublimaze
2/4/02	P.J.	2 mg. Ativan 3 cc Valium 1.5 cc Versed

2/6/02	S.A.	3 mg. Ativan 3 cc Valium .75 cc Versed .75 cc Sublimaze
2/15/02	J.S.	3 cc Valium 1.25 cc Versed .5 cc Sublimaze
2/20/02	J.G.	3 mg. Ativan 2 cc Valium 5 cc Versed 1 cc Sublimaze
2/26/02	J.G.	3 mg. Ativan 3 cc Valium .5 cc Versed
3/22/02	S.A.	2 mg. Ativan 3 cc Valium .5 cc Versed .75 cc Sublimaze
4/2/02	A.B.	3 mg. Ativan 3cc Valium

8. Ativan is a brand name for a drug containing lorazepam. Lorazepam is a Schedule IV controlled substance.¹

9. Valium is a brand name for a drug containing diazepam. Diazepam is a Schedule IV controlled substance.²

10. Sublimaze is a brand name for a drug containing fentanyl. Fentanyl is a Schedule II controlled substance.³

¹Section 195.017.8(2)(z), RSMo Supp. 2006. Statutory references are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

²Section 195.017.8(2)(n), RSMo Supp. 2006.

³Section 195.017.4(2)(j), RSMo Supp. 2006.

11. On April 24, 2002, the Board filed a complaint with this Commission asserting cause to discipline Olson's license for the conduct set forth in Finding 7 above.⁴ The complaint asserted that there was cause to discipline Olson under § 332.321.2(6) for violation of the Board's Regulation 4 CSR 110-2.181, and under § 332.321.2(5) and (13). On October 22, 2002, Olson and the Board filed with this Commission a waiver of hearing, joint stipulation and request for consent order, wherein Olson admitted the allegations of the complaint and admitted that there was cause to discipline his license. On October 25, 2002, this Commission issued its consent order finding cause for discipline under § 332.321.2(5), (6) and (13). On May 1, 2003, Olson signed a waiver of hearing before the Board and agreed to a suspension of his license for 90 days and probation of his license for five years. Olson agreed to 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, and to submit to random drug tests.

12. Olson applied for a new BNDD registration on January 6, 2003. He did not use the proper form and did not submit the correct fee, which had been increased. He answered "no" in response to a question asking whether his license had ever been disciplined. BNDD was aware of previous disciplinary proceedings by the Board because it had copies of the documents. BNDD sent a letter to Olson explaining these problems with his application. Olson responded by sending in a correct form and the correct fee, but still answered "no" to the question asking whether his license had ever been disciplined.

13. On September 19, 2003, the Board charged that Olson violated the terms of probation by refusing to submit to a urine drug test. On January 8, 2004, the Board issued second amended findings of fact, conclusions of law, and order, suspending Olson's license for

⁴*Missouri Dental Bd. v. Olson*, No. 02-0593 DB. The complaint differed slightly from Finding 7 in that it asserted an administration of conscious sedation to K.L. rather than J.G. on February 26, 2002.

90 days by January 20, 2004, and extending his probation for five years, beginning immediately following the period of suspension. The Board again required that:

Respondent 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[.]

14. Dennis Moore, an inspector for BNDD, conducted inspections of Olson's office on October 17, 2003, and August 24, 2004. During both inspections, Olson admitted that he knew he did not have a valid BNDD registration.

15. During the inspection on October 17, 2003, Moore found the following controlled substances in an open box in Olson's office:

<u>Controlled Substance</u>	<u>Quantity</u>
Nembutal, 50 mg/ml	120 ml
Meperidine, 50 mg/ml	30 ml
Demerol, 30 mg/ml	15 ml
Talwin, 30 mg/ml	15 ml
Diazepam, 5 mg/ml	10 ml
Versed, 5 mg/ml	48 ml

Olson told Moore that he had purchased all controlled substances from St. Charles Clinic Pharmacy, but had not purchased any controlled substances in over two years. Moore confirmed this with the pharmacy, which told him that Olson had not purchased any controlled substances since September 2001.

16. Nembutal is a brand name for a drug containing pentobarbital. Pentobarbital is a Schedule II controlled substance.⁵

17. Demerol is a brand name for a drug containing meperidine. Meperidine is a Schedule II controlled substance.⁶

⁵Section 195.017.4(4)(c), RSMo Supp. 2006.

⁶Section 195.017.4(2)(q), RSMo Supp. 2006.

18. Talwin is a brand name for a drug containing pentazocine. Pentazocine is a Schedule IV controlled substance.⁷

19. Diazepam is a Schedule IV controlled substance.⁸

20. Versed is a brand name for a drug containing midazolam. Midazolam is a Schedule IV controlled substance.⁹

21. The box was placed in a chair in the operatory. The door to the operatory was not equipped with a lock.

22. During the inspection on October 17, 2003, Moore also found that Olson did not maintain an annual inventory of the controlled substances in his possession.

23. On October 30, 2003, BNDD sent correspondence to Olson regarding his “Application currently pending for a Missouri Controlled Substances Registration,” and informed him that he needed to correctly answer the question asking whether he had been previously disciplined by the Board.

24. Olson issued the following prescriptions for controlled substances, knowing that he did not have a valid BNDD registration:

<u>Date</u>	<u>Patient</u>	<u>Controlled Substance</u>
01/06/03	R.H.	Darvocet
03/13/03	J.M.	Darvocet
11/17/03	S.W.	Vicodin ES
11/19/03	S.W.	Vicodin
02/20/04	J.J.	Ativan
03/02/04	J.B.	Ativan
03/02/04	T.H.	Ativan
03/04/04	T.H.	Tylenol #3
04/14/04	T.H.	Ativan
05/06/04	D.Q.	Ativan
05/20/04	D.Q.	Vicodin ES

⁷Section 195.017.8(5), RSMo Supp. 2006.

⁸Section 195.017.8(2)(n), RSMo Supp. 2006.

⁹Section 195.017.8(2)(gg), RSMo Supp. 2006.

25. Darvocet is a brand name for a drug product containing propoxyphene. Propoxyphene is a Schedule IV controlled substance.¹⁰

26. Vicodin and Vicodin ES are brand names for combination drug products containing hydrocodone. Combination drug products containing hydrocodone are Schedule III controlled substances.¹¹

27. Olson did not document all of the required information in the patients' charts regarding controlled substances prescribed. The following records from patients' charts did not document the quantity of controlled substances to be dispensed:

<u>Date</u>	<u>Patient</u>	<u>Controlled Substance</u>
01/06/03	R.H.	Darvocet N-100
03/13/03	J.M.	Darvocet N-100
11/17/03	S.W.	Vicodin ES
05/20/04	D.Q.	Vicodin ES

28. On February 20, 2004, a prescription issued for Ativan to patient J.J. was not documented at all.

29. On March 2, 2004, Respondent issued a prescription for Ativan to patient J.B., and it was filled the same day at Dierbergs Pharmacy. The entry recorded in the patient chart reflects that the prescription was issued on March 4, 2004. Olson did not record the quantity prescribed.

Evidentiary Rulings

We took with the case Olson's objections to the Board's Exhibits 1-4 and 6-10, which are copies of documents from past proceedings involving Olson's licensure. Exhibits 1-4, 6-7, and 9 are relevant inasmuch as the Board, in the present case, alleges an intentional violation of statutes and regulations; i.e, misconduct. Therefore, we overrule Olson's relevancy objection and admit these exhibits into evidence.

¹⁰Section 195.017.8(1)(b), RSMo Supp. 2006.

¹¹Section 195.017.6(4)(d), RSMo Supp. 2006.

We sustain Olson's relevancy objection as to Exhibit 8, which is a statement of charges brought by the Board on March 21, 2005, for violation of the terms of Olson's probation. This statement of charges reiterates the allegations of the Board's complaint in this case, and the Board voluntarily dismissed the statement of charges because the Board was prosecuting its complaint filed with this Commission. Exhibit 8 is not probative as to Olson's mental state at the time of the conduct alleged in the complaint. As Exhibit 8 is merely duplicative of the complaint's allegations, and the Board dismissed its statement of charges, Exhibit 8 is not relevant.

We also sustain Olson's relevancy objection as to Exhibit 10, which is a copy of court documents culminating in a temporary restraining order and preliminary injunction on April 25, 2002, and a stipulation for permanent injunction on May 1, 2003, prohibiting Olson from administering parenteral conscious sedation without a permit issued by the Board. The Board's application for temporary restraining order and petition for preliminary and permanent injunction cited the administration of conscious sedation to patients described in our Finding 7 above.¹² The subsequent temporary restraining order, preliminary injunction and permanent injunction are not probative as to Olson's mental state at the time the conduct occurred. Exhibit 10 is not relevant.

Conclusions of Law

We have jurisdiction over the Board's complaint.¹³ The Board has the burden of establishing the grounds alleged in its complaint by a preponderance of the credible evidence.¹⁴

¹²The application for temporary restraining order and petition for preliminary and permanent injunction differed slightly from Finding 7 in that it asserted an administration of conscious sedation to K.L. rather than J.G. on February 26, 2002.

¹³Section 621.045, RSMo 2006.

¹⁴Section 621.110.

Section 332.321.2 provides that the Board may discipline a license for:

(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;

* * *

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

Count I

The Board alleges that there is cause for discipline under § 332.321.2(6) in that Olson possessed, had under his control, administered and prescribed controlled substances without a BNDD registration. Section 332.361.2 provides:

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:

(1) The dentist possesses the requisite valid federal and state registration to distribute or dispense that class of controlled substance[.]

Section 195.030.2 provides:

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare, distribute, dispense, or prescribe any controlled substance and no person as a wholesaler shall supply the same, without having first obtained a registration issued by the department of health in accordance with rules and regulations promulgated by it.

A BNDD registration is a state registration for controlled substance purposes in Chapter 195.

Section 332.321.2(6) states the Board may discipline a dental license for violation of other statutes contained in Chapter 332. Olson prescribed and administered controlled substances

without a proper state registration in violation of § 332.361.2. Therefore, there is cause for discipline under § 332.321.2(6).

Section 332.321.2(15) allows discipline for violation of the drug laws or rules of the State. Section 195.030.2 is part of the drug laws of the State.

Regulation 19 CSR 30-1.017(2)(A) provides:

Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is processed and the registration is issued.

Olson prescribed and administered controlled substances without a proper state registration in violation of § 195.030.2 and Regulation 19 CSR 30-1 .017(2)(A). Therefore, there is cause for discipline under § 332.321.2(15).

The Board argues that Olson is subject to discipline for gross negligence and misconduct because he possessed, prescribed, and administered controlled substances without a valid BNDD registration.¹⁵ Gross negligence is defined as “an act or course of conduct which demonstrates a conscious indifference to a professional duty.”¹⁶ The requisite mental state may be inferred from the conduct of the licensee “in light of the surrounding circumstances.”¹⁷ Misconduct is the willful commission of a wrongful act.¹⁸ The mental states for gross negligence and misconduct are mutually exclusive. Previous disciplinary proceedings against Olson were based on lack of a permit from the Board to practice conscious sedation. Olson knew he needed a valid permit from the Board, yet he continued to administer conscious sedation without it. The present case

¹⁵The conduct differs from the conduct that this Commission previously found as cause for discipline in Case No. 02-0593 DB, because the conduct is practicing without a valid BNDD registration rather than practicing without a conscious sedation authorization permit from the Board.

¹⁶*Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surveyors v. Duncan*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988).

¹⁷*Id.*

¹⁸*Grace v. Missouri Gaming Comm'n*, 51 S.W.3d 891, 900-01 (Mo. App., W.D. 2001).

asserts a lack of BNDD registration. Olson's previous disciplinary agreements required him to comply with Chapter 332, RSMo, and with all drug laws and regulations. During both inspections by Moore, Olson admitted that he did not have a valid BNDD registration. However, he had controlled substances in his possession during the inspection on October 17, 2003. We find that he intentionally possessed, prescribed, and administered controlled substances without a valid BNDD registration throughout 2003 and 2004. Olson is subject to discipline for misconduct, but not for gross negligence.

Incompetency, when referring to occupation, relates to the failure to use the "actual ability of a person to perform in that occupation."¹⁹ The courts have also defined that term as a licensee's general lack of present ability, or lack of a disposition to use his otherwise sufficient present ability, to perform a given duty.²⁰ By possessing, administering, and prescribing controlled substances without a valid BNDD registration, Olson demonstrated incompetency. We find cause for discipline under § 332.321.2(5) for misconduct and incompetency.²¹

Count II

A. Documentation in Patient Records

The Board alleges that Olson prescribed controlled substances without properly documenting the prescriptions in his records.

Section 332.361.2(4) states that a dentist may only prescribe controlled substances to the extent that:

The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

¹⁹Section 1.020(8).

²⁰*Johnson v. Missouri Bd. of Nursing Home Adm'rs*, 130 S.W.3d 619, 642 (Mo. App., W.D. 2004).

²¹The Board does not allege any facts showing fraud, dishonesty or misrepresentation, and makes no argument that Olson is subject to discipline on those grounds.

Regulation 19 CSR 30-1.048(2) states:

Each individual practitioner shall maintain a record of the date, full name and address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. . . .

Olson violated § 332.361.2(4) and Regulation 19 CSR 30-1.048(2) by failing to document prescriptions for controlled substances, the correct date, and the quantity of the substance in the patient chart. Therefore, there is cause for discipline under § 332.321.2(6).

B. Annual Inventory

The Board argues that Olson violated § 195.050.6 and Regulation 19 CSR 30-1.042(3).

Section 195.050.6 states:

Every person **registered** to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health.

(Emphasis added). Regulation 19 CSR 30-1.042(3) states:

Annual Inventory Date. After the initial inventory is taken, the **registrant** shall take a new inventory of all stocks of controlled substances on hand at least once a year. The annual inventory may be taken on any date that is within one year of the previous annual inventory date.

(Emphasis added). Section 195.050.6 and Regulation 19 CSR 30-1.042(3) impose upon registrants the duty to take inventory. Olson has not had a valid BNDD registration since June 30, 2001, and had not purchased any controlled substance since September 2001. Moore found on October 17, 2003, that Olson had failed to maintain an annual inventory. The evidence is insufficient to show that Olson failed to maintain an annual inventory when he was a registrant. We cannot find that Olson violated § 195.050.6 and Regulation 19 CSR 30-1.042(3).

C. Storage of Controlled Substances

Regulation 19 CSR 30-1.031(1) provides:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. . . .

This regulation is different from Regulation 19 CSR 30-1.042(3) because it imposes the duty on applicants and registrants.²² Moore found the controlled substances in an open box in the unlocked operatory during his inspection on October 17, 2003. At that time, Olson had an application that had been pending since January 8, 2003, for a BNDD registration. BNDD sent him correspondence regarding that application on October 30, 2003. Therefore, Olson was an applicant on October 17, 2003. Storing controlled substances in an open box in a chair in an unlocked operatory does not constitute effective controls to guard against theft and diversion. This conduct violated Regulation 19 CSR 30-1.031(1). Therefore, there is cause for discipline under § 332.321.2(15).

D. Misconduct and Incompetency

Olson argues that his failure to correctly document patients' files and failure to maintain an annual inventory were merely an oversight and not intentional. We agree that the mistakes in documentation could have been an oversight. However, we infer that his failure to safeguard against theft and diversion was intentional and more than a mere oversight. Olson's previous disciplinary agreements required him to comply with Chapter 332, RSMo, and with all drug laws and regulations. He should have been aware of the requirements imposed by those laws and regulations, and he had agreed to comply with those requirements on numerous occasions. He is

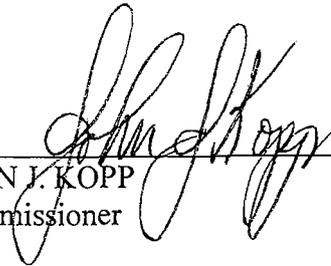
²²Why the regulation applies to applicants is not clear, as Regulation 19 CSR 30-1.017(2)(A) plainly states that no one may engage in an activity for which registration is required until the application for registration is processed and the registration is issued. However, regulations have the force and effect of law, *State ex rel. Barnett v. Missouri State Lottery Comm'n*, 196 S.W.3d 72, 78 (Mo. App., W.D. 2006), and we must take them as we find them.

subject to discipline for misconduct, but not for gross negligence, for failing to safeguard against theft and diversion. Even though the regulation requiring an annual inventory applies only to registrants, Olson failed to maintain a valid registration and to abide by the regulations. Because he demonstrated a lack of disposition to use his professional abilities to perform the duties imposed on him by law, there is also cause for discipline for incompetency. We find cause to discipline Olson's license under § 332.321.2(5).²³

Summary

We find cause to discipline Olson's license under § 332.321.2(5), (6) and (15).

SO ORDERED on January 19, 2007.



JOHN J. KOPP
Commissioner

²³Once again, the Board does not allege any facts showing fraud, dishonesty or misrepresentation, and makes no argument that Olson is subject to discipline on those bases.

FILED

OCT 14 2005

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.: 05-1519 DB

WAYNE D. OLSON, D.D.S.,)
1008 Country Club Drive)
St. Charles, MO 63303)
Respondent.)

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 though under discipline through most all of the times relevant herein.

3. This Commission has jurisdiction to hear this Complaint pursuant to the provision in the Missouri Revised Statute section 621.045.

4. Respondent's Bureau of Narcotic and Dangerous Drug (hereinafter BNDD) registration expired June 30, 2001, and Respondent has not possessed a valid BNDD

registration to possess, administer, dispense or prescribe controlled substances since June 30, 2001.

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:

5. 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.

6. On October 17, 2003, Wayne D. Olson, D.D.S., was found by a BNDD investigator to be in possession with the intent to distribute the following controlled substances without a valid BNDD registration:

- a. Schedule II controlled substance, Nembutol, 50mg/ml, quantity of 120ml;
- b. Schedule II controlled substance, Merperidine, 50mg/ml, quantity of 30 ml;
- c. Schedule II controlled substance, Demerol, 30 mg/ml, quantity of 15 ml;
- d. Schedule IV controlled substance, Talwin, 30 mg/ml, quantity of 15 ml;
- e. Schedule IV controlled substance, Diazepam, 5 mg/ml, quantity of 10 ml;

- f. Schedule IV controlled substance, Versed, 5 mg/ml, quantity of 48 ml;

7. Wayne D. Olson, D.D.S, administered controlled substances without a valid BNDD registration as follows:

- a. On November 12, 2001, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 3cc Valium and 1cc Versed, and Schedule II controlled substance .75cc Sublimaze to patient KB;
- b. On December 10, 2001, Wayne D. Olson, D.D.S., administered Schedule II controlled substance 3mg Ativan to patient MM;
- c. On December 19, 2001, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 2mg Valium and 2mg Versed; and Schedule II controlled substance 25 mg Demerol to patient KF;
- d. On January 12, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substance 3cc Valium and 1cc Valium, and Schedule II controlled substance 75 cc Sublimaze to patient TW;
- e. On February 4, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 2 mg Ativan, 3cc Valium, 5cc Versed to patient PJ;
- f. On February 6, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 3mg Ativan, 3cc Valium, .75cc

Versed, and Schedule II controlled substance 75cc Sublimaze to patient SA;

- g. On February 15, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 3cc Valium, 1.25cc Versed, and Schedule II controlled substance .5cc Sublimaze to patient JS;
- h. On February 20, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 3 mg Ativan, 2cc Valium, 5cc Versed, and Schedule II controlled substance 1cc Sublimaze to patient JG;
- i. On February 26, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 3mg Ativan, 3cc Valium, and .5cc Versed to patient JG;
- j. On March 22, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 2 mg Ativan, 3cc Valium, .5cc Versed, and Schedule II controlled substance .75cc Sublimaze to patient SA;
- k. On April 2, 2002, Wayne D. Olson, D.D.S., administered Schedule IV controlled substances 3 mg Ativan and 3cc Valium to patient AB.

8. Wayne D. Olson, D.D.S. prescribed controlled substance without a valid BNDD registration as follows:

- a. On January 6, 2003, Wayne D. Olson, D.D.S., prescribed to patient R.H., the Schedule IV controlled substance #14 Darvocet N-100, Rx # 4013151;
- b. On March 13, 2003, Wayne D. Olson, D.D.S., prescribed to patient J.M., the Schedule IV controlled substance #8 Darvocet N-100, Rx # 4053602;
- c. On November 17, 2003, Wayne D. Olson, D.D.S., prescribed to patient S.W., 21 dosage units of the Schedule III controlled substance Vicodin ES;
- d. On November 19, 2003, Wayne D. Olson, D.D.S., prescribed to patient S.W., 12 dosage units of the Schedule III controlled substance Vicodin;
- e. On February 20, 2004, Wayne D. Olson, D.D.S., prescribed to patient J.J., 3 dosage units of the Schedule IV controlled substance Ativan;
- f. On March 2, 2004, Wayne D. Olson, D.D.S., prescribed to patient J.B., two dosage units of the Schedule IV controlled substance Ativan;
- g. On March 2, 2004, Wayne D. Olson, D.D.S., prescribed to patient T.H., two dosage units of the Schedule IV controlled substance Ativan;
- h. On March 4, 2004, Wayne D. Olson, D.D.S., prescribed to patient T.H., 12 dosage units of Tylenol #3;

- i. On April 14, 2004, Wayne D. Olson, D.D.S., prescribed to patient T.H., the Schedule IV controlled substance 4 mg Ativan;
- j. On May 6, 2004, Wayne D. Olson, D.D.S., prescribed to patient D.Q., 3 dosage units of the Schedule IV controlled substance Ativan;
- k. On May 20, 2004, Wayne D. Olson, D.D.S., prescribed to patient D.Q., 12 dosage units of the Schedule III controlled substance Vicodin ES.

9. Missouri Revised Statute section 332.361.2 provides that a registered and currently licensed dentist may possess, have under his control, administer, dispense or distribute a controlled substance only to the extent that:

- (1) The dentist possesses the requisite valid federal and state registration to distribute or dispense that class of controlled substance; . . .

10. 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:

. . . (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;

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

11. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332.321.2 and section 332.361.

12. 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 I 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:

13. 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.

14. Wayne D. Olson, D.D.S. did not, document accurate information regarding controlled substances, either by not documenting the prescription at all or not recording the quantity to be dispensed, pursuant to RSMo Section 195.050.6, Section 332.361.2(4) and Regulation 19 CSR 30-1.044(1), with regard to the following controlled substances:

- a. On January 6, 2003, Wayne D. Olson, D.D.S., had recorded in the patient record of R.H., the prescription for the Schedule IV controlled substance Darvocet N-100 with no quantity recorded;
- b. On March 13, 2003, Wayne D. Olson, D.D.S., had recorded in the patient record of J.M., the prescription for the Schedule IV controlled substance Darvocet N-100 with no quantity recorded;
- c. On November 17, 2003, Wayne D. Olson, D.D.S., had recorded in the patient record of SW, the prescription for the Schedule III controlled substance Vicodin ES with no quantity recorded;
- d. On February 20, 2004, Wayne D. Olson, D.D.S., issued a prescription for the Schedule IV controlled substance Ativan to patient J.J. without a notation being made in the patient record;
- e. On March 4, 2004, Wayne D. Olson, D.D.S., had recorded in the patient record of J.B., issuing the prescription for Schedule IV controlled substance Ativan with no quantity recorded but the prescription had been filled two day prior to the date of notation in the record, March 2, 2004;
- f. On May 20, 2004, Wayne D. Olson, D.D.S., had recorded in the patient record of D.Q., the precription for Schedule III controlled substance Vicodin ES with no quantity recorded.

15. On October 17, 2003, Wayne D. Olson, D.D.S., did not maintain an annual inventory of the controlled substances in his possession pursuant to RSMo Section 195.050.6 and Regulation 19 CSR 30-1.042(3).

16. On October 17, 2003, Wayne D. Olson, D.D.S., kept controlled substances in an unlocked, open box in a chair, not protecting and guarding against theft and diversion as required in Regulation 19 CSR 30-1.031(1).

17. Missouri Revised Statute section 332.361.2 provides that a registered and currently licensed dentist may possess, have under his control, administer, dispense or distribute a controlled substance only to the extent that:

(4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

18. 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:

. . . (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;

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

19. That as a result of the foregoing, Respondent has failed to comply with Missouri Revised Statute section 332.321.2 and section 332.361.

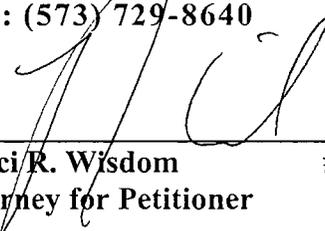
20. That Missouri Revised Statute section 332.321.3 gives Petitioner the authority to take disciplinary action against the dentist licensed to practice dentistry in the

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.

**NANCI R. WISDOM, L.C.
ATTORNEY AT LAW
POST OFFICE BOX 983
SALEM, MISSOURI 65560
(573) 729-8630
FAX: (573) 729-8640**

BY:



**Nanci R. Wisdom #39359
Attorney for Petitioner**

DR. WAYNE OLSON

Motion for STAY ORDER was denied by the Missouri Court of Appeals on April 18, 2005.

ORDER ISSUED BY MISSOURI DENTAL BOARD ON JANUARY 8, 2005 (dated 12/11/03) IN EFFECT.

DR. OLSON'S LICENSE IS SUSPENDED FOR 90 DAYS EFFECTIVE JUNE 1, 2005 THROUGH AUGUST 29, 2005

PROBATION PERIOD WILL RUN AUGUST 30, 2005 THROUGH AUGUST 30, 2010



MISSOURI COURT OF APPEALS
WESTERN DISTRICT

WAYNE D. OLSON, D.D.S.)	
Appellant,)	WD65136
)	
vi.)	
)	
MISSOURI DENTAL BOARD,)	
Respondent.)	

ORDER

Appellant, Wayne D. Olson, D.D.S., on April 7, 2005, filed his motion for the court's order staying the January 8, 2004, Order of the Missouri Dental Board disciplining his license

The court having considered Appellant's motion; the response to the motion filed by Respondent, The Missouri Dental Board; and section 536.120 RSMo does hereby deny Appellant's motion.

Dated this 18th day of April 2005.

Robert G. Ulrich, Presiding Judge
Wrt Division

Holliger, J. concurs

cc.
Sherry L. Doctorian, Esq.
3405 West Truman Boulevard, Suite 210
Jefferson City, Missouri 65109-5713



Nanci Wisdom, Esq.
P.O. Box 983
107 West Fourth Street
Salina, Missouri 65360



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

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

v.)

CAUSE NO. DB-04-5

WAYNE D. OLSON, D.D.S.,)
1008 Country Club Drive)
St. Charles, MO 63303)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 18, 2003, the Missouri Dental Board held a Hearing on the Notice of Hearing on Complaint in the above-styled cause. Said hearing was held at the Embassy Suites Hotel, St. Louis Downtown, 901 North First Street, in St. Louis, Missouri, for the purpose of determining the truth of the allegations contained in the Statement of Charges filed with the Missouri Dental Board on September 19, 2003, alleging that Wayne D. Olson, D.D.S., had violated the terms of his discipline. The Missouri Dental Board was represented by Nanci R. Wisdom, Outside Counsel for the Missouri Dental Board. Respondent, Wayne D. Olson, D.D.S., was present in person and without counsel. The Missouri Dental Board heard evidence on the allegations contained in the Statement of Charges and heard evidence offered in mitigation on said charges by Respondent, Wayne D. Olson, D.D.S. The Board also heard testimony of Executive Director of the Missouri Dental Board, Sharlene Rimiller, Investigator Edwin Irvin, and Wayne D. Olson, D.D.S. Petitioner's Exhibits 1, 2, 3, 4, 5, and 6 were admitted into evidence. At the conclusion of the hearing, the Missouri Dental Board, in closed session, determined the truthfulness

of the allegations contained in the Statement of Charges and whether further disciplinary action should be taken concerning the certificate and license of the Respondent.

FINDINGS OF FACT

1. That on or about the 27th day of August, 1987 the Missouri Dental Board filed a Complaint against Wayne D. Olson, D.D.S., in the Administrative Hearing Commission alleging violation of Section 332.321.2(6) and 4 CSR110-2.181 adopted and promulgated pursuant to authority of Chapter 332 in that Wayne D. Olson, D.D.S., administered IV intravenous conscious sedation without possessing a permit of authorization issued by the Missouri Dental Board.

2. That on or about January 6, 1988 the parties filed a Waiver of Hearing, *Joint Stipulation and Request for Consent Order with the Administrative Hearing Commission* duly executed by Wayne D. Olson, D.D.S., James E. Bowles as attorney for the Missouri Dental Board and Patricia S. Norfleet as Executive Director of the Missouri Dental Board. That by the terms of said Order Respondent Wayne D. Olson, D.D.S., admitted the allegations contained in the Complaint and admitted that the allegations were constituted cause for discipline.

3. That on the 13th day of January, 1988, the Administrative Hearing Commission acting through the Honorable James B. Deutsch, Commissioner, entered a Consent Order finding cause for discipline and remanding the matter to the Missouri Dental Board for the imposition of discipline.

4. As part of his duties, James E. Bowles represented the Missouri Dental Board in a hearing concerning the violation of probation imposed upon Wayne D. Olson, D.D.S., by the Missouri Dental Board which bore the Cause Number DB-91-1.

Following a hearing in this matter, the Missouri Dental Board filed an Order on July 8, 1991, placing the license and certificate of registration of Wayne D. Olson, D.D.S., to practice dentistry in Missouri on probation for a period of five (5) years.

5. On June 2, 1995, the Missouri Dental Board filed a Statement of Charges alleging that Wayne D. Olson, D.D.S., violated his disciplinary order entered on July 8, 1991.

6. On October 25, 1995, the Missouri Dental Board, after hearing, issued its Findings of Fact, Conclusions of Law and Order finding Wayne D. Olson, D.D.S. violated his disciplinary order entered July 8, 1991, and placing Wayne D. Olson's, D.D.S. license on probation for five (5) years.

7. On November 2, 1990, the Missouri Dental Board filed a Motion for Temporary Restraining Order and Petition for Injunction in the case of Missouri Dental Board vs. Wayne D. Olson, D.D.S., Cause Number CV190-6298CC before the Circuit Court of St. Charles County, Missouri. A Consent to the Temporary Restraining Order was filed on November 2, 1990.

8. On April 25, 2002, the Missouri Dental Board filed an application for Temporary Restraining Order and Petition for Preliminary and Permanent Injunction in the case of Missouri Dental Board vs. Wayne D. Olson, D.D.S., Cause Number 02CV126185, before the Circuit Court of St. Charles County, Missouri. Also on April 25, 2002, the parties filed a Stipulation for Temporary Restraining Order and Preliminary Injunction in the Circuit Court of St. Charles County, Missouri.

9. On May 1, 2003, the parties entered a Stipulation for Permanent Injunction in the case of Missouri Dental Board vs. Wayne D. Olson, D.D.S., Cause Number 02CV126185, in the Circuit Court of St. Charles County, Missouri.

10. On April 24, 2002, the Missouri Dental Board filed a Complaint with the Administrative Hearing Commission in Missouri Dental Board vs. Wayne D. Olson, D.D.S., Cause Number 02-0593DB alleging Wayne D. Olson, D.D.S., violated the Dental Practices Act, Chapter 332, by administering parenteral conscious sedation including intravenous conscious sedation without the proper permit.

11. On October 22, 2002, a Waiver of Hearing, Joint Stipulation and Request for Consent Order was filed with the Administrative Hearing Commission in which Wayne D. Olson, D.D.S., admitted the allegations before the Administrative Hearing Commission in Missouri Dental Board vs. Wayne D. Olson, Cause Number 02-0593DB.

12. The Administrative Hearing Commission entered its Consent Order in Missouri Dental Board vs. Wayne D. Olson, Cause Number 02-0593DB, on October 25, 2002.

13. The case of Missouri Dental Board vs. Wayne D. Olson, D.D.S., was noticed for disciplinary hearing before the Missouri Dental Board on May 1, 2003.

14. The parties entered a Waiver of Hearing Before the Missouri Dental Board and Disciplinary Order on May 1, 2003, in which Wayne D. Olson's, D.D.S., license to practice dentistry was suspended for ninety (90) days followed by five (5) years probation after the first thirty (30) days of suspension and conditioned as follows:

(14) During the disciplinary period, Respondent shall, at Respondent cost, submit to biological fluid testing as required by the Board. Respondent shall, upon demand and without delay, allow 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 whatsoever in a biological fluid sample for which Licensee does not hold a valid prescription shall constitute a violation of Respondent's discipline.

15. On August 28, 2003, a Missouri Dental Board investigator met with Wayne D. Olson, D.D.S., at his office and requested a urine specimen from Wayne D. Olson, D.D.S.

16. Wayne D. Olson, D.D.S. refused to submit to a urine test.

17. The Missouri Dental Board investigator made two additional requests for a urine specimen from Wayne D. Olson, D.D.S., on August 28, 2003. Wayne D. Olson, D.D.S., refused these requests.

18. On a date prior to August 28, 2003, a Missouri Dental Board investigator requested by telephone to come to the office of Wayne D. Olson, D.D.S., to obtain a urine specimen from Wayne D. Olson, D.D.S. Wayne D. Olson, D.D.S., indicated he would refuse to provide the urine specimen, so the Missouri Dental Board investigator need not bother coming to the office of Wayne D. Olson, D.D.S.

CONCLUSIONS OF LAW

19. The Missouri Dental Board has jurisdiction to render discipline against the license and certificate of registration of Wayne D. Olson, D.D.S. under the provisions of Chapter 332 and previous Order of the Missouri Dental Board entered as set forth herein. Section 621.110 RSMo and State Board of the Registration for the Healing Arts v. Masters, 512 S.W.2d 150 (Mo. App. 1974).

20. That the actions of Wayne D. Olson, D.D.S. as stated in the Findings of Fact give grounds to the Missouri Dental Board to impose discipline, including revocation of Wayne D. Olson's, D.D.S., license and certificate, suspension up to three years of said license and certificate, probation up to five years of said license and certificate, or a combination of suspension and probation. See Section 332.321.3 and Section 621.110 RSMo (2002).

21. That the actions of Wayne D. Olson, D.D.S. as set forth herein constitute violations of the terms of his probation.

DISCIPLINE

22. It is the Order of the Missouri Dental Board that the license and certificate of registration of Wayne D. Olson, D.D.S., to practice dentistry in the State of Missouri shall be disciplined as follows:

23. Respondent's license to practice dentistry shall be suspended for a period of ninety (90) days beginning December 26, 2003; to be followed by a period of probation for five (5) years beginning immediately following the period of suspension ("disciplinary period"). Respondent shall return his dental license, wall-hanging certificate, pocket card, and all other indicia of licensure to the Board no later than the day before the first day of suspension to be held by the Board during the period of suspension. Failure to return the license, wall-hanging certificate, pocket card, and other indicia of licensure shall be a violation of this Order. During Respondent's suspension, Respondent shall not engage in the practice of dentistry under Chapter 332, RSMo, nor shall Respondent hold himself out in any fashion being authorized to engage in the practice of dentistry under Chapter 332, RSMo. The following activities are identified

for illustrative or informational purposes only and are not intended to be an exhaustive listing of the activities that would constitute the practice of dentistry and that Respondent shall not engage in during suspension. During suspension, Respondent shall not engage in any gratuitous or occasional treatment of any person; shall not maintain an office; shall not provide consultation services or opinions of any kind concerning the dental care and treatment of any person; shall not charge or accept compensation for dental services from any person or entity unless the dental services were provided prior to the effective date of this Order; shall not provide testimony as an expert dental witness; and shall not endeavor in any manner to evaluate, test diagnose, or treat any person. Following the period of suspension, Respondent's license shall be returned and shall be placed on probation as provided above. During Respondent's probation, Respondent shall be allowed to practice dentistry under Chapter 332, RSMo, provided he adheres to all of the term of this Order.

24. Respondent shall not prescribe, order, administer or participate in the administration of any form of parenteral conscious sedation.

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

26. Respondent 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 Order by no later than January 1 and July 1 during each year of the disciplinary period.

27. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. Respondent shall inform the Board within ten days of any change of home or work address and home or work telephone number.

28. Respondent 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.

29. Respondent shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City. 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 Respondent's disciplinary period. Respondent 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.

30. Respondent shall take and pass the Board's designated jurisprudence examination within six (6) months of the start of the disciplinary period. Respondent 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 he desires to take the examination. Respondent shall submit the required re-examination fee to the Board prior to taking the examination. Failure to take and pass the examination during the disciplinary period shall constitute a violation of this Order.

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

32. If at any time during the disciplinary period Respondent 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 shall not be deemed or taken as any part of the time of discipline so imposed in accordance with Section 332.321.6, RSMo.

33. During the disciplinary period, Respondent shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Order.

34. If Respondent fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate.

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

36. During the disciplinary period, Respondent shall, at Respondent cost, submit to biological fluid testing as required by the Board. Respondent shall, upon demand and without delay, allow 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 whatsoever in a biological fluid sample for which Licensee does not hold a valid prescription shall constitute a violation of Respondent's discipline.

37. If the Missouri Dental Board determines upon a proper hearing, that Respondent, Wayne D. Olson, D.D.S., has violated a term or condition of the terms of his

discipline as set forth herein, or had otherwise failed to comply with the provisions of chapter 332 RSMo (2002), which violation would be actionable in a proceeding before the Missouri Dental Board as provided by 4 C.S.C. 110-2.160, before the Administrative Hearing Commission, or in a Circuit Court, the Missouri Dental Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by the type of nor the duration of discipline specified in this document in its election of remedies concerning such violation.

The provisions of this Order become effective fifteen days from the date of this Order.

IT IS SO ORDERED ON THIS 11th DAY OF DECEMBER, 2003.

MISSOURI DENTAL BOARD

BY:



Sharlene Rimiller, Executive Director

aware of these rights, Respondent knowingly and voluntarily waives each and every one of these rights and freely enters into this Waiver of Hearing Before the Missouri Dental Board and Disciplinary Order and agrees to abide by the terms of this document as they pertain to him.

Based upon the foregoing, the Board and Respondent jointly stipulate to the following:

1. The Board is an agency of the state of Missouri created and established pursuant to § 332.021, RSMo 2000, for the purpose of executing and enforcing provisions of Chapter 332, RSMo, the Dental Practices Act.

2. The Missouri Administrative Hearing Commission issued its Consent Order on October 25, 2002, finding cause to discipline Respondent's license to practice dentistry based on a violation of § 332.321.2(5), (6) and ⁽¹³⁾ ~~(5)~~, RSMo 2000.

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, which shall become effective the date this agreement is signed by the Executive Director for the Board, under the authority of § 332.321.3, RSMo 2000:

1. Respondent's license to practice dentistry shall be suspended for a period of ninety (90) days; to be exercised in a thirty (30) day period beginning 6/1/03 and ending 6/30/03; a thirty (30) day period beginning 6/1/04 and ending 6/30/04; and, a thirty (30) day period beginning 6/1/05 and ending 6/30/05; to be followed by a period of probation for five (5) years beginning immediately following the period of suspension ("disciplinary period"). The suspension shall begin on the effective date of this Settlement Agreement. Respondent shall return his dental license, wall-hanging-certificate, pocket

*the first period of suspension is OK
K.D.O.*

card, and all other indicia of licensure to the Board no later than the day before the first day of suspension to be held by the Board during the period of suspension. Failure to return the license, wall-hanging certificate, pocket card, and other indicia of licensure shall be a violation of this Settlement Agreement. During Respondent's suspension, Respondent shall not engage in the practice of dentistry under Chapter 332, RSMo, nor shall Respondent hold himself out in any fashion being authorized to engage in the practice of dentistry under Chapter 332, RSMo. The following activities are identified for illustrative or informational purposes only and are not intended to be an exhaustive listing of the activities that would constitute the practice of dentistry and that Respondent shall not engage in during suspension. During suspension, Respondent shall not engage in any gratuitous or occasional treatment of any person; shall not maintain an office; shall not provide consultation services or opinions of any kind concerning the dental care and treatment of any person; shall not charge or accept compensation for dental services from any person or entity unless the dental services were provided prior to the effective date of this Settlement Agreement; shall not provide testimony as an expert dental witness; and shall not endeavor in any manner to evaluate, test diagnose, or treat any person. Following the period of suspension, Respondent's license shall be returned and shall be placed on probation as provided above. During Respondent's probation, Respondent shall be allowed to practice dentistry under Chapter 332, RSMo, provided he adheres to all of the term of this Settlement Agreement.

2. Respondent shall not prescribe, order, administer or participate in the administration of any form of parenteral conscious sedation.

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

4. Respondent 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.

5. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. Respondent shall inform the Board within ten days of any change of home or work address and home or work telephone number.

6. Respondent 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.

7. Respondent shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City. 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 Respondent's disciplinary period. Respondent 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.

8. Respondent shall take and pass the Board's designated jurisprudence examination within six (6) months of the start of the disciplinary period. Respondent 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 he desires to take the examination. Respondent shall submit

the required re-examination fee to the Board prior to taking the examination. Failure to take and pass the examination during the disciplinary period shall constitute a violation of this Agreement.

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

10. If at any time during the disciplinary period Respondent 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 shall not be deemed or taken as any part of the time of discipline so imposed in accordance with Section 332.321.6, RSMo.

11. During the disciplinary period, Respondent 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.

12. If Respondent fails to comply with the terms of this agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate.

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

14. During the disciplinary period, Respondent shall, at Respondent cost, submit to biological fluid testing as required by the Board. Respondent shall, upon demand and without delay, allow 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 whatsoever in a biological fluid sample for which Licensee does not hold a valid prescription shall constitute a violation of Respondent's discipline.

15. The parties to this agreement understand that the Board will maintain this Disciplinary Order as an open and public record of the Board as provided in Chapters 335, 610, and 620, RSMo.

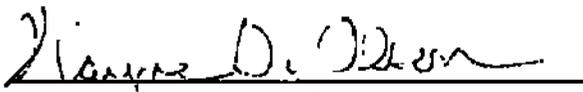
16. Upon the determination of the Board that Respondent has failed to comply with the terms of this Disciplinary Order, the Board may revoke Respondent's license or may take such other or additional disciplinary action against Respondent or Respondent's license as the Board deems appropriate. No order shall be entered by the Board pursuant to this paragraph of this Disciplinary Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

17. Upon the expiration and successful completion of the period of probation, Respondent's license to practice dentistry in Missouri shall be fully restored if all other requirements of law have been satisfied.

18. If the Board determines that Respondent has violated a term or condition of this Disciplinary Order, 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 that violation. Furthermore, Respondent agrees and stipulates that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this agreement has occurred.

19. In consideration of the foregoing, the parties consent to the entry of record and approval of this Waiver of Hearing Before the Missouri Dental Board and Disciplinary Order and to the termination of any further proceedings before the Board based upon the Complaint filed by the Petitioner in the above-styled action.

20. Respondent hereby waives and releases the Board, its 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 litigation, or from the negotiation or execution of this settlement and release agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement and release agreement in that it survives in perpetuity even in the event that any court of law deems this settlement and release agreement or any portion thereof void or unenforceable.



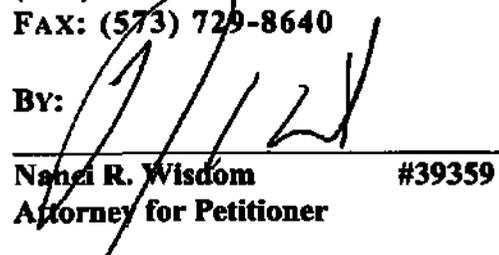
WAYNE D. OLSON, D.D.S.

May 1 '03
Date

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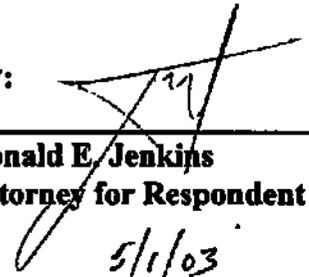


Nanci R. Wisdom #39359
Attorney for Petitioner

05-01-03

DRTG

By:



Ronald E. Jenkins #23850
Attorney for Respondent

Date

5/1/03

Date

MISSOURI DENTAL BOARD

By:



SHARLENE RIMILLER,
EXECUTIVE DIRECTOR

Date

5-1-03

**IN THE ELEVENTH JUDICIAL CIRCUIT OF MISSOURI, AT ST.
CHARLES, ST. CHARLES COUNTY, MISSOURI**

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

Plaintiff,)

vs.)

Case No.: 02CV126185

WAYNE D. OLSON, D.D.S.,)
1008 COUNTRY CLUB DRIVE)
St. Charles, MO 63303)

Respondent.)

STIPULATION FOR PERMANENT INJUNCTION

COMES NOW Petitioner, Missouri Dental Board, by and through its Executive Director, Sharlene Rimiller, and its attorney, Nanci R. Wisdom, and Respondent, Wayne D. Olson, D.D.S., in person and with counsel, Ronald E. Jenkins and for their Stipulation for Permanent Injunction state as follows:

1. Respondent, Wayne D. Olson, D.D.S., admits the allegations contained in Plaintiff's, Missouri Dental Board's, Application for Temporary Restraining Order and Petition for Preliminary and Permanent Injunction.

2. The parties stipulate and agree that Defendant, Wayne D. Olson, D.D.S., shall be permanently restrained and enjoined from practicing dentistry except under the following conditions:

(1) Defendant shall not prescribe, order, administer or participate in the administration of any form of parenteral conscious sedation, ^{in the state of Missouri} without a permit issued by the Missouri Dental Board pursuant to 4 CSR 110-2.181 or by whatever rule the Parental Conscious Sedation Rule shall be known.

W.D.O. M.J. NEW SR

3. Respondent, Wayne D. Olson, D.D.S., shall be responsible for court costs in this case.

Wayne D. Olson
WAYNE D. OLSON, D.D.S.

May 1 03
Date

MISSOURI DENTAL BOARD

BY: Shirlene Rimiller
SHIRLENE RIMILLER,
EXECUTIVE DIRECTOR

5-1-03
Date

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Ronald E. Jenkins # 23850
Attorney for Respondent

5/1/03
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Nanci R. Wisdom #39359
Attorney for Petitioner

05-01-03
Date