

**BEFORE THE MISSOURI DENTAL BOARD
STATE OF MISSOURI**

MISSOURI DENTAL BOARD)	
)	
Petitioner,)	
)	
v.)	No. 2010-003763
)	
)	
AARON M. SCHERTZER, D.D.S)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DISCIPLINARY ORDER**

At its scheduled meeting on April 20, 2012 at approximately 1:00 p.m., and pursuant to notice, the Missouri Dental Board (Board) took up the probation violation complaint alleging that Aaron M. Schertzer, D.D.S. (Licensee) has failed to comply with the terms of his probation.

The Board appeared at the hearing through Attorney Tina Crow Halcomb, Attorney at Law. Licensee was present at the hearing and was represented by counsel Gilbert Sison. Division of Professional Registration Legal Counsel Sarah Ledgerwood served as the Board's legal advisor at the hearing, during deliberations, and in the preparation of this order.

Findings of Fact

1. The Board is an agency of the state of Missouri created and established pursuant to § 332.021, RSMo Cum. Supp. 2011, for the purpose of licensing all persons engaged in the practice of dentistry in this state. The Board has control and supervision of the licensed occupations and enforcement of the terms and provisions of Chapter 332, RSMo (as amended).

2. Licensee holds dentist license number 2001022562 issued by the Board. Licensee's license was current and active at all relevant times. Licensee's license is currently on probation.

3. Licensee entered into a settlement agreement with the Board for prescribing medicine for symptoms unrelated to the practice of dentistry and for failing to maintain adequate records of the prescriptions. The Settlement Agreement placed Licensee's license on probation for a period of three years (disciplinary period). Licensee signed the Settlement Agreement on November 28, 2009, and the Board signed the Settlement Agreement on December 7, 2009.

4. During the disciplinary period, Licensee was entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided that Licensee adhered to all of the terms and conditions of the Settlement Agreement.

5. The Settlement Agreement states, as a term and condition, that 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. Settlement Agreement, Page 6, paragraph C¹.

6. On June 26, 2010, the Board received a letter from Licensee regarding an incident that occurred on August 30, 2009, which resulted in criminal charges against Licensee that were still pending as of the date of his letter. Licensee stated he had been involved in a physical altercation after his wife had been touched inappropriately by a patron of O'Leary's Bar and Grill. As a result, Licensee informed the Board he was charged with assault.

¹ In the Settlement Agreement, there are two paragraphs C. This citation is to the second paragraph C.

7. On September 14, 2010, the Board received certified copies of the Complaint, Criminal Scheduling Conference Order and Affidavit of Probable Cause. The records showed that Licensee was charged with Assault in the First Degree, a class A felony and Armed Criminal Action, a felony, as a result of Licensee striking another individual in the face with a glass, severely lacerating the individual's face.

8. On April 18, 2011, the Board received certified copies of the Complaint, Information, Affidavit of Probable Cause, Plea of Guilty and Sentence and Judgment from the St. Louis County Circuit Court. Licensee pled guilty to Assault in the Third Degree, a class A misdemeanor in the Circuit Court of St. Louis County. The Court dismissed the count of Armed Criminal Action.

9. The Court sentenced Licensee to the custody of the Department of Justice Services of St. Louis County for one year but suspended the execution of sentence and placed Licensee on probation for a period of two years with additional conditions of abstaining from alcohol, ten days incarceration in the county jail, \$13,000 restitution to the victim, no contact with the victim and anger management class.

10. Licensee testified at the probation violation hearing. Licensee stated he was compliant with the terms of probation and had no criminal probation violations. Licensee testified he had no other criminal incidents.

Conclusions of Law

11. The Board has jurisdiction in this proceeding, pursuant to the Settlement Agreement, page 6 paragraph G and page 7 paragraphs 3 and 5, to determine whether Licensee has violated the terms and conditions of the Settlement Agreement.

12. The Board also has jurisdiction pursuant to § 324.042, RSMo to determine whether Licensee has violated the terms and conditions of the Settlement Agreement.

Section 324.042, RSMo states, in pertinent part:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

13. The Board also has jurisdiction pursuant to regulation 20 CSR 2110-2.160(7) to determined if Licensee has violated the terms and conditions of the Settlement Agreement. 20 CSR 2110-2.160(7) states, in pertinent part:

(7) Any violation of a probationary agreement shall constitute grounds for the Missouri Dental Board to impose a further period of probation, a period of suspension, or to revoke the licensee's certificate of registration, license to practice dentistry, or both.

14. Licensee's violation, the plea of guilty to, and conviction for, the class A misdemeanor of assault in the third degree, gives cause for the Board to impose further discipline upon Licensee's dental license pursuant to the Settlement Agreement, § 324.042, RSMo, and 20 CSR 2110-2.160(7).

Decision and Order

It is the decision of the Board that Licensee has violated the terms of the Settlement Agreement, and that his license is, therefore, subject to further disciplinary action.

The Board orders that the dental license of Dr. Aaron M. Schertzer, DDS, license number 2001022562, shall be placed on **PROBATION** for an additional two (2) years to the three (3) years ordered in the 2009 Settlement Agreement. The period of probation

shall now end December 23, 2014. During the aforementioned probation, Licensee shall be entitled to practice as a licensed dentist subject to the following terms and conditions.

I. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall keep the Board apprised of 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.
- C. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- D. During the disciplinary period, Licensee shall timely renew 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.
- E. 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, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.
- F. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Order.
- G. If Licensee fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).
- H. This Order 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.

II. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.

- B. Licensee shall notify, within 15 days of the effective date of this Order, 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.

This Order will be maintained as an open record of the Board as provided in

Chapters 332, 610, and 324, RSMo.

SO ORDERED this 25th day of April, 2012.

MISSOURI DENTAL BOARD



Brian Barnett,
Executive Director

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND AARON SCHERTZER, D.D.S.**

Comes now Aaron Schertzer, 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 2001022562, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 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. Aaron Schertzer ("Licensee") is licensed by the Board as a dentist, License No. 2001022562. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On January 11, 2007 and January 14, 2007, Licensee prescribed Cymbalta to his wife, H.S. to treat symptoms of post-partum depression.

4. Licensee failed to maintain adequate records of the Cymbalta prescriptions to H.S. in his records.

5. As a licensed dentist, Licensee does not possess the education, skills or training necessary to diagnose or treat post-partum depression or to prescribe Cymbalta.

6. On or about July 24, 2008, Licensee prescribed Ambien to H.S. for sleep related disorders.

7. Licensee failed to maintain adequate records of the Ambien prescription to H.S. in his records.

8. As a licensed dentist, Licensee does not possess the education, skills or training necessary to diagnose or treat sleep disorders or to prescribe Ambien.

9. Licensee prescribed acetaminophen with codeine for H.S. on three separate occasions, to wit: 9-23-07 and 11-16-07, for symptoms unrelated to the practice of dentistry.

10. Licensee failed to maintain adequate records of the acetaminophen with codeine prescriptions to H.S. in his records.

11. Licensee prescribed Tramadol to H.S. on three separate occasions to wit: 4-15-08, 3-3-08 and 5-12-08, for symptoms unrelated to the practice of dentistry.

12. Licensee failed to maintain adequate records of the Tramadol prescriptions to H.S. in his records.

13. Licensee prescribed Tussionex Suspension to H.S. on five separate occasions to wit: 8-6-07, 9-27-07, 12-9-07, 1-9-08, for symptoms unrelated to the practice of dentistry.

14. Licensee failed to maintain adequate records of the Tussionex Suspension prescriptions to H.S. in his records.

15. Section 195.050.6, RSMo requires every person registered to manufacture, distribute or dispense controlled substances under sections 195.005 to 195.425 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 requirements of the Missouri Department of Health and Senior Services.

16. Regulation 19 CSR 30-1.048(2) requires all persons licensed to stock, prescribe, and dispense controlled substances 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 (“administration record”).

17. Licensee failed to document H.S.’ prescriptions on an administration record in violation of §195.050.6, RSMo and 19 CSR 30-1.048(2).

18. Licensee has a duty to comply with Missouri controlled substance laws and regulations.

19. Licensee has a duty to comply with Chapter 332 regarding the practice of dentistry.

20. Licensee’s conduct as alleged herein demonstrates a lack of ability or a lack of disposition to use his ability to perform his professional duties, or a conscious indifference to those duties.

21. Licensee’s conduct as alleged herein demonstrates a conscious indifference to his professional duty to comply with Missouri’s laws and regulations governing controlled substances and the practice of dentistry.

22. Licensee’s conduct as alleged in herein violated the professional trust and confidence of his employees and patients and constitutes a violation of § 332.321.2(13), RSMo.

23. Licensee failure to maintain records of the controlled substances he dispensed to H.S. constitutes misconduct in the performance of his functions and duties as a licensed dentist in violation of § 332.321.2(5), (13), and (15), RSMo.

24. Cause exists for the Board to take disciplinary action against Licensee’s dental license pursuant to § 332.321.2(5), (13), and (15) RSMo, which states:

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

....

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

....

(13) Violation of any professional trust or confidence;

....

(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 disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

1. The terms of discipline shall include that Licensee's dental license numbered 2001022562 be placed on **PROBATION for a period of three (3) years** ("disciplinary period"). During the disciplinary 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 probation shall be:

I. REQUIREMENTS REGARDING CONTINUING EDUCATION

Ethics Course

A. Licensee 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 (12) months of Licensee's disciplinary period. Licensee shall provide the Board with proof of attendance from the sponsor of the program no later than thirty (30) days after attending the course. Failure to obtain the required additional continuing education hours and/or submit the required documentation to the Board will result in a violation of the terms of discipline.

Jurisprudence Exam

- B. Licensee shall take and pass the Board's designated jurisprudence examination within six (6) months of the start of the disciplinary period. 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 take and pass the examination during the first six (6) months of the disciplinary period shall constitute a violation of this 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 this 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.
- C. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- D. During the disciplinary period, Licensee shall timely renew 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.
- E. If at any time during the disciplinary period, Licensee 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 § 332.321.9, RSMo.
- F. 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 this Settlement Agreement.
- G. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, including revocation.

- H. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. 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.

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 324, 332, 610, RSMo.

3. 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.

4. 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.

5. 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 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.

6. 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.

7. 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.

8. 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.**

9. 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


AARON SCHERTZER, D.L.S.

Date 11/28/09

BOARD


BRIAN BARNETT
Executive Director
Missouri Dental Board

Date 12/7/09

ATTORNEY FOR THE BOARD:

LORETTA SCHOUTEN
Missouri Bar No. 52290
7970 S. Tomlin Hill Road
Columbia, MO 65201
Telephone: 573-875-7169
Fax: 573-875-5603
E-mail: llschouten@yahoo.com