

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

Michael J. Sawyer, D.D.S. (“Dr. Sawyer”) and the Missouri Dental Board (“Board”) enter into this settlement agreement for the purpose of resolving the question of whether Dr. Sawyer’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 and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo, as amended, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Dr. Sawyer 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, Dr. Sawyer 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.

Dr. Sawyer 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, Dr. Sawyer stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Dr. Sawyer's license, numbered 015118, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2005 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, RSMo, which regulates the practice of dentistry.
2. Dr. Sawyer is licensed by the Board as a dentist, License No. 015118. Dr. Sawyer's Missouri license was at all times relevant herein, and is now, current and active.
3. Dr. Sawyer practices dentistry in Osage Beach, Missouri. His practice includes a high volume of patients needing teeth extractions and dentures. Many of his patients are on Medicaid and all complaints herein involve Medicaid recipients.

**D.S.**

4. On or about April 22, 2004, Dr. Sawyer examined D.S. Dr. Sawyer performed a panoramic X-ray and took impressions of D.S.'s teeth in preparation for the extraction of all of her teeth and the fitting of dentures.

5. On or about April 22, 2004, D.S. indicated on a medical history form that she had had a heart attack in the past and she had heart disease.

6. D.S.'s history of a heart attack and heart disease indicated that a cardiac dosage of Epinephrine should have been used.

7. A cardiac dosage of Epinephrine is .04 mg, or 40 µg.

8. One 1.7 ml carpule of Lidocaine with Epinephrine contains .017 mg, or 17 µg, of Epinephrine.

9. On or about June 4, 2004, Dr. Sawyer administered 14 carpules of Lidocaine with Epinephrine and two carpules of Carbocaine to D.S., extracted all of her teeth, inserted her dentures, and provided her with a follow-up appointment date and prescriptions.

10. Dr. Sawyer did not contact D.S.'s physician prior to administering 14 carpules of Lidocaine with Epinephrine or prior to extracting her teeth.

11. Dr. Sawyer administered an excessive dosage of Epinephrine to D.S.

12. Dr. Sawyer failed to obtain any of D.S.'s routine vital signs, including, but not limited to blood pressure and weight, prior to administering 14 carpules Lidocaine with Epinephrine and Carbocaine to her.

13. After administering the Lidocaine with Epinephrine and Carbocaine to D.S., Dr. Sawyer instructed D.S. to take a break.

14. Dr. Sawyer has a duty to practice dentistry within the minimum standard of acceptable dental care.

15. Dr. Sawyer's care of D.S. was not within the minimum standard of acceptable dental care because Dr. Sawyer did not contact D.S.'s physician prior to administering 14 carpules of Lidocaine with Epinephrine to D.S. or prior to extracting her teeth.

16. Dr. Sawyer's care of D.S. was not within the minimum standard of acceptable dental care because Dr. Sawyer administered an excessive dosage of Epinephrine to D.S., who had a history of a heart attack and heart disease.

17. Dr. Sawyer's care of D.S. was not within the minimum standard of acceptable dental care because Dr. Sawyer did not assess D.S.'s routine vital signs prior to administering 14 carpules Lidocaine with Epinephrine to her.

18. Dr. Sawyer failed to use the degree of skill and learning ordinarily used under the same or similar circumstances by members of his profession in the care of D.S.

19. Dr. Sawyer's above mentioned acts and failures to act constitute incompetency in the performance of the functions and duties of a licensed dentist.

20. Cause exists for the Board to take disciplinary action against Dr. Sawyer's license under § 332.321.2(5), 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 . . . 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[.]

**BNDD**

21. On or about November 10, 2004, an investigator for the Bureau of Narcotics and Dangerous Drugs (hereinafter "BNDD"), conducted an inspection of Dr. Sawyer's office.

22. From the November 10, 2004 inspection, BNDD noted the following violations of Missouri drug laws:

- a. On or about July 21, 2004, Dr. Sawyer issued a prescription for 30 Hydrocodone/APAP, 10/650 tablets to M.M. without documenting this prescription in Dr. Sawyer's prescribing records.
- b. On or about July 22, 2004, Dr. Sawyer issued a prescription for 30 Hydrocodone/APAP, 10/650 tablets to M.M. without documenting this prescription in Dr. Sawyer's prescribing records.
- c. On or about August 21, 2004, Dr. Sawyer issued a prescription for 30 Hydrocodone/APAP, 10/650 tablets to C.D. without documenting this prescription in Dr. Sawyer's prescribing records.

- d. On or about September 7, 2004, Dr. Sawyer issued a prescription for 30 Hydrocodone/APAP, 10/650 tablets to C.D. without documenting this prescription in Dr. Sawyer's prescribing records.
- e. On or about October 27, 2004, Dr. Sawyer issued a prescription for 30 Hydrocodone/APAP, 10/650 tablets to C.D. without documenting this prescription in Dr. Sawyer's prescribing records.
- f. On or about November 4, 2004, Dr. Sawyer issued a prescription for 30 Hydrocodone/APAP, 10/650 tablets to C.D. without documenting this prescription in Dr. Sawyer's prescribing records.

23. Pursuant to § 195.01 7.6(4)(d), RSMo, Hydrocodone/APAP, 10/650 is a Schedule III controlled substance.

24. Section 195.050.6, RSMo states:

(13) 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.

25. 19 CSR 30-1.048(2) states in pertinent part:

(2) 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[.]

26. Dr. Sawyer's failure to document the above mentioned controlled substance prescriptions constitutes a violation of § 195.050.6, RSMo, and 19 CSR 30-1.048(2), pursuant to a warning given to Dr. Sawyer by BNDD.

27. Under § 332.361.2(4), RSMo, Dr. Sawyer had an obligation to follow BNDD regulations.

28. Cause exists for the Board to take disciplinary action against Dr. Sawyer's license under § 332.321.2(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:

.....

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

**P.K.**

29. On or about August 5, 2005, Dr. Sawyer examined P.K. Dr. Sawyer performed a panoramic x-ray and took impressions of P.K.'s teeth in preparation for the extraction of all of her teeth and the fitting of dentures. The impressions taken for the upper dentures had a large void where the impression material did not properly flow.

30. Dr. Sawyer was notified by the dental laboratory that, due to poor impression quality, chairside interventions were necessary to ensure proper fit.

31. Dr. Sawyer allowed a dental assistant to perform specific functions to manipulate or adjust P.K.'s dentures without the requisite training or proof of competency as required by 4 CSR 110-2.120.

32. Board regulation 4 CSR 110-2.120(4), effective at the time in question, provided, in pertinent part:

(4) A currently licensed dentist may delegate, under direct supervision, functions listed in subsection (4)(D) of this rule to a certified dental assistant or a dental assistant subsequent to submission to the Missouri Dental Board of the following satisfactory proof of competence:

....

(B) Certified dental assistants graduating prior to June 1, 1995, or from programs outside Missouri, may be delegated the functions in subsection (4)(D) of this rule with proof of competence issued by their educational institutions and may be delegated other specific functions if they have completed an approved course, passed an approved competency examination, and can provide proof of competency as defined in subsection (1)(D) [sic];

(C) Dental assistants, as defined in subsection (1)(B), may be delegated any specific function listed in subsection (4)(D) of this rule if they have successfully completed a basic dental assisting skills mastery examination approved by the board, completed an approved course, passed an approved competency examination, and can provide proof of competence as defined in subsection (1)(D) [sic];

(D) Functions delegable upon successful completion of competency testing are.

....

18. Extra-oral adjustment of removable prosthesis during and after insertion[.]

33. Board regulation 4 CSR 110-2.120(1)(E), effective at the time in question, provided, in pertinent part:

(E) Proof of competence--any written document, such as a diploma, a certificate of mastery, or a letter from an approved competency testing agent stating that the dental auxiliary has successfully passed the competency testing for specific functions after having.

1. Completed an approved course--a course of study offered by an accredited school of dentistry, dental hygiene, or dental assisting or any course approved by the Missouri Dental Board; and

2. Passed an approved competency examination--an examination testing essential knowledge of specifically itemized functions constructed, administered and evaluated by an accredited school of dentistry, dental hygiene, or dental assisting, the Dental Assisting National Board, or any other competency testing agent approved by the Missouri Dental Board.

34. Dr. Sawyer's assistant, Dana Douglas, completed the Basic Skills Mastery Examination on or about December 5, 2004.

35. Prior to adjusting P.K.'s dentures, Dana Douglas had not completed an approved course or passed an approved competency examination to adjust dentures, and therefore could not provide proof of competence to adjust dentures.

36. Section 332.071, RSMo, defines the practice of dentistry and provides, in pertinent part:

A person or other entity "practices dentistry" within the meaning of this chapter who:

....

(5) Attempts to or does adjust an appliance or appliances for use in . . . the human mouth[.]

37. By allowing his dental assistant, Dana Douglas, to perform specific functions to manipulate or adjust P.K.'s dentures without the requisite training or proof of competency as required by 4 CSR 110-2.120, Dr. Sawyer assisted and/or enabled Dana Douglas to violate Chapter 332, and/or the regulations promulgated thereunder, including, but not limited to 4 CSR 110-2.120.

38. By allowing his dental assistant, Dana Douglas, to perform specific functions to manipulate or adjust P.K.'s dentures without the requisite training or proof of competency as required by 4 CSR 110-2.120, Dr. Sawyer assisted and/or enabled Dana Douglas to practice dentistry without a license.

39. Dr. Sawyer's above mentioned acts and failures to act constitute incompetency in the performance of the functions and duties of a licensed dentist.

40. Cause exists for the Board to take disciplinary action against Dr. Sawyer's license under § 332.321.2(5), (6), and (10), 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 . . . 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;

....

(10) Assisting or enabling any person to practice or offer to practice, by lack of supervision or in any other manner, any profession licensed or regulated by this chapter who is not registered and currently eligible to practice 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, as amended:

1. **Effective THIRTY days after the Executive Director signs this agreement, Dr. Sawyer’s license as a dentist will be SUSPENDED for FORTY-FIVE DAYS and shall be immediately thereafter be placed on PROBATION for a period of THREE YEARS.** The periods of suspension and probation shall be referred to hereinafter as the “disciplinary period.” During the period of suspension, Dr. Sawyer shall not be entitled to engage in the practice of dentistry under Chapter 332, RSMo. During Dr. Sawyer’s probation, Dr. Sawyer 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.

I. EDUCATIONAL REQUIREMENTS

A. Dr. Sawyer shall take the continuing education course in ethics sponsored by the University of Missouri-Kansas City or its equivalent. 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 months of Dr. Sawyer's disciplinary period, depending on course availability. Dr. Sawyer shall provide the Board with proof of attendance from the sponsor of the program no later than thirty days after attending the course. Failure to obtain the required additional continuing education hours and/or timely submit the required documentation to the Board will result in a violation of the terms of discipline.

B. Dr. Sawyer shall complete in addition to the continuing education required by statute and rules promulgated thereto twenty five hours of continuing education in pharmacology given by Missouri Dental Board approved sponsors. Dr. Sawyer will complete all continuing education required by this section within the first twelve months of Dr. Sawyer's disciplinary period, depending on course availability. Dr. Sawyer will supply the Missouri Dental Board with written proof of attendance at said continuing education courses within thirty days of attending each course. Failure to obtain the required additional continuing education hours and/or timely submit the required documentation to the Board will result in a violation of the terms of discipline.

C. Dr. Sawyer shall complete in addition to the continuing education required by statute and rules promulgated thereto twenty five hours of continuing education in prosthetics given by Missouri Dental Board approved sponsors. Dr. Sawyer will complete all continuing education required by this section within the first twelve months of Dr. Sawyer's disciplinary period, depending on course availability. Dr. Sawyer will supply the Missouri Dental Board with written proof of attendance at said continuing education courses within thirty days of attending each course. Failure to obtain the required additional continuing education hours and/or timely submit the required documentation to the Board will result in a violation of the terms of discipline.

## II. GENERAL REQUIREMENTS

- A. Dr. Sawyer 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. Dr. Sawyer 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.
- C. Dr. Sawyer shall keep the Board apprised of his current home and work addresses and telephone numbers. Dr. Sawyer shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- D. Dr. Sawyer 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, Dr. Sawyer shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Dr. Sawyer's license in a current and active state.
- F. If at any time during the disciplinary period, Dr. Sawyer 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 § 332.321.6, RSMo.
- G. During the disciplinary period, Dr. Sawyer shall accept and comply with unannounced visits not to exceed one every quarter from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement. These unannounced visits are in addition to any unannounced visits for investigative purposes.

H. If Dr. Sawyer 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 under law.

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 Dr. Sawyer not specifically mentioned in this document.

### III. EMPLOYEE AFFIDAVITS

A. Dr. Sawyer shall provide the Board a list of all employees and their positions within the office not later than 30 days after the disciplinary period begins. Dr. Sawyer shall provide the Board with an updated list not later than 30 days after any change in employees occurs. Dr. Sawyer shall require all present and future employees other than dentists and hygienists to execute a notarized statement indicating he or she will not now or in the future perform any delegable functions without proper credentials and proof of competency as defined under law. Said notarized statements shall be executed and Dr. Sawyer shall provide the same to the Board not later than 30 days after the date the disciplinary period begins and not later than 30 days after any future employee begins assisting in Dr. Sawyer's practice.

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, 620, 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. Upon the expiration of said discipline, Dr. Sawyer's license as a dentist 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 Dr. Sawyer 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 Dr. Sawyer.

5. 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.

6. If the Board determines that Dr. Sawyer 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 disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary 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.

7. Dr. Sawyer, 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.

8. Dr. Sawyer understands that he may, either at the time the settlement agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Dr. Sawyer's license. If Dr. Sawyer desires the Administrative Hearing Commission to review this Agreement, Dr. Sawyer 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.

9. If Dr. Sawyer 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 Dr. Sawyer's license. If Dr. Sawyer does not request review by the Administrative Hearing Commission, all of the terms of this settlement agreement, except for the suspension and probation as referenced above on page 11, ¶ 1, go into effect 15 days after the document is signed by the Executive Director of the Board. As provided above on page 11, ¶1, the suspension period commences thirty days after the Executive Director signs the agreement. The probationary period immediately starts upon the conclusion of the suspension period.

LICENSEE

  
\_\_\_\_\_  
Michael J. Sawyer, D.D.S.

Date 8/2/7

BOARD

  
\_\_\_\_\_  
Sharlene Rimiller  
Executive Director  
Missouri Dental Board

Date 8-2-07

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Attorneys for Dr. Sawyer

Attorneys for Missouri Dental Board

Before the  
Administrative Hearing Commission  
State of Missouri

RECEIVED

SEP 13 1999

MISSOURI  
ATTORNEY GENERAL



RECEIVED

SEP 14 1999

MISSOURI DENTAL BOARD

MISSOURI DENTAL BOARD, )  
)  
Petitioner, )  
)  
vs. ) No. 99-2744 DB  
)  
MICHAEL J. SAWYER, D.D.S., )  
)  
Respondent. )

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 1998, gives us jurisdiction.

On August 24, 1999, the parties filed a "Settlement Agreement Between the Missouri Dental Board and Michael J. Sawyer, D.D.S." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W.2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under section 332.321.2(5) for incompetency and gross negligence and (13) for violation of professional trust and confidence, RSMo 1994. We incorporate the parties' proposed findings of fact and our revised conclusions of law into this Consent Order under Regulation 1 CSR 15-2.450(1)(B). We certify the record to the licensing agency under section 621.110, RSMo 1994

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3. This is consistent with the holding that we have no role in superintending agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W.2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied.

SO ORDERED on September 10, 1999.

  
\_\_\_\_\_  
WILLARD C. REINE  
Commissioner



BEFORE THE  
ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

AUG 24 1999

ADMINISTRATIVE HEARING  
COMMISSION

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

Petitioner, )

v. )

MICHAEL J. SAWYER, D.D.S. )  
Highway 54 and Highway "W" )  
Lake Ozark, MO 65049 )

Respondent. )

No. 99- 2744 DB  
BX

REQUEST FOR REVIEW OF THE SETTLEMENT AGREEMENT  
BETWEEN MISSOURI DENTAL BOARD AND MICHAEL J. SAWYER, D.D.S.  
CONCERNING MICHAEL J. SAWYER'S LICENSE

The Missouri Dental Board and Michael J. Sawyer, D.D.S., request that the Administrative Hearing commission review the thirteen (13) page settlement agreement attached hereto which they entered into on August 24, 1999.

1. Section 621.045.3(3), RSMo 1994, provides that a licensee may submit a settlement agreement to the Administrative Hearing Commission for determination of whether the facts agreed to by the parties constitute grounds for denying or disciplining the license of the licensee.

2. Respondent has requested that the Administrative Hearing Commission review the agreement and the Missouri Dental Board joins in that request.

WHEREFORE, the parties request that the Administrative Hearing Commission enter Findings of Fact and Conclusions of Law whether the facts agreed to by the parties constitute grounds for disciplining the dental license Michael J. Sawyer, D.D.S.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON  
Attorney General

  
Laura Krasser  
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P.O. Box 899  
Jefferson City, MO 65102  
Telephone: 573-751-9623  
Telefax: 573-751-5660

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, this 24th day of August, 1999, to:

Mr. James E. Whaley  
Attorney for Respondent  
Brown & James Lawyers, P.C.  
705 Olive Street, Suite 100  
St. Louis, MO 63101-2270

  
Assistant Attorney General

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

Comes now the licensee, Michael J. Sawyer, D.D.S. ("Licensee") and the Missouri Dental Board ("the 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 Supp. 1995, the parties hereto waive the right to a hearing of the issues stipulated in this Agreement by the Administrative Hearing Commission (hereinafter "AHC") of the state of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 1994, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

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; the right to a ruling on questions of law by an Administrative Hearing Commissioner, 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, Michael J. Sawyer, D.D.S. 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 may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this agreement are true and stipulates with the Board that Licensee's license as a dentist, numbered 015118, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 332, RSMo 1994, Dentistry.

**JOINT STIPULATION OF FACT**

1. The Board is an agency of the state of Missouri created and established pursuant to section 332.021 RSMo 1994, for the purposes of administering and enforcing the provisions of Chapter 332, RSMo, Dentists.

2. Licensee is licensed by the Board as a dentist, license number 015118. Licensee's license to practice dentistry is now, and was at all times stated herein, current and active.

3. At the time of the events alleged herein, Licensee was self-employed as a dentist at Lifesports Chiropractic & Dental Services, Osage Beach, Missouri

Count I

4. On or about July 3, 1997, patient K.J., a 53-year-old woman, visited Licensee's office.

5 K.J. presented for replacement of a loose filling in tooth number 6

6. The loose filling was causing K.J. pain.

7. Licensee attempted to place a composite on K.J.'s tooth.

8 Composite is a white filling material.

9. Licensee attempted to place the composite shade on K.J.'s tooth three times without success.

10. K.J.'s tooth had a pulpal exposure, which is an opening into the tooth pulp.

11. The pulp of a tooth consists of blood vessels and nerves which nourish the tooth.

12. The pulp of the tooth in question appeared to be necrotic, which means that the pulp was dead.

13. The standard of care in a situation where a tooth needs to be filled but has a necrotic pulp and pulpal exposure requires that a dentist perform a root canal on the tooth or, alternatively, that the dentist medicate the tooth and refer the patient to an endodontist or other dental professional for a root canal.

14. Licensee did not perform a root canal on K.J.'s tooth.

15. Licensee did not medicate the tooth and refer K.J. to an endodontist for a root canal.

16. Licensee subsequently placed an amalgam on the exposed pulp of K.J.'s tooth.

17. Amalgam is a silver-colored filling material.

18. Subsequent to Licensee's placement of the amalgam, K.J. experienced significant pain in tooth number 6.

19. A professional trust exists between a patient and dentist that the dentist will render treatment that is within the standard of care for dentistry.

### Count II

20. On or about July 16, 1997, patient C.R., a 25 year-old woman, visited Licensee's office

21. C.R. presented with severe pain in the teeth on the upper right side of her mouth.

22. Licensee determined that C.R. had several cavities and that she should return to Licensee's office at a later date for treatment of the cavities.

23. C.R. continued to experience severe pain in the teeth on the upper right side of her mouth.

24. C.R. returned to Licensee's office on July 21, 1998, for treatment of the cavities.

25. Licensee filled two of C.R.'s teeth.

26. Licensee then attempted to extract tooth number 32, one of C.R.'s wisdom teeth.

27. Licensee fractured tooth number 32 as he attempted to extract it

28. As a result of the fracture, the tooth's root tip remained embedded in C.R.'s bone.

29. Licensee did not adequately document the event of the fracture on C.R.'s patient chart.

30. The standard of care in a situation where a root tip remains embedded in a patient's bone after tooth extraction requires that a dentist remove the root tip or, alternatively, that the dentist medicate the patient and refer the patient to an oral surgeon or other dental professional for extraction of the root tip.

31. Licensee did not attempt to remove the root tip from C.R.'s bone.

32. Licensee did not refer C.R. to an oral surgeon or other dental professional for removal of the root tip.

33. Licensee instructed C.R. to return to his office in two weeks to one month for extraction of the root tip.

34. The root tip caused C.R. severe pain.

35. A professional trust exists between a patient and dentist that the dentist will render treatment that is within the standard of care for dentistry.

### Count III

36. On or about May 11, 1998, patient K.P., a 23 year-old man, visited Licensee's office.

37. K.P. presented for extraction of tooth number 17.
38. Licensee attempted for approximately 45 minutes to extract the tooth using forceps.
39. Forceps are plier-like dental instruments used for grasping teeth.
40. Licensee was unsuccessful in his attempt to extract tooth number 17 using forceps.
41. Licensee subsequently attempted for approximately 15 minutes to extract the tooth using an elevator.
42. An elevator is an instrument used for its wedging action between the tooth and the bone to loosen the tooth in the socket.
43. Licensee was unsuccessful in his attempt to extract tooth number 17 using an elevator.
44. Licensee's attempted extraction caused K.P. severe pain.
45. The standard of care in a situation where a tooth presents extreme difficulty requires that a dentist use prudence in referral to a licensed oral surgeon.
46. Licensee gave K.P. a prescription for painkillers and instructed him that he could either go to an oral surgeon or return in one month to Licensee's office so that Licensee could attempt extraction again.
47. A professional trust exists between a patient and dentist that the dentist will render treatment that is within the standard of care for dentistry.

**JOINT CONCLUSIONS OF LAW**

48. Cause exists for the Board to discipline Licensee's license pursuant to § 332.321.2(5) and (13), RSMo 1994, which provides.

2. The board [Petitioner] may cause a complaint to be filed with the Administrative Hearing Commission as provided by chapter 621, RSMo, against any holder of any . . . license required by this chapter . . . 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 profession licensed or regulated by 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 disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo Supp. 1995.

1. Licensee's Missouri dental license, number 015118, is hereby **SUSPENDED** for a period of ninety (90) days ("period of suspension") from the effective date of this

agreement. During the period of suspension, Licensee shall not practice as a dentist. Upon expiration of the period of suspension, Licensee's license shall be returned to active status and Licensee shall be entitled to practice as a dentist pursuant to the terms of this agreement.

2. Pursuant to 4 CSR 110.2.160(3), during the period of suspension, Licensee shall:

(A) Surrender his certificate of registration, license, or both, to the Missouri Dental Board. When a suspension is ordered, the certificate, license, or both, shall be held by the Missouri Dental Board for the duration of the suspension period;

(B) Refrain from misrepresenting the status of his license to practice dentistry to any patient or to the general public;

(C) Refrain from maintaining a physical presence in any office organized to practice dentistry in Missouri during the period of the suspension;

(D) Be prohibited from receiving any compensation from any person, group practice, partnership or corporate practice or any dental office in this state during the period of suspension or revocation. This subsection shall not be intended to include any fees received by a licensee to which he is entitled which are for services performed prior to the effective date of his suspension or revocation but which are received during this period; and

(E) Not accept fees, during a period of licensee's period of suspension, from any capitation or third-party payment program to which he might otherwise be entitled. This subsection shall not include these fees received by the licensee for a period of time prior to the effective date of his suspension.

3. Upon expiration of the period of suspension, Licensee's Missouri dental license, number 015118, shall be placed on probation for a period of five (5) years ("period of probation"). During the periods of probation and suspension ("disciplinary period"), Licensee shall timely renew his license, timely pay all fees required for licensure and comply with all other Board requirements necessary to maintain his license in a current and active state. During the period of probation Licensee shall be entitled to practice as a dentist, provided he adheres to all the terms of this agreement.

4. During the period of probation, Licensee shall keep the Missouri Dental Board apprised at all times in writing of his current home and work addresses and telephone numbers at each place of employment. Licensee shall notify the Board within ten (10) days of any change in this information.

5. During the period of probation, Licensee shall comply with all provisions of Chapter 332, RSMo, all rules and regulations of the Missouri Dental Board, and all federal and state laws, rules and regulations. "State" here includes the state of Missouri and all other states and territories of the United States.

6. During the period of probation, Licensee shall appear before the Board or one of its representatives for a personal interview upon the Board's request.

7. Pursuant to section 332.321.6, RSMo 1994, if at any time during the period of probation Licensee removes himself from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 332, or fails to keep the Missouri Dental Board advised of his current place of business and residence, the time of his absence, or

unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed.

8. During the period of probation, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this agreement.

9. Licensee shall submit written reports to the Board by no later than January 1 and July 1 during each year of the period of probation stating truthfully whether there has been compliance with all the conditions of this agreement. It is Licensee's responsibility to see that the reports are submitted.

10. Licensee shall obtain twenty-four continuing education units (CEUs), with emphasis in Oral Surgery, within six months of the effective date of this agreement. Licensee shall obtain the Board's prior approval for each CEU. Licensee shall submit documentation/certification of attendance at continuing education programs to the Board within six months of the effective date of this agreement. The documentation shall indicate all continuing education courses attended by Licensee during probation which have not previously been submitted to the Board and shall include a pamphlet, brochure, or other materials which indicate the content of the course. Licensee shall also submit reports at other times as necessary to document compliance with this requirement. These twenty-four CEUs are a requirement in addition to the CEUs required for license renewal.

11. The parties to this Settlement Agreement understand that the Board will maintain this Agreement as an open and public record of the Board as provided in Chapters 332, 610, and 620, RSMo.

12. Upon the expiration and successful completion of the disciplinary period, Licensee's Missouri dentistry license shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Licensee has violated any term or condition of this 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 Licensee.

13. No order shall be entered by the Board pursuant to the preceding paragraph of this agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

14. If the Board determines that Licensee has violated a term or condition of this agreement, which violation would also be actionable in a proceeding before the AHC 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 such violation.

15. In consideration of the foregoing the parties consent to this Settlement Agreement and Waiver of Hearing Before the AHC and the Board based upon the facts stipulated in this Agreement.

16. If Licensee has requested review, Licensee and the Board jointly request that the AHC 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' license. Effective the date the AHC determines that the agreement sets forth cause for disciplining Licensee' license, the agreed upon discipline set forth herein shall go into effect.

17. If Licensee has not requested review by the AHC, the agreement goes into effect 15 days after the document is signed by the Executive Director.

18. Licensee, together with his heirs and assigns, and his attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former 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 attorneys fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 USC 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 its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law or administrative tribunal deems this Agreement or any portion thereof void or unenforceable.

LICENSEE

MISSOURI DENTAL BOARD

Michael J. Sawyer 8/17/99  
Michael J. Sawyer, D.D.S. date

Sharlene Rimiller  
Sharlene Rimiller date  
Executive Director  
Missouri Dental Board

James E. Whaley 8/19/99  
James E. Whaley, Esq. date  
Missouri Bar No. 20780

JEREMIAH W. (JAY) NIXON  
Attorney General

Laura Krasser 8-23-99  
Laura Krasser date  
Assistant Attorney General  
Missouri Bar No. 47704

Broadway State Office Building  
P.O. Box 899  
Jefferson City, Missouri 65102  
(573) 751-9623

ATTORNEY FOR LICENSEE

ATTORNEYS FOR MISSOURI  
DENTAL BOARD

MICHAEL J. SAWYER, D.D.S., AS EVIDENCED BY THE INITIALS ON

THE APPROPRIATE LINE

MS REQUESTS

\_\_\_\_\_ DOES NOT REQUEST

THE AHC TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS  
FOR DISCIPLINING Licensee' LICENSE AS A MISSOURI DENTIST.

Before the  
Administrative Hearing Commission  
State of Missouri



MISSOURI DENTAL BOARD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 99-2744 DB
	)	
MICHAEL J. SAWYER, D.D.S.,	)	
	)	
Respondent.	)	

**CONSENT ORDER**

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 1998, gives us jurisdiction.

On August 24, 1999, the parties filed a "Settlement Agreement Between the Missouri Dental Board and Michael J. Sawyer, D.D.S." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W.2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under section 332.321.2(5) for incompetency and gross negligence and (13) for violation of professional trust and confidence, RSMo 1994. We incorporate the parties' proposed findings of fact and our revised conclusions of law into this Consent Order under Regulation 1 CSR 15-2 450(1)(B). We certify the record to the licensing agency under section 621.110, RSMo 1994.

No statute authorizes us to determine whether the agency has complied with the provisions of section 621.045.3. This is consistent with the holding that we have no role in superintending agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W.2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied.

SO ORDERED on September 10, 1999.

WILLARD C. REINE  
Commissioner