

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND MAX SMITH, JR., D.D.S.**

Comes now Max Smith, Jr., 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 were 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 012446, 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. Dr. Max Smith, Jr., ("Licensee") is a dentist licensed to practice in the state of Missouri, License No. 012446 and holds a specialty certification in oral and maxillofacial surgery. At all times relevant herein, Licensee's Missouri license was, and is now, current and active. Licensee also held a General Anesthesia Permit, No. 0413, which was current and active until its expiration on June 1, 2006.

3. At the time of the events alleged herein, Licensee was employed by Oral Surgeons, Inc., P.C. and practiced oral and maxillofacial surgery at 8787 Ballentine, Suite 2100, Overland Park, Kansas ("the office").

4. Patients requiring anesthesia prior to dental treatment should be evaluated to determine the patient's ability to tolerate the use of anesthesia during the dental treatment. In healthy and medically stable individuals, this may simply be a review of their current medical history and

medication use. However, with individuals who are not medically stable or who have significant health disability, consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is required.

5. The American Society of Anesthesiologists (“ASA”) has developed a patient classification system to aid dentists in their evaluation of a patient’s ability to tolerate anesthesia in an office setting. The ASA classification system is as follows:

- ASA I: a normal healthy patient
- ASA II: a patient with mild systemic disease
- ASA III: a patient with severe systemic disease
- ASA IV: a patient with a severe systemic disease that is a constant threat to life.
- ASA V: a moribund patient who is not expected to survive without the operation.
- ASA VI: a declared brain-dead patient whose organs are being removed for donor purposes.

6. In a dental office setting, pre-operative preparation includes:

- A. Advising the patient, parent, guardian or care giver regarding the procedure associated with the delivery of any sedative agents and acquiring informed consent for the proposed sedation.
- B. Determination of adequate oxygen supply and equipment necessary to deliver oxygen under positive pressure must be completed.
- C. Determining baseline vital signs unless the patient’s behavior prohibits such determination.
- D. A focused physical evaluation should be performed.
- E. Dietary instructions should be given based on the sedative technique prescribed.

- F. Post-operative verbal or written instructions should be given to the patient, guardian, parent or care giver.
- G. Ensuring advanced airway equipment, resuscitation medications and an appropriate defibrillator are immediately available.

7. During oral surgery, continual assessment of the patient's level of consciousness, color, oxygen saturation, blood pressure and heart rate should be conducted. For patients with significant cardiovascular disease, continuous ECG monitoring should also be done.

8. On April 23, 2003, Dr. [REDACTED], a dentist, referred [REDACTED] to Licensee for surgical removal of five roots, specifically nos. 13, 14, 18, 19, and 31. [REDACTED] was 53 years-old, weighing 280 pounds and was a new referral in that Licensee had never before treated Mr. [REDACTED] and was not familiar with his medical history.

9. On April 23, 2003, Dr. [REDACTED] documented that Mr. [REDACTED] was a "medically compromised" patient and questioned whether Mr. Heller's diabetes was under control. Mr. [REDACTED] regular physician was noted to be Dr. [REDACTED].

10. Under the ASA classification system, Mr. [REDACTED] was classified as III or IV, in that he was a medically compromised patient suffering from severe systemic disease. When it is clear the patient has an ASA classification of III or IV, the treating dentist should discuss the alternatives and risks associated with doing the procedure in the office setting as opposed to a hospital setting.

11. On April 30, 2003, Mr. [REDACTED] presented at Licensee's office for surgical removal of five roots, nos. 13, 14, 18, 19, and 31, to be performed by Licensee under IV sedation.

12. On April 30, 2003, Mr. [REDACTED] reported a medical history significant for drug allergies to Codeine, Demerol and Morphine, high blood pressure, and diabetes. Mr. [REDACTED] also reported

taking medication for high blood pressure, difficulty breathing through his nose, experiencing hives, wheezing, and breathing difficulties from foods or medicines, and past problems related to the administration of local anesthetics, sedatives and general anesthesia. Mr. [redacted] also reported taking prescription medications which included Norvasc, Normadyne, Primivil, Maxzide, and Glipizide.

13. Outside of the operative consent form, which Licensee signed, Licensee did not provide Mr. [redacted] with any additional written information regarding the risks associated with IV sedation or anesthesia.

14. Administration of sedatives during oral surgery is a non-delegable duty and should always be performed by the treating dentist. Licensee delegated this task to his assistants during Mr. Heller's procedure.

15. On April 30, 2003, at approximately 10:25 a.m., Mr. [redacted] was escorted into an operating room where Licensee's dental assistant administered a set amount of preoperative medications consisting of Atropine, Nubain and Versed and an intraoperative sedative consisting of sodium brexital to Mr. [redacted].

16. Sodium brexital should be used with caution in patients with high blood pressure and obesity and should only be used in settings that provide for continuous monitoring of the patient's respiratory and cardiac functions.

17. On April 30, 2003, Licensee monitored Mr. [redacted] via a pulse oximeter only.

18. On numerous occasions during the procedure, at times certain known only to Licensee and his dental assistants, Mr. [redacted]'s oxygen saturation dropped below 90 which sounded the alarm on the pulse oximeter and required Licensee to adjust Mr. [redacted]'s head to clear his blocked airway.

19. Shortly after Licensee completed the twenty minute procedure, Mr. _____ suffered a cardio respiratory event and was not able to be resuscitated.

20. On April 30, 2003, Licensee was negligent in his care and treatment of Mr. _____ in that he failed to care for and treat him in accordance with the standard of care and skill required of, and ordinarily exercised by the average qualified dentist engaged in oral and maxillofacial surgery in that:

- A. Licensee failed to evaluate Mr. _____'s ability to tolerate anesthesia during the dental procedure and did not consult with or contact Mr. Heller's treating physician or referring dentist;
- B. Licensee failed to advise Mr. _____ and/or Mr. _____'s wife regarding the procedure and the risks and complications related to the use of anesthesia in the office setting and acquire informed consent for the proposed sedation;
- C. Licensee failed to have immediately available adequate oxygen supply and equipment necessary to deliver oxygen under positive pressure to Mr. _____ prior to starting the procedure;
- D. Licensee failed to ensure an appropriate defibrillator was immediately available prior to starting the procedure;
- E. Licensee delegated the administration of sedatives during Mr. _____'s procedure to his assistants;
- F. During Mr. _____'s oral surgery on April 30, 2003, Licensee monitored Mr. Heller via pulse oximeter only;
- G. Licensee failed to maintain detailed, time-oriented records during Mr. _____'s dental procedure;

21. Licensee's conduct as described in paragraph 22(A) through (G) constitutes misconduct and incompetency in the performance of his functions and duties as a licensed dentist in violation of § 332.321.2(5).

22. Licensee's conduct as described in paragraph 223(A) through (G) constitutes a violation of § 332.321.2(6).

23. Licensee's conduct as described in paragraph 22(A) through (G) constitutes a violation of § 332.321.2(10), RSMo.

24. Licensee's conduct as described in paragraph 22(A) through (G) constitutes a violation of § 332.321.2(13), RSMo.

25. 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;

....
JOINT AGREED DISCIPLINARY ORDER

1. 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. Licensee's dental license numbered 012446 is immediately **VOLUNTARILY SURRENDERED**. Licensee shall return all evidence of licensure to the Missouri Dental Board.

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. 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.

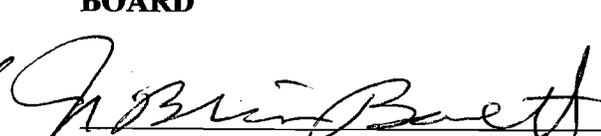
5. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen (15) days thereafter, submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining 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.**

6. 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

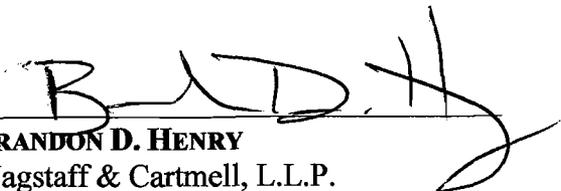
BOARD


MAX SMITH, JR., D.D.S.


SHARLENE RIMILLER
Executive Director
Missouri Dental Board

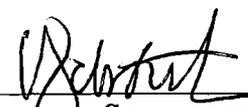
Date 1-2-08

Date 1/23/08



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