
**SETTLEMENT AGREEMENT BETWEEN
MISSOURI DENTAL BOARD AND STEVEN SICKMEYER, D.D.S.**

Come now Steven Sickmeyer, 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 what was cause to discipline his license,

along with citations to law and/or regulations the Board believes was violated.

The Board acknowledges that this Settlement Agreement applies to all complaints in the possession of the Board as to Licensee at the time of the execution of this Settlement Agreement. The Board agrees that no additional discipline will be issued against Licensee for complaints in the possession of the Board at the time of the Execution of this Settlement Agreement or arising prior to the Execution of this Settlement Agreement.

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 013437, 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

ALLEGATIONS COMMON TO ALL COUNTS

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. Steven Sickmeyer ("Licensee") is licensed by the Board as a dentist, License No. 013437.
3. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
4. Licensee practices dentistry at 721 NE Lakewood Blvd., Lee's Summit, Missouri ("the office").
5. "Dental Assistant" is defined in section 332.011 (5) as an employee of a duly registered and currently licensed dentist in Missouri, other than either a dental hygienist or a

certified dental assistant.

6. Under section 332.011 (6) an “Expanded-functions dental assistant” is any dental assistant who has passed a basic dental assisting skills mastery examination or a certified dental assistant, either of whom has successfully completed a board-approved expanded-functions course, passed a competency examination, and can show proof of competency in a specific expanded function.

7. At all times relevant herein, Licensee’s dental assistants were “ expanded functions dental assistants” in orthodontics as that term is defined in section 332.011 (6), RSMo.

8. Pursuant to section 332.093 a currently registered and licensed dentist may delegate to a dental assistant, certified dental assistant or expanded functions dental assistant, under their direct supervision, such acts that would be considered the practice of dentistry provided such delegation is done pursuant to the terms and conditions of a rule adopted by the board.

9. Direct supervision is defined as:

- A. The dentist is in the dental office or treatment facility;
- B. The dentist has personally diagnosed the condition to be treated;
- C. The dentist has personally authorized the procedures;
- D. The dentist remains in the dental office or treatment facility while the procedures are being performed by the dental auxiliary; and
- E. The dentist evaluates the performance of the dental auxiliary before the dismissal of the patient.

10. A dental assistant cannot, under any circumstances, perform such acts that would be considered the practice of dentistry unless such assistant is under the direct supervision of a dentist.

11. On or about February 7, 2008, Licensee was not physically present at the Dental office.

12. On or about February 7, 2008, Licensee's dental office was advertised and held out as open to the public.

13. On or about February 7, 2008, Licensee's dental office was staffed with dental assistants and other office personnel.

14. On or about February 7, 2008, no dentist was physically present in the Dental Office.

15. On or about February 7, 2008, and at additional dates known only to Licensee, Licensee delegated to his dental assistants certain procedures defined as the practice of dentistry without direct supervision by Licensee in violation of sections 332.093 and 332.321.2(6) and (10), RSMo and 20 CSR 2110-2.120(4)(D).

16. On or about February 7, 2008, and on additional dates known only to Licensee, Licensee knew or should have known that his dental assistants were practicing dentistry when Licensee was not present in the office.

17. On or About February 7, 2008, Licensee did not personally diagnose the condition to be treated in patient(s).

18. On or about February 7, 2008, Licensee was not, and did not remain in the office while procedures were performed by dental assistants.

19. On or about February 7, 2008, Licensee did not evaluate the performance of the dental assistants before dismissal of the patients.

20. Pursuant to 20 CSR 2110-2.120(6) Licensee is responsible for determining the appropriateness of delegation of any specific function based upon knowledge of the skills of the auxiliary, the needs of the patient, the requirements of the task and whether proof of the competence is required.

21. Licensee permitted dental assistants to engage in the practice of dentistry as defined in section 332.071, RSMo, which states:

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

- (1) Undertakes to do or perform dental work or dental services or dental operations or oral surgery, by any means or methods, including the use of lasers, gratuitously or for salary or fee or other reward, paid directly or indirectly to the person or to any other person or entity;
- (2) Diagnoses or professes to diagnose, prescribe for or professes to prescribe for, treats or professes to treat, any disease, pain, deformity, deficiency, injury or physical condition of human teeth or adjacent structures or treats or professes to treat any disease or disorder or lesions of the oral regions;
- (3) Attempts to or does replace or restore a part or portion of a human tooth;
- (4) Attempts to or does extract human teeth or attempts to or does correct malformations of human teeth or jaws;
- (5) Attempts to or does adjust an appliance or appliances for use in or used in connection with malposed teeth in the human mouth;
- (6) Interprets or professes to interpret or read dental radiographs;
- (7) Administers an anesthetic in connection with dental services or dental operations or dental surgery;
- (8) Undertakes to or does remove hard and soft deposits from or polishes natural and restored surfaces of teeth;
- (9) Uses or permits to be used for the person's benefit or for the benefit of any other person or other entity the following titles or words in connection with the person's name: "Doctor", "Dentist", "Dr.", matter which directly or indirectly indicated or imply that the person is willing or able to perform any type of dental service for any person

or persons, or uses or permits the use of for the person's benefit or for the benefit of any other person or other entity any card, directory, poster, sign or any other means by which the person indicates or implies or represents that the person is willing or able to perform any type of dental services or operation for any person;

- (10) Directly or indirectly owns, leases, operates, maintains, manages or conducts an office or establishment of any kind in which dental services or dental operations of any kind are performed for any purpose; but this section shall not be construed to prevent owners or lessees of real estate from lawfully leasing premises to those who are qualified to practice dentistry within the meaning of this chapter;
- (11) Controls, influences, attempts to control or influence, or otherwise interferes with the dentist's independent professional judgment regarding the diagnosis or treatment of a dental disease, disorder or physical condition except that any opinion rendered by any health care professional licensed under this chapter or chapter 330, 331, 334, 335, 336, 337, or 338, RSMo, regarding the diagnosis, treatment, disorder, or physical condition or any patient shall not be construed to control, influence, attempt to control or influence or otherwise interfere with a dentist's independent professional judgment;
- (12) Constructs, supplies, reproduces or repairs any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except when one, not a registered and licensed dentist, does so pursuant to a written uniform laboratory work order, in the form prescribed by the board, of a dentist registered and currently licensed in Missouri and which the substitute in this subdivision described is constructed upon or by use of casts or models made from an impression furnished by a dentist registered and currently licensed in Missouri;
- (13) Attempts to or does place any substitute described in subdivision (12) of this section in a human mouth or attempts to or professes to adjust any substitute or delivers any substitute to any person other than the dentist upon whose order the work in producing the substitute was performed;
- (14) Advertises, solicits, or offers to or does sell or deliver any substitute described in subdivision (12) of this section or offers to or does sell the person's services in constructing, reproducing, supplying or repairing the substitute to any person other than a registered and licensed dentist in Missouri;
- (15) Undertakes to do or perform any physical evaluation of a patient in

the person's office or in a hospital, clinic, or other medical or dental facility prior to or incident to the performance of any dental services, dental operations, or dental surgery;

(16) Reviews examinations finding, x-rays, or other patient data to make judgments or decisions about the dental care rendered to a patient in this state.

22. Licensee has a duty to maintain full and complete patient records.

23. Licensee failed to maintain full and complete patient records.

24. Licensee's conduct as alleged herein constitutes incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of a licensed dentist in violation or section 332.321.2(5), RSMo.

25. Licensee's conduct as alleged herein constitutes a violation of section 332.321.2(6), RSMo.

26. Licensee assisted or enabled any person to practice or offer to practice, by lack of supervision or in any other manner in violation of § 332.321.2(10), RSMo.

27. Licensee's conduct as alleged herein constitutes a violation of § 332.321.2(13), RSMo.

28. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6), (10), and (13) RSMo, which states in pertinent part:

2 The board may cause a complaint to be filed with the

administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

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

(6) Violation of, 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;

(13) Violation of any professional trust or confidence;

**ALLEGATIONS APPLICABLE TO
THE ABOVE REFERENCED CONDUCT**

67. Licensee's conduct as alleged herein is subject to discipline under § 332.321.2 (5),

(6), (10) and (13) RSMo, which states in pertinent part:

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

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

(6) Violation of, 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;

* * *

(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:

1. The terms of discipline shall include that Licensee's dental license numbered 013437 be on **PROBATION for a period of TWO (2) YEARS** ("Disciplinary Period"). During the probationary period, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Settlement Agreement. The terms of the Disciplinary Period shall be:

I. GENERAL REQUIREMENTS

A. Licensee shall take and pass the Board's designated jurisprudence examination within twelve (12) 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 reexamination 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 this Agreement.

III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. The terms of discipline apply even if Licensee places his license on inactive status.
- C. Licensee shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.
- D. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 324, 332, 610, RSMo.
- E. Upon the expiration of said discipline, Licensee's license to practice dentistry in Missouri shall be fully restored if all other requirements of law have been satisfied; provided however, that in the event the Board determines that the Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline the Licensee.
- F. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the

Board in accordance with the provisions of Chapter 536, RSMo.

- G. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the 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.
- H. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.
- I. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited

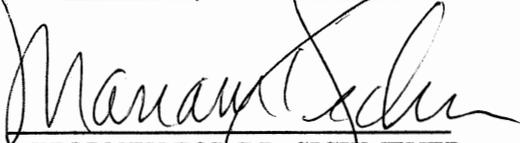
to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. §1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

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

LICENSEE


STEVEN SICKMEYER, D.D.S.

Date 5-19-2011



ATTORNEY FOR DR. SICKMEYER:
MARIAM DECKER
401 Locust, Suite 406
Columbia, MO 65205
Telephone: (573) 443-3134
Fax: (573) 442-6323
E-mail: mdecker@owwlaw.com

BOARD


BRIAN BARNETT
Executive Director
Missouri Dental Board

Date 7/20/11



ATTORNEY FOR THE BOARD:
TINA M. CROW HALCOMB
1739 E. Elm Court, Suite 207
Jefferson City, MO 65101
Telephone: 573-636-7017
Fax: 573-636-7012
E-mail: tina@tmchlaw.com