

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND MISTY L. SHELTON, D.D.S.**

Come now Misty L. Shelton, 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 she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to present evidence on her 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 her and, subsequently, the right to a disciplinary hearing before the Board at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against her license. Being aware of these rights provided her 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 her.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline her license, along with citations to law and/or regulations the Board believes were 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 015949 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 and Chapter 332, RSMo.

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



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 Misty L. Shelton, D.D.S. is licensed by the Board as a dentist, License No. 015949. Licensee's Missouri license was active and current at all relevant times.

3. On July 23, 2008, the Board received a letter from counsel for Licensee stating that Licensee was self-reporting an investigation by the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs (BNDD). At the time of the investigation, Licensee was employed by Robert Reynolds, D.D.S. and worked in his dental office. The investigation occurred at Dr. Reynolds' practice and involved Licensee, Reynolds, and the staff at Reynolds' practice. The investigation resulted in Licensee and BNDD entering into a settlement agreement which was signed by Licensee on January 6, 2009 with an effective date of January 14, 2009. The Settlement Agreement resolved the question of whether Licensee's BNDD registration was subject to discipline. The Settlement Agreement placed Licensee's registration on probation for five years until January 14, 2014. The Settlement Agreement also placed twenty-one terms of probation upon Licensee's license including, but not limited to, precluding Licensee from prescribing or administering for herself and immediate family and limiting controlled substance authority to Schedule III, IV and V controlled substances.

4. The Settlement Agreement described in detail Licensee's violations of state drug laws. The Settlement Agreement stated the following:

- a. Licensee is registered by BNDD to stock, prescribe, dispense and administer controlled substances at 1628 South Campbell, Springfield, Missouri 65807.
- b. Licensee issued twenty-two controlled substance prescriptions for Percocet™ to F.D. for non-dental reasons between December 2004 and March 2008. Licensee also issued one controlled substance prescription for hydrocodone/APAP to F.D. for non-dental reasons on March 24, 2008.
- c. Percocet™ is a brand name for a drug containing oxycodone, which is codified as a Schedule II controlled substance pursuant to § 195.017.4(4)(a)n, RSMo. Supp. 2007.



- d. Hydrocodone/APAP is a combination drug product containing hydrocodone, which is codified as a Schedule III controlled substance pursuant to § 195.017.6(4)(d), RSMo Supp. 2007.
- e. Licensee issued a controlled substance prescription for phentermine, 30 mg to P.D. for non-dental reasons on May 24, 2007. Licensee also issued two controlled substance prescriptions for phentermine, 37.5 mg to P.D. for non-dental reasons on June 21 and July 25, 2007.
- f. Phentermine is codified as a Schedule IV controlled substance pursuant to § 195.017.8(4)(j), RSMo
- g. Licensee prescribed these controlled substances outside the scope of her professional practice in violation of § 195.070.1, RSMo.
- h. Licensee prescribed controlled substances outside the scope of her Missouri Controlled Substances Registration in violation of § 195.030.3, RSMo and prescribed controlled substances in violation of §§ 195.030.3 and 195.252.1, RSMo.
- i. Licensee issued controlled substances to patients F.D. and P.D. that were not fully documented and maintained in the patients' charts in violation of § 195.050.6, RSMo and regulations 19 CSR 30-1.048(2) and 19 CSR 30-1.044(1).
- j. Licensee did not provide adequate controls to detect and prevent the diversion of controlled substances, both of which violate 19 CSR 30-1.031(1).
- k. The BNDD issued licensee a Missouri Controlled Substance Registration under probation for five years. The Settlement Agreement proscribed the requirements for Licensee including, but not limited to, not prescribing controlled substances for herself and immediate family; Licensee can only purchase, stock, prescribe, dispense or administer Schedule III, IV and V controlled substances; and requirements for documentation of any prescriptions for controlled substances.

5. The Board also conducted an investigation based on BNDD's investigation and findings. The Board's investigation revealed that:



a. On June 3, 2009, Board investigator Mark Dudenhoeffer (Dudenhoeffer) met with Licensee at her new practice location she purchased after leaving Reynolds' practice.

During the interview, Licensee provided the following information:

- i. She stated she had her BNDD registration disciplined and was "serving a probation period."
- ii. She stated that as part of her discipline, she was prohibited from writing prescriptions for schedule II controlled substances, she was required to use numbered carbon copied prescription pads, she was prohibited from writing controlled substance prescriptions for family or employees, and she could not stock controlled substances.
- iii. Licensee stated she was in compliance with her agreement with BNDD.
- iv. Licensee stated that the prescriptions for F.D. were for a family member who suffered from pain related to a knee replacement, Achilles tendon, and shingles. Licensee admitted the treatment of these conditions was outside the scope of practice of a dentist. She stated that the prescriptions for P.D. were for another family member and were dental related.
- v. Licensee stated she no longer writes many controlled substance prescriptions. She refers patients to dental specialists who would then be responsible for pain management and does not feel the need to prescribe medication all that often.
- vi. She stated she did practice outside the scope of dentistry in her prescribing for F.D.. She stated she wrote the prescriptions for F.D. in secrecy and then deleted the computer record of the prescription because of embarrassment. She stated she never received any medications from Trudy Escamilla, Dr. Reynolds' receptionist.
- vii. She stated she did not have an impairment issue or any addiction problems. She stated she rarely drinks alcoholic drinks. She also stated she was prescribed controlled substance medications for specific reasons but she was not currently taking any.



- b. On July 22, 2009, Dudenhoeffer interviewed Dr. Reynolds at his practice location, Ozark Preferred Dental Group (OPDG). Also present was Cindy Day (Day), Reynolds' office manager. During the interview, Dr. Reynolds provided the following information:
- i. He had hired Licensee as an associate at OPDG.
  - ii. He was unaware of any issues with prescriptions until the BNDD investigation when he was made aware that Licensee had failed to document all prescriptions she authorized. Reynolds stated as a result he terminated Licensee and hired a private investigator to audit his records.
  - iii. Reynolds and Day stated that prior to the BNDD investigation, any member of the staff could have access to the computers, including to generate a prescription. They stated now, only they have access to the computers.
  - iv. Reynolds stated that deleted prescriptions were a fairly common occurrence before. He stated that his dental assistants were responsible for updating treatment notes and before this incident, for generating the prescriptions based on the dentist's directions. He stated that if the wrong drug was put on the prescription, or the wrong strength noted, the prescription would have to be deleted to indicate that it was not given to the patient.
  - v. During the course of the investigation, Dudenhoeffer requested and received patient records for several OPDG patients, including F.D.
  - vi. Dudenhoeffer's investigation revealed that F.D. is a family member of Licensee.
- c. On August 10, 2009, Dudenhoeffer interviewed Licensee a second time. During the second interview, Licensee provided the following information:
- i. During the interview, Licensee's attorney was present.
  - ii. Licensee again stated that she wrote prescriptions for her father, mother, the receptionist of Reynolds' dental practice and the receptionist's family.
  - iii. She stated that the prescriptions for F.D. were to treat pain associated with knee replacement in August, 2006, an Achilles tendon injury in the spring of 2007, and shingles in late 2006 through 2007. She stated that all of the



prescriptions for F.D. were for these underlying medical issues and not dental pain. She stated that she attended physician appointments with F.D. with his general physician and his orthopedic surgeon. She stated she told both doctors that she provided pain medication to F.D. She stated she felt both doctors should have done more to help F.D. cope with his pain.

- iv. She stated she did not document all of the care given to her parents very well because they were family members. She also stated she was lax in her documentation of treatment to employees and their families.
- v. Dudenhoeffer questioned Licensee about all of the prescriptions for F.D. for Oxycodone/APAP 10/650, 50 tablets. He also asked what her standard directions were for taking this medication. She stated she would direct her patients to take one to two tablets ever four to six hours as needed for pain. She and Dudenhoeffer agreed this would total a maximum of twelve tablets. She and Dudenhoeffer agreed this would be a total of 7800 mg of acetaminophen a day if they took 12 tablets at 650 mg each. Dudenhoeffer asked Licensee why she would direct patients to take over the recommended daily dose of 4000 mg. She stated she was not aware she directed over the recommended does, she was not aware of the United States Food and Drug Administration recommended daily dose, and she was not aware of the direct correlation of acute liver failure and overdosing of acetaminophen.
- vi. Licensee stated she frequently prescribed Percocet™ (Oxycodone/APAP 10 mg/650 mg) to her patients based on advice from a pharmacist patient of hers. She stated that Percocet™ is cost effective, effective on pain, and can be cut into smaller doses by the patient if they do not choose to take as much as prescribed.
- vii. Licensee wrote two prescriptions on February 5, 2007 to patient B.S. The first was for diazepam, 10 mg, 1 tablet. The second was for triazolam, .25 mg, 1 tablet. Licensee stated she prescribed the drugs for anxiolysis. She would



instruct the patient to take the diazepam the night before the procedure and the triazolam an hour before the procedure. She stated she used both drugs to achieve the amnesiac effect. She stated she felt it helped patients feel that the procedure did not take as long. She reported she learned the technique at a Dentists for Oral Conscious Sedation (DOCS) course she took in 2006. She stated she felt she would need to use stronger drugs or more of them to obtain conscious sedation. However, she stated she did not want to use conscious sedation because she wanted her patients to be able to respond to her if she asked them questions. She stated she was always able to have her patients respond to her voice commands. She also reported she did not have many anxiolysis patients but she did use the technique on R.R. on December 28, 2007.

- viii. She stated that OPDG did not have emergency equipment required for sedation services including an automatic electrical defibrillator or a pulse oxymeter.
- ix. Neither Licensee nor Reynolds has, or ever had, a sedation permit.
- x. Dudenhoeffer expressed a concern to Licensee that accusations have been made that she diverted controlled substances by prescriptions to self-medicate for an addiction. Licensee denied the accusation. Licensee's attorney provided a copy of laboratory results where she sent Licensee for a hair sample test for controlled substances. The reports were dated April 24, 2008 and April 29, 2008.
- xi. The April 24, 2008 test resulted in a positive for Oxycodone. Licensee provided prescription information to indicate she was taking a prescription for Endocet (Oxycodone/APAP 10 mg/650 mg) and Methyprednisolone.
- xii. The April 29, 2008 test resulted in a positive of Oxycodone. Licensee provided prescription information to indicate she was taking a prescription for hydrocodone/APAP 5 mg/500 mg at the time of the test.



xiii. A second test on April 29, 2008 resulted in a negative.

- d. Dudenhoeffer also received a medical release from Licensee to obtain records from Licensee's medical doctors which confirmed a prescription for Oxycodone.

6. Licensee appeared before the Board with counsel at the Board's meeting on July 22, 2010.

During the appearance, Licensee provided the following information:

- a. She admitted writing the prescriptions outside the scope for F.D. and deleting them from the computer.
- b. She stated she had changed her practices dramatically regarding prescriptions and keeping records.
- c. She stated there were forgeries of prescriptions under her name at OPDG. An assistant called in a prescription for a friend under Licensee's name that Licensee did not authorize. She never took any of the medications to self-medicate and again denied any addiction.
- d. The computers had no passwords or controls regarding anything, including prescriptions. Staff had no restrictions on the computers. There were also access concerns regarding the building itself.
- e. Her testimony was consistent with prior statements given to the BNDD and Dudenhoeffer.

7. Section 195.030.3, RSMo 2000 states:

A physician, podiatrist, dentist or a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, RSMo, in good faith and in the course of his or her professional practice only, may prescribe, administer, and dispense controlled substance or he or she may cause the same to be administered or dispensed by an individual authorized by statute.

8. Section 195.070.1, RSMo states:

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



9. Section 195.252.1, RSMo 2000 states:

It is unlawful for any person:

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

10. Section 332.361, RSMo 2000 states:

1. Any duly registered and currently licensed dentist in Missouri may write, and any pharmacist in Missouri who is currently licensed under the provisions of chapter 338, RSMo, and any amendments thereto, may fill any prescription of a duly registered and currently licensed dentist in Missouri for any drug necessary or proper in the practice of dentistry, provided that no such prescription is in violation of either the Missouri or federal narcotic drug act.

2. Any duly registered and currently licensed dentist in Missouri may possess, have under his control, prescribe, administer, dispense, or distribute a "controlled substance" as that term is defined in section 195.010, RSMo, only to the extent that:

- (1) The dentist possesses the requisite valid federal and state registration to distribute that class of controlled substance;
- (2) The dentist prescribes, administers, dispenses, or distributes the controlled substance in the course of his professional practice of dentistry, and for no other reason;
- (3) A bona fide dentist-patient relationship exists; and
- (4) The dentist possesses, has under his control, prescribes, administers, dispenses, or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

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

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

12. Regulation 19 CSR 30-1.048(2) states:

Each individual practitioner shall maintain a record of the date, full name and address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. This record may be maintained in the patient's medical record. When the controlled substance record is maintained in the patient's medical record and the practitioner is not the custodian of the medical record, the



practitioner shall make the controlled substance record available as required in 19 CSR 30-1.041 and 19 CSR 30-1.044.

13. Licensee's actions as described in paragraphs 3 through 6 above constitute violations of state drug laws as described in paragraphs 7 through 9 and 11-12 above for which the Board has cause to discipline Licensee's license.

14. Licensee's actions as described in paragraphs 3 through 6 above constitute violation of § 332.361, RSMo for which the Board has cause to discipline Licensee's license.

15. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(6) and (15) RSMo, which states in pertinent part:

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

...

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

...

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

#### Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo 2000: The terms of discipline shall include that the dental license, license number 015949, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided she adheres to all of the terms of the Board Settlement Agreement.

#### I. EDUCATIONAL REQUIREMENTS

A. Licensee shall take and pass the Board's jurisprudence examination within the first twelve (12) months of Licensee's period of probation. Licensee shall contact the Board office to request a current law packet and permission to sit for the jurisprudence examination no less than thirty (30) days prior to the date Licensee desires to take the examination. Licensee shall submit the required re-examination fee to the Board prior to taking the examination. Failure to



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

## II. GENERAL REQUIREMENTS

A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.

B. Licensee shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether she has complied with all the terms and conditions of the Board Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.

C. Licensee shall keep the Board apprised of her current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.

D. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.

E. During the disciplinary period, Licensee shall timely renew her license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.

F. If at any time during the disciplinary period, Licensee removes herself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of her current place of business and residence, the time of her 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, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor her compliance with the terms and conditions of the Board Settlement Agreement.

H. If Licensee fails to comply with the terms of the Board Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of the revocation).

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

## III. ADDITIONAL REQUIREMENTS

A. During the disciplinary period, Licensee shall, at Licensee's expense, submit to drug screens as required by the Board. Licensee shall, upon demand and without delay, provide a biological sample to the Board's designated representative, including allowing the Board's designated representative to obtain witnessed biological fluid samples and shall cooperate fully and completely with the Board's designated representative in providing such samples. The presence of any controlled substance or any drug whatsoever in a drug screen for which Licensee does not hold a valid prescription shall constitute a violation of this Agreement.



B. Licensee shall not allow her license to lapse.

C. Licensee shall notify, within 15 days of the effective date of the Board Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

1. The parties to the Board Settlement Agreement understand that the Missouri Dental Board will maintain the Board Settlement Agreement as an open record of the Board as provided in Chapters 332, 610, 324, RSMo.

2. The terms of the Board Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither the Board 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.

3. Licensee, together with her heirs and assigns, and her 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 the Board Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Board Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems the Board Settlement Agreement or any portion thereof to be void or unenforceable.

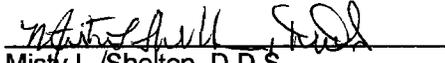
4. If no contested case has been filed against Licensee, Licensee has the right, either at the time the Board Settlement Agreement is signed by all parties or within fifteen days thereafter, to submit the Board Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Board Settlement Agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review the Board Settlement



Agreement, Licensee may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

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

**LICENSEE**

  
Misty L. Shelton, D.D.S.

Date Jan 14, 2011

**BOARD**

  
Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 1/26/11