

**FILED**

JAN 09 2012

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD AND AUSTIN R. RUST, D.M.D.** ADMINISTRATIVE HEARING COMMISSION

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

11-2504 DB

Pursuant to the terms of § 536.060, RSMo 2000, 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 2000.

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

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

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 012262 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2008 and Chapter 332, RSMo.



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 2000, for the purpose of executing and enforcing the provisions of Chapter 332.
2. Licensee Austin R. Rust, D.M.D. is licensed by the Board as a dentist, License No. 012262. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. Based on information obtained in the course of a different investigation by the Board, on August 29, 2009 Investigator Joseph Sears requested patient records from Licensee's office. Investigator Sears requested records for the following patients: J.A., A.G., N.H., H.M., D.S., N.T.(1), and N.T.(2).
4. On September 17, 2009, the Board office received from Licensee's office the requested records for the following patients: A.G., H.M., D.S., and N.T.(2). Included with the produced records was a note from Licensee's office manager "Pam" indicating that the office could not locate records for the remaining individuals.
5. On September 18, 2009 Investigator Sears made another request to Licensee's office for financial and billing information for all of the above listed patients. That same day, Licensee responded to the request and produced billing and financial records for the following patients: J.A., A.G., H.M., D.S., and N.T.(2). Licensee noted that billing records for N.H. and N.T.(1) could not be located.
6. On August 13, 2010, Investigator Mark Dudenhoeffer sent a request to Licensee's office for patient records for all the patients listed in Paragraph 4 above.
7. On August 23, 2010, Licensee's "Chief of Staff" Ms. Pam Van Drie confirmed that the Licensee's practice could not locate patient records for J.A., N.H., H.M., and N.T.(1). Despite Ms. Van Drie's notation, the Board had previously received patient records for H.M.
8. On October 28, 2010 Investigator Sears drove to Licensee's practice in Springfield, Missouri in order to confirm in person that Licensee's practice did not have the patient records for J.A., N.H., and N.T.(1). Investigator Sears interviewed Ms. Van Drie who further confirmed that no patient records were available for J.A., N.H., and N.T.(1). Ms. Van Drie also stated that she believes that Mr. John Rust, a former employee and Licensee's son, stole the records when he was terminated.



9. On November 8, 2010, Licensee called Investigator Sears and informed him that Licensee believed that the missing records were stolen by Dr. Michael DeRuyter (License # 012974) who was a former summer employee of Licensee. During this phone conversation, Licensee informed Investigator Sears that Licensee very much doubts that his son, John Rust, has the records.

10. In response to the information from Licensee's telephone call to Investigator Sears, on November 8, 2010 Investigator Sears contacted via email Dr. DeRuyter's attorney, Ms. Audrey Hanson-McIntosh in regards to the missing patient records. In reply, Ms. Hanson-McIntosh informed Investigator Sears that Dr. DeRuyter was not in possession of the requested records.

11. Licensee's failure to maintain adequate and complete patient records for patients J.A., N.H., and N.T.(1) for dates of service between 2006 and 2009 is a violation of section 332.052 and of Regulation 20 CSR 2110-2.240(2).

12. Pursuant to § 332.052, RSMo 2000 and 20 CSR 2110-2.070, every Board licensee is required to maintain adequate and complete patient records for each patient for a minimum of seven (7) years from the date of the last professional service.

13. 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."

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

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

.....

(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;

(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;



(13) Violation of any professional trust or confidence.

15. Licensee's failure to maintain patient records as described in paragraphs 3 through 11 above constitutes 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 for which the Board has cause to discipline his license.

16. Licensee's failure to maintain patient records as described in paragraphs 3 through 11 above constitutes a 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, for which the Board has cause to discipline his license.

17. Licensee's failure to maintain patient records as described in paragraphs 3 through 11 above constitutes a violation of any professional trust or confidence, for which the Board has cause to discipline his license.

Joint Agreed Disciplinary Order

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

1. The terms of discipline shall include that the dental license, license number 012262, be **CENSURED.**

2. 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.

3. 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.

4. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42



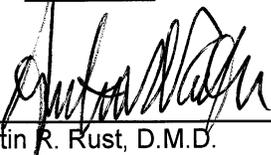
U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

5. 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.**

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

**LICENSEE**

  
Austin R. Rust, D.M.D.

Date 01-03-2012

**BOARD**

  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 1/30/12



Before the  
Administrative Hearing Commission  
State of Missouri



RECEIVED

JAN 19 2012

MISSOURI DENTAL BOARD

AUSTIN R. RUST,

Petitioner,

vs.

MISSOURI DENTAL BOARD,

Respondent.

No. 12-0031 DB

**ORDER OF DISMISSAL**

On January 9, 2012, Austin R. Rust sent a Settlement Agreement that he had signed to this Commission. We opened the above referenced case. Upon review, it appears that Rust intended to send this to the Missouri Dental Board ("the Board").<sup>1</sup>

We forward the original document to the Board, and dismiss this case.

SO ORDERED on January 17, 2012.

A handwritten signature in cursive script, appearing to read "Karen A. Winn", written over a horizontal line.

KAREN A. WINN  
Commissioner

<sup>1</sup>The envelope is addressed to the Missouri Dental Board, Attn: Brian Barnett, but then addressed to the Administrative Hearing Commission's office address and post office box.