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**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND MICHAEL J. SAWYER, D.D.S.**

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Come now Michael J. Sawyer, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement ("Board 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<sup>1</sup>, 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 the Board 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 the Board Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 015118

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<sup>1</sup> Unless otherwise noted, all references to RSMo are to RSMo 2000.

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 Michael J. Sawyer, D.D.S. is licensed by the Board as a dentist, License No. 015118. Licensee's Missouri license was active and current at all relevant times.

3. On or about July 11, 2011, the Missouri Dental Board ("Board") filed a Complaint with the Administrative Hearing Commission alleging cause to discipline Michael J. Sawyer's dental license, Case No. 11-1427 DB.

4. The parties wish to resolve the AHC Case No. 11-1427 DB by way of this Settlement Agreement.

5. Jurisdiction and venue are proper under sections 621.045 and 332.32, RSMo.

COUNT I

6. Paragraphs 1 through 5 are hereby incorporated by reference.

7. On November 18, 2009, the Board received a complaint against Licensee filed by patient H.H.

8. H.H. had a tooth on the lower left side of her jaw extracted by Licensee and after, she alleged, the Novocain had worn off, causing her extreme pain.

9. Licensee noted in Patient H.H.'s chart that "patient screaming and crying" still in pain while extractions of mandibular teeth and immediate denture inserted.

10. Patient H.H. alleged she had to go to the hospital because of an abscess on the lower left side of her jaw.

11. Patient H.H. was referred by the hospital to a different dentist to correct her problem.

12. Licensee removed all of Patient H.H.'s funds from her Care-Credit account without finishing her dental work or correcting the problem of the abscess.

13. On or about August 30, 2010 an investigator for the Board conducted an infection control inspection at Licensee's Osage Beach location.

14. During the investigator's inspection he was informed by Licensee's staff that they had been conducting spore testing weekly.

15. Licensee could not provide documentation of the office's weekly spore testing.

#### COUNT II

16. On or about February 24, 2009, the Board received a complaint from patient A.C.O.

17. Patient A.C.O. had a tooth that broke off and after a couple of weeks was causing her pain. She alleged she found Dr. Sawyer in the telephone book and contacted him to address her tooth pain because of a coupon he offered in the telephone book.

18. A.C.O. made an appointment but because she was taking Coumadin, Licensee advised her that she could not receive treatment until she had been off the Coumadin for three days. A.C.O. returned after three days to have the broken tooth extracted.

19. Licensee informed A.C.O. she needed two teeth extracted: the one that had broken and another one under a crown. The original tooth that was causing A.C.O.'s pain was extracted without difficulty. When Licensee attempted to remove the second tooth, A.C.O. alleged Licensee broke off the crown and dropped it in A.C.O.'s mouth, nearly causing her to swallow it.

20. A.C.O. experienced severe pain and bled profusely. Licensee terminated the extraction and informed A.C.O. she would have to go to an oral surgeon.

21. Licensee noted in Patient A.C.O.'s chart that "patient started bleeding too much and crying."

22. A.C.O. continued to experience pain in the broken tooth and alleged a piece of bone came out after several weeks.

23. A.C.O. contacted another dentist to address the tooth broken by Licensee. She claimed that the broken tooth had to be surgically removed and was very infected.

#### COUNT III

24. On December 16, 2008, the Board received a complaint from representatives of Delta Dental.

25. The representatives, Pamela Summers and Julie Partney, conducted an on-site visit of Licensee's dental practice on October 30, 2008 at Licensee's invitation.

26. Summers and Partney observed Licensee place a new set of dentures into a female patient, M.W. Dr. Sawyer explained that he had extracted 29-30 teeth from the patient the day before. It appeared patient M.W. was in pain during the denture fitting by Licensee.

27. Summers and Partney examined the before and after panoramic x-rays of patient M.W.'s mouth. Both Summers and Partney observed 2 or 3 root tips still present on the post-operative x-ray. Licensee acknowledged the "bone remnants," but explained that they would work their way out.

28. Summers and Partney described what they observed as tooth roots rather than bone slivers. They also observed the patient's third molars were still in place.

29. Based on their observations, Licensee was not reinstated as a network provider for Delta Dental.

30. In response to the complaint, Licensee advised the Board investigator that root tips will almost always work their way out and stated, "no one has died from root tips."

31. Licensee's conduct as described herein constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions and duties of a dentist under section 332.321.2(5), RSMo.

32. Licensee's conduct as described herein constitutes violation of the lawful rules or regulations adopted pursuant to chapter 332, RSMo.

33. Licensee's conduct as described herein constitutes violation of a professional trust or confidence under section 332.321(13), RSMo.

34. 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, or relating to one's ability to perform, the functions or duties of any professional 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;

...

(13) Violation of any professional trust or confidence;

Joint Agreed Disciplinary Order

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

The terms of discipline shall include that Licensee's dental license numbered 015118 be placed on **PROBATION for a period of three (3) years ("probationary period")**. During the probationary period, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Settlement Agreement. The terms of the probationary period shall be:

**I. CONTINUING EDUCATION REQUIREMENTS**

- A. During the first year of the probationary period, Licensee shall complete 80 hours of continuing education from Oral Health Enrichment. The 80 hours would be comprised of 20 hours in each of the following categories:
  - 1. Infection control;
  - 2. Oral surgery;
  - 3. Removable prosthodontics; and
  - 4. Diagnosis/treatment planning.
- B. After completing the educational requirements, Licensee shall complete a skills assessment to demonstrate that he has the skills to practice competently and safely.

**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

this Settlement Agreement by no later than January 1 and July 1 during each year of the probationary 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 probationary 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 probationary period, Licensee 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 unlicensed status or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.9, RSMo.
- G. During the probationary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.
- H. 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 revocation.
- I. 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. The terms of discipline apply even if Licensee places his license on inactive status.

- C. 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.
- D. 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 324, 332, 610, RSMo.
- E. Upon the expiration of said discipline, Licensee's license to practice dentistry in Missouri shall be fully restored if all other requirements of law have been satisfied; provided however, that in the event the Board determines that the Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline the Licensee.
- F. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.
- G. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, 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 Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the Probationary Period, the Board may choose to conduct a hearing before it either during the Probationary Period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.
- H. 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.

- I. 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.
- J. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit his request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P. O. Box 1557, Jefferson City, Missouri 65101.**
- K. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Executive Director of the Board.

LICENSEE

M J Sawyer

Michael J. Sawyer, D.D.S.

Date 1/2/13

BOARD

Brian Barnett

Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 1/30/13