

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND BENJAMIN SANLEY, D.D.S.**

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

Pursuant to the terms of § 536.060, RSMo 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 2007014549 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 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 Benjamin Sanley, D.D.S. is licensed by the Board as a dentist, License No. 2007014549. Licensee's Missouri license was active and current at all relevant times.
3. On August 24, 2009, the Board received a copy of a letter dated August 19, 2009 regarding Licensee. The Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs (BNDD) sent the August 19, 2009 letter and a copy of a Conference letter to Licensee's attorney. The letter contained an invitation to Licensee and his attorney to an informal conference on September 17, 2009 with BNDD to discuss the drug law violations contained in the BNDD investigative report. The August 18, 2009 Conference letter was sent to Licensee and Licensee's attorney.
4. In summary, the August 18, 2009 letter states that the violations consist of failure to notify BNDD of a change in his practice location that occurred on June 20, 2008; issuance of Schedule II controlled substances prescriptions without the required information on the prescription; failure to document all controlled substance activities in patient charts; prescribing controlled substances outside the scope of his dental license; issuing controlled substances in absence of a Missouri Controlled Substance Registration; illegally distributing controlled substances; failure to maintain complete and current controlled substance records and failure to provide adequate security to prevent the diversion of controlled substances.
5. The August 18, 2009 letter also describes in detail BNDD's investigation and the violations of state and federal drug laws. On April 17, 2009, BNDD Investigator Dick Schurman (Schurman) inspected Licensee's practice regarding controlled substance record keeping and security. The investigation revealed eight violations of state and federal drug law.
 - a. On June 20, 2008, Licensee changed his practice address from 1601 Missouri Avenue, Carthage, Missouri 64386 to 1112 Baxter Street, Neosho, Missouri 64850 without notifying BNDD in violation of regulation 19 CSR 30-1.023(2)(A)(5). Accordingly, the registration automatically closed on July 20, 2008.

- b. On March 23, 2009 and April 3, 2009, Licensee issued prescriptions for patient J.S. for Percocet™. Percocet™ is a brand name for a drug containing oxycodone, a Schedule II controlled substance pursuant to § 195.017.4(1)(a)(n), RSMo Cum. Supp 2008. The prescriptions did not contain Licensee's registered practice location in violation of federal regulation 21 CFR 1306.05(a) and § 195.060.1, RSMo.
- c. On August 30, 2007 and September 5, 2007, you issued prescriptions for patient J.S. for Percocet™ and did not document them in the patient records at the office where the treatment was provided. You did not document all controlled substance activities in the patient's chart in violation of § 195.050.6, RSMo and 19 CSR 30-1.048(2).
- d. Licensee issued controlled substance prescriptions to patient J.S. for abdominal pain following childbirth and to patient A.S. for chloral hydrate to sedate and make him drowsy, both of which are outside the scope of Licensee's dental license. Chloral hydrate is a Schedule IV controlled substance pursuant to § 195.017.8(2)(f), RSMo Cum. Supp. 2008. Licensee prescribed controlled substances outside the course of professional practice and in a manner not authorized by law in violation of § 195.070.1, RSMo and Regulation 19 CSR 30-1.060.
- e. Licensee's Missouri Controlled Substances Registration automatically closed on July 20, 2008. Licensee issued ten controlled substances in the absence of Registration between August 4, 2008 and April 3, 2009. Licensee issued prescriptions for: APAP/codeine, hydrocodone/APAP, chloral hydrate syrup, diazepam, propoxyphene/APAP and Percocet™. APAP/codeine is a combination drug product containing codeine, a Schedule III controlled substance pursuant to § 195.017.6(4)(b), RSMo Cum. Supp 2008. Hydrocodone/APAP is a combination drug product containing hydrocodone, a Schedule III controlled substance pursuant to § 195.017.6(4)(d), RSMo Cum. Supp. 2008. Diazepam is a Schedule IV controlled substance pursuant to § 195.017.8(2)(n), RSMo Cum. Supp. 2008. Propoxyphene/APAP is a combination drug product containing propoxyphene, a Schedule IV controlled substance pursuant to § 195.017.8(1)(b), RSMo Cum. Supp. 2008. Percocet™ is a brand name for a drug

containing oxycodone, a Schedule II controlled substance pursuant to § 195.017.4(1)(a)(n), RSMo Cum. Supp 2008. Chloral hydrate is a Schedule IV controlled substance pursuant to § 195.017.8(2)(f), RSMo Cum. Supp. 2008. Licensee issued these ten prescriptions in violation of § 195.030.2, RSMo and regulations 19 CSR 30-1.023(2)(A)(1) and 19 CSR 30-1.017(1)(A).

- f. Licensee illegally distributed controlled substances in violation of §§ 195.030.3 and 195.252, RSMo.
- g. Licensee did not maintain complete and current controlled substance records in violation of § 195.050.6, RSMo and regulation 19 CSR 30-1.044(1).
- h. By failing to be properly registered with the State of Missouri, Licensee did not provide adequate security to prevent the diversion of controlled substances in violation of regulation 19 CSR 30-1.031(1).

6. Licensee applied with BNDD for a new Missouri Controlled Substances Registration on April 16, 2009.

7. In its August 18, 2009 Conference letter in response to Licensee's application, the BNDD stated it followed § 195.040, RSMo in determining whether to issue the Registration. The BNDD also invited Licensee to discuss the items detailed in the August 18, 2009 letter as well as his application for Registration.

8. The Board also conducted an investigation based on BNDD's investigation and findings. On April 21, 2010, Board Investigator Mark Dudenhoeffer (Dudenhoeffer) travelled to Licensee's practice location on file with the Board. Dudenhoeffer met with Dr. Jon L. Reagan, DDS, owner of Family Dentistry of Neosho, a former employer of Licensee. Investigator Dudenhoeffer also conducted a search on-line at BNDD's registration search database at or around April, 2010. Licensee did not have a current BNDD registration.

9. Licensee has a license to practice general dentistry from the State of Texas, issued October 12, 2009. Licensee's Texas license had an expiration date of June 1, 2010.

10. Section 195.030.2, RSMo 2000 states:

No person shall manufacture, compound, mix, cultivate, grow or by any other process produce, 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 and senior services in

accordance with the rules and regulations promulgated by it. No registration shall be granted for a term exceeding three years.

11. Section 195.030.3, RSMo 2000 states:

Persons registered by the department of health and senior services pursuant to sections 195.005 to 195.425 to manufacture, distribute, or dispense or conduct research with controlled substances are authorized to possess, manufacture, distribute, or dispense such substances, including any such activity in the conduct of research, to the extent authorized by their registration and in conformity with other provisions of sections 195.005 to 195.425.

12. Section 195.040.3, RSMo 2000 states:

3. The department of health and senior services shall register an applicant to manufacture, distribute or dispense controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) Compliance with state law;

...

(4) Past experience in the manufacture or distribution of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

...

(7) Any other factors relevant to and consistent with the public health and safety.

13. Section 195.050.6, RSMo 2000 states:

Every person registered to manufacture, distribute or dispense controlled substances under section 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 and senior services.

14. Section 195.060.1, RSMo 2000 states:

Except as provided in subsection 3 of this section, a pharmacist, in good faith, may sell and dispense controlled substances to any person only upon a prescription of a practitioner as authorized by statute, provided that the controlled substances listed in Schedule V may be sold without prescription in accordance with regulations of the department of health and senior services. All written prescriptions shall be signed by the person prescribing the same. All prescriptions shall be dated on

the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is prescribed, and the full name, address, and the registry number under the federal controlled substances laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of the animal for which the drug is prescribed. The person filling the prescription shall either write the date of filling and his own signature on the prescription or retain the date of filling and the identity of the dispenser as electronic prescription information. The prescription or electronic prescription information shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this law. No prescription for a drug in Schedule I or II shall be filled more than six months after the date prescribed; no prescription for a drug in schedule I or II shall be refilled; no prescription for a drug in Schedule III or IV shall be filled or refilled more than six months after the date of the original prescription or be refilled more than five times unless renewed by the practitioner.

15. Section 195.070.1, RSMo states:

A physician, podiatrist, dentist, or a registered optometrist certified to administer pharmaceutical agents as provided in section 226.220, RSMo, in good faith and in the course of his or her professional practice only, may prescribe, administer, and dispense controlled substances or he or she may cause the same to be administered or dispensed by an individual as authorized by statute.

16. Section 195.292, RSMo. 2000 states:

1. It is unlawful for any person:

- (1) Who is subject to the provisions of sections 195.005 to 195.198 to distribute or dispense a controlled substance in violation of section 195.030;
- (2) Who is a registrant, to manufacture a controlled substance not authorized by the person's registration, or to distribute or dispense a controlled substance not authorized by that person's registration to another registrant or other authorized person;
- (3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under section 195.050.

2. Any person who violates subdivision (1) of subsection 1 of this section or subdivision (2) of subsection 1 of this section is guilty of a class D felony.

3. Any person who violates subdivision (3) of subsection 1 of this section is guilty of a class a misdemeanor.

17. Pursuant to § 332.361.1, RSMo, “only duly registered and currently licensed dentists in Missouri may write a prescription for any drug necessary or proper in the practice of dentistry, provided that no such prescription is in violation of the Missouri or federal narcotic drug act.”

18. Federal regulation 21 CFR 1306.05(a) states, in pertinent part:

All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document[.] Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist, including a pharmacist employed by a central fill pharmacy, who fills a prescriptions not prepared in the form prescribed by DEA regulations.

19. Regulation 19 CSR 30-1.017(1)(A) states:

(1) Period of Registration.

(A) Any registration, except a re-registration, shall be current and effective for 36 months from the date issued or until the expiration date assigned at the time the registration is issued. A re-registration shall be current and effective for 36 months from the expiration date of the previous registration, provided that the application for re-registration was received prior to the expiration of the previous registration. No person who is required to be registered shall conduct any activity for which registration is required without a current registration.

20. Regulation 19 CSR 30-1.023(2)(A)(1) states:

(2) Termination of Registration of any person shall terminate.

1. On the expiration date assigned to the registration at the time the registration was issued.

21. Regulation 19 CSR 30-1.023(2)(A)(5) states, in pertinent part:

(2) Termination of Registration.

(A) The registration of any person shall terminate:

...
(5) If and when the person discontinues business or changes business location, except:

(A). The registration shall not terminate for 30 days after the effective date of the change if the person applies for a new registration or modification within the 30-day period;

(B) The registration shall not terminate if it is a temporary registration[.]

22. Regulation 19 CSR 30-1.031(1) states:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 20-1.032- 19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

23. Regulation 19 CSR 30-1.044(1) states:

Every registrant required to keep records shall maintain on a current basis a complete and accurate record of each substance manufactured, imported, received, sold, delivered, exported or otherwise disposed of by him/her.

24. 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. This record may be maintained in the patient's record. When the controlled substance record is maintained in the patient's medical record and the practitioner is not the custodian of the medical record, the practitioner shall make the controlled substance record available as required in 19 CSR 30-1.041 and 19 CSR 30-1.044.

25. Regulation 19 CSR 30-1.060 states:

When determining if controlled substances are being lawfully prescribed, dispensed and administered by practitioners, the Department of Health shall enforce Chapter 195, RSMo, the Department of Health rules in 19 CSR 30 pertaining to controlled substances, and the federal Controlled Substances Act 21 U.S.C. 801-966, and its regulations 21 CFR 1300-1399. In determining lawful prescribing, dispensing and administering of controlled substances, the Department of Health also shall consider the provisions of Chapters 330, 332, 334, 335, 336, 338 and 340, RSMo, the rules in 4 CSR 110, 150, 200, 210, 220,

230, and 270, and protocols relating to the respective practitioners established and on file at the respective licensing boards.¹

26. Licensee's actions as described in paragraphs 3 through 9 above constitute violations of the drug laws of this country, this state, and § 332.361.1, RSMo, contained in paragraphs 10 through 25 above, in that Licensee wrote prescriptions that violated state and federal drug laws.

27. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(6) and (15) 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:

...

(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, any other state or the federal government[.]

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the 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 be placed on **PROBATION** for a period of five (5) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

A. Licensee shall take and pass the Board's jurisprudence examination within the first twelve (12) months of Licensee's period of probation. Licensee 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 Licensee desires to take the examination. Licensee shall submit the required re-examination fee to the Board prior to taking the examination. Failure to

¹ The Department of Health is now the Department of Health and Senior Services. Additionally, references to provisions of 4 CSR are now contained in chapter 20 of the CSR.

take and pass the examination during the first twelve (12) months of the disciplinary period shall constitute a violation of the Board Settlement Agreement.

II. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall 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 the Board Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.
- C. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. 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.
- E. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- F. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence from the State of Missouri, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed pursuant to § 332.321.9, RSMo and 20 CSR 2110-2.160(8).
- G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of the Board Settlement Agreement.
- H. If Licensee fails to comply with the terms of the Board Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).
- I. The Board 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 the Board 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.

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 act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission

determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE



Benjamin Sanley, D.D.S.

Date 10-11-10

BOARD



Brian Barnett,
Executive Director
Missouri Dental Board

Date 10/15/10