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JAN 28 2013

MISSOURI DENTAL BOARD

SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD AND KELLI S. POGUE, R.D.H.

Come now Kelli S. Pogue, R.D.H. ("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 dental hygienist 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 Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's 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 Licensee and, subsequently, the right to a disciplinary hearing before the Board at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline Licensee's 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 2000158360 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621and 332, RSMo.

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[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 Kelli S. Pogue, R.D.H. is licensed by the Board as a dental hygienist, License No. 011135. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. Pursuant to § 332.261, RSMo, and 20 CSR 2110-2.071, every Missouri licensed dental hygienist is required to obtain thirty (30) hours of continuing educational programs during the two-year period immediately preceding the renewal period to renew his or her license.

4. On Licensee's 2010-2012 renewal application Licensee swore and affirmed under penalty of law that she obtained thirty (30) hours of Board-approved continuing education during the period of December 1, 2008, through November 30, 2010.

5. The Board renewed Licensee's license.

6. On or about January 9, 2009, the Board audited License's continuing education hours pursuant to 20 CSR 2110-2.240(2)(A), which states in pertinent part:

> The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries.

7. Licensee failed to submit adequate documentation for thirty (30) hours of continuing education for the December 1, 2008 through November 30, 2010 period.

8. Licensee has a duty to maintain full and complete records of all approved continuing education credits earned pursuant to and as defined by 20 CSR 2110-2.240(2)(A), which states in pertinent part:

> Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document the licensee's attendance at the continuing education course including, but not limited to, retaining the titles of the courses taken, dates, locations, receipts, course sponsors, agendas and number of hours earned.

9. Licensee's failure to obtain the required thirty (30) continuing education credits is a violation of § 332.261 and 20 CSR 2110-2.240(2).

10. Pursuant to Regulation 20 CSR 2100-2.240(5), "a violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional, or any combination of these, in the performance of the functions, duties, or both, of a dentist or dental hygienist, depending on the license's conduct."

11. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(3), (5), and (6), 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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> (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;
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> . . . .
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> (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
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> (6) Violation of, assisting, or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter[.]

Joint Agreed Disciplinary Order

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

12. The terms of discipline shall include that the dental hygiene license be placed on **PROBATION** for a period of one (1) year ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dental hygiene under Chapter 332, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

A. Licensee shall make up the eleven (11) approved continuing education hours that she was delinquent within the first nine (9) months of the effective date of this Agreement. These hours must be classroom/out of office hours (NO correspondence or internet courses.)

B. Licensee shall earn an additional eleven (11) hours of approved continuing education within the first nine (9) months of the effective date of this Agreement. These hours may be obtained through correspondence or internet courses.

C. These hours that need to be made up and the additional hours are in addition to those hours required by law for renewal. These additional continuing education hours cannot carry over into the next reporting period.

D. Licensee shall provide the Board with proof of attendance of the continuing education hours no later than thirty (30) days after attending the course. Failure to attend the required documentation to the Board will result in a violation of the terms of discipline.

E. Licensee shall take and pass the Board's jurisprudence examination.

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 Licensee's 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 Licensee's 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 Licensee from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of Licensee's current place of business and residence, the time of Licensee's 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 Licensee's 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.

13. 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, 324, RSMo.

14. 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.

15. Licensee, together with Licensee's heirs and assigns, and Licensee's 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.

16. 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.

17. 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. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

Kelli S. Pogue, R.D.H..

Date 1-24-13

BOARD

Brian Barnett,
Executive Director
Missouri Dental Board

Date 1/28/13