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**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND BERNARD R. TELLEZ, D.D.S.** MISSOURI DENTAL BOARD

Come now Bernard R. Tellez, 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 011373 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 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. Licensee Bernard R. Tellez, D.D.S. is licensed by the Board as a dentist, License No. 011373. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On August 27, 2009, the Board received information regarding Licensee. The information was from an anonymous source. The information alleged that Licensee was knowingly ordering and allowing dental assistants to perform tasks that should not be delegated to assistants including "class II and III fillings, permanent cementations, etc., etc.," The information did not identify specific patients but did identify one assistant, Heather Hyatt.

4. As a result of the information, the Board initiated a complaint and an investigation of Licensee's practices.

5. On December 18, 2009, Board Investigator Mark Dudenhoeffer interviewed Licensee at his practice location in Ozark, Missouri. Licensee stated that he employed six dental assistants and two dental hygienists. He stated that all of his dental assistants possessed expanded function certificates. He stated that his dental assistants provided the following services: impressions for study models and crown and bridge, provide prophys utilizing speed rubbed cup, remove sutures, monitor patients on nitrous oxide, tie and untie wires for orthodontics, cut wires to size, take impressions for appliances, conduct the office infection control program, x-rays, and charting. He stated his assistants do not provide scaling or root planning. He stated dental assistant Heather Hyatt had worked for him for the past six months. He stated of his two hygienists, one is full time and one part time.

6. As part of the Board's investigation, on April 22, 2010, Investigator Dudenhoeffer interviewed dental hygienist Jaquilyn Roberts. Roberts stated she had worked for Licensee since her graduation four years ago. She stated she is permitted to administer nitrous oxide and local anesthesia. Ms. Roberts provided copies of her board-issued license with the endorsements for infiltration/block/nitrous oxide on it to Investigator Dudenhoeffer. She stated she works for Licensee Monday through Thursday. She stated for the most part she



is too busy to observe what Licensee allows his dental assistants to perform. She stated she very rarely works under general supervision as Licensee is almost always at the office when it is open. She stated the second hygienist works on Fridays only.

7. As part of the Board's investigation, on April 22, 2010, Investigator Dudenhoeffer interviewed dental assistant Heather Hyatt. Hyatt stated she has worked for Licensee for ten months but has been a dental assistant for 13 years. Hyatt stated that she is permitted to monitor nitrous oxide and has her expanded function certificates in prosthodontics, restorative. Hyatt provided Investigator Dudenhoeffer with a copy of her expanded function certificates. She stated that her job duties for Licensee included: seating crowns, final impressions for crowns, bridges and dentures, class I surface restorations, charting, x-rays, and infection control. She stated she does not scale teeth.

8. As part of the Board's investigation, on April 22, 2010, Investigator Dudenhoeffer interviewed dental assistant Anna Swearingen Malagon. Malagon stated she has been a dental assistant for five years, all of which she worked with Licensee. She stated she possesses certificates in expanded functions in restoratives, prosthodontics and periodontics and provided Investigator Dudenhoeffer copies of the certificates. She stated she is not a certified dental assistant. She stated her job duties for Licensee include all types of restorations including class II through IV which is not allowed under the rules. She stated she expressed her concerns to Licensee but he had her do them anyway. She stated she also does sutures and removes sutures. She stated she assists with nitrous oxide monitoring but has a permit to do so.

9. As part of the Board's investigation, on April 22, 2010, Investigator Dudenhoeffer interviewed dental assistant Jessica Kluesner. Kluesner stated she has worked for Licensee for a year and for a few years for a dentist in Cape Girardeau. She stated she has her certificate in expanded function of restorative. She provided a copy of her certificate to Investigator Dudenhoeffer. She stated her job duties include crown preparation, doing suction and helping with impressions. She stated she can do simple one sided restorations but is not allowed to do impressions or scaling.

10. As part of the Board's investigation, on April 22, 2010, Investigator Dudenhoeffer interviewed dental assistant Kathy Wilson. Wilson stated she has been a dental assistant for 16 years, the past three with Licensee. She stated she has an expanded function certificate in orthodontics and provided Investigator Dudenhoeffer with a copy of the certificate. She stated her job duties include: placing and cementing brackets



and bands on orthodontic patients, tying and untying wires, making some bends to arch wires to include omega stops and distal stops. She stated she takes impressions for study models and removable appliances and retainers. She stated she has also cut wires. She stated she only does what Licensee tells her to do and Licensee examines all the patients prior to their discharge.

11. As part of the Board's investigation, on April 22, 2010, Investigator Dudenhoeffer interviewed dental assistant Cindy Boyce. Boyce stated she has been a dental assistant for 21 years, the last two-and-a-half with Licensee. She stated she has expanded function certificates in prosthodontics, restorative and periodontics. She stated she also has a permit for nitrous oxide administration. She provided Investigator Dudenhoeffer with copies of all her certificates. She stated her job duties include: seating, adjusting and cementing temporary and permanent crowns; taking impressions for study models, crowns, bridges and dentures. She stated she does class I through VI restorations. She stated she knows the rules prevent her from doing class II through IV restorations but does so because Licensee tells her to do so. She stated she will carve fillings but does not drill. She stated she will also start patients on nitrous oxide at the direction of Licensee even if he is not in the operatory. She stated she does some limited scaling above the gum line with a hand scaler. She stated she does not administer local anesthetic or use a high speed to scale above the gum line. She also stated she does not scale below the gum line.

12. As part of the Board's investigation, on April 22, 2010, Investigator Dudenhoeffer interviewed dental assistant Joyce Flasnick. Flasnick stated she has been a dental assistant for 28 years, the last five or six for Licensee. She stated she has an expanded function certificate for restorative. She stated she does not have a nitrous oxide monitoring permit. She stated her job duties for orthodontic patients include placing and cementing brackets and bands, tying and untying wires, taking impressions for study models, appliances and retainers and cutting and sizing wires. She stated she does not bend wires. For prosthodontic patients, she stated her job duties include impressions for study models and final impressions, making adjustments to dentures and crowns "to her comfort level" and occasionally a one-surface restoration. She stated she does not scale teeth or administer or monitor nitrous oxide.

13. As part of the Board's investigation, on August 31, 2010, Board Investigator Joseph Sears traveled to Licensee's practice to follow up with Licensee on the interviews Investigator Dudenhoeffer conducted with Licensee's employees. During the August 31, 2010 interview, Licensee stated:



- a. Licensee stated that he is the only dentist in the practice and there had been no staffing changes at the practice since Investigator Dudenhoeffer's visit.
 - b. With regard to assistant Malagon, Licensee specifically confirmed that Malagon "was doing class II-IV restorations" but that it had been corrected and she no longer did restorations. He also confirmed that she used to do suturing and remove sutures but she no longer does this either. He stated there was "not much" Malagon could do for him anymore.
 - c. With regard to assistant Kluesner, he stated her position in the practice is "hygiene assistant." He confirmed she used to do single surface restorations and impressions but is not allowed to do so now.
 - d. With regard to assistant Wilson, Licensee stated that Wilson is an "ortho tech" and is allowed to "suck spit." He stated that all the job duties she told Investigator Dudenhoeffer that she did (see paragraph 10 above) are actually done by him.
 - e. With regard to assistant Boyce, Licensee confirmed that she did all of the job duties she described to Investigator Dudenhoeffer (see paragraph 11 above). However, he stated she is no longer allowed to do class I-VI restorations, carve fillings, start patients on nitrous oxide or do "general" scaling. He stated she can still do "minor" scaling on children and "some" adults.
 - f. With regard to assistant Flasnck, Licensee confirmed she did all the job duties stated in her interview with Investigator Dudenhoeffer (see paragraph 12 above). Licensee confirmed she can do all the same duties as Ms. Wilson as Flasnck is also an "ortho tech." He stated he allows Ms. Flasnck to place and cement brackets and bands, tie and untie ortho wires, take impressions for study models, removable appliances and retainers and do an "occasional" single surface restoration. He stated she is no longer allowed to cut or size wires.
14. Pursuant to regulation 20 CSR 2110-2.120:
- (2) A registered and currently licensed dentist may not delegate to a dental assistant or certified dental assistant, as defined in subsections (1)(B) and (C) respectively, the performance of the following procedures:
 - (A) Diagnosis, including interpretation of dental radiographs and treatment planning;
 - (B) Cutting of tooth structure;



- (C) Surgical procedures on hard and soft tissues including, but not limited to, the removal of teeth and the cutting and suturing of soft tissues;
- (D) The prescription, injection and parenteral administration of drugs;
- (E) The final bending of archwire prior to ligation;
- (F) The scaling of teeth; and
- (G) Administration of nitrous oxide-oxygen analgesia except that a dental assistant or certified dental assistant may assist in the administration of and monitor nitrous oxide-oxygen analgesia with specific training as provided in section (3) of this rule.

(3) A dental assistant or certified dental assistant may assist the administration of and monitor nitrous oxide analgesia under direct supervision if s/he—

- (A) Has successfully completed formal certified training in a course approved by the Missouri Dental Board; and
- (B) Has successfully passed an approved competency test regarding the clinical and didactic training; or
- (C) Has been certified in another state to assist the administration and monitor nitrous oxide subsequent to equivalent training and testing. The dental assistant may qualify to perform this function by presenting proof of competence of this equivalent training and testing to the Missouri Dental Board;
- (D) The responsibility of the dental assistant or certified dental assistant shall be to provide the Missouri Dental Board proof of competence; and
- (E) Upon presentation to the dental board of proof of competency that the dental assistant or certified dental assistant has complied with the requirements imposed by subsections (3)(A), (B) or (C) of this rule, and remitted the appropriate fee as specified in 4CSR 110-2.170, the Missouri Dental Board will issue the appropriate certification to the dental assistant or certified dental assistant.

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

- (A) After June 1, 1995, all certified dental assistants graduating from accredited dental assisting programs in Missouri will have competency testing for all functions listed in subsection (4)(D) of this rule and may be delegated those functions by a currently licensed dentist;
- (B) Certified dental assistants graduating prior to June 1, 1995, or from programs outside Missouri, may be delegated the functions in subsection (4)(D) of this rule with proof of competence issued by their educational institutions and may be delegated other specific functions if they have completed an approved course, passed an approved competency examination, and can provide proof of competency as defined in subsection (1)(D);
- (C) Dental assistants, as defined in subsection (1)(B), may be delegated any specific function listed in subsection (4)(D) of this rule if they have successfully completed a basic dental assisting skills mastery examination approved by the board, completed an approved course, passed an approved competency examination,



and can provide proof of competence as defined in subsection (1)(D);

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

1. Placement of post-extraction and sedative dressings;
2. Placing periodontal dressings;
3. Size stainless steel crowns;
4. Placing and condensing amalgam for Class I, V, and VI restorations;
5. Carving amalgam;
6. Placing composite for Class I, V, and VI restorations;
7. Polishing the coronal surfaces of teeth (air polisher);
8. Minor palliative care of dental emergencies (place sedative filling);
9. Preliminary bending of archwire;
10. Removal of orthodontic bands and bonds;
11. Final cementation of any permanent appliance or prosthesis;
12. Minor palliative care of orthodontic emergencies (that is, bend/clip wire, remove broken appliance);
13. Making impressions for the fabrication of removable prosthesis;
14. Placement of temporary soft liners in a removable prosthesis;
15. Place retraction cord in preparation for fixed prosthodontic impressions;
16. Making impressions for the fabrication of fixed prosthesis;
17. Extra-oral adjustment of fixed prosthesis;
18. Extra-oral adjustment of removable prosthesis during and after insertion; and
19. Placement and cementation of orthodontic brackets and/or bands; and

(E) Upon request by the Missouri Dental Board, the licensed and supervising dentist must provide copies of proof of competence of dental auxiliaries.

(5) A currently licensed dentist may delegate under direct supervision to a dental assistant or certified dental assistant any functions not specifically referenced in sections (2)–(4) of this rule and not considered either the practice of dentistry or the practice of dental hygiene as defined in sections 332.071 and 332.091, RSMo, and 4 CSR 110-2.130.

(6) The licensed dentist 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.

(7) Pursuant to section 332.031.2., RSMo, the dentist is ultimately responsible for patient care. Nothing contained in the authority given the dentist by this rule to delegate the performance of certain procedures shall in any way relieve the supervising dentist from liability to the patient for negligent performance by a dental assistant or certified dental assistant.

15. Licensee's delegation of duties including class II-IV restoratives, suturing, scaling of teeth, final bending or archwires, and administering nitrous oxide without Licensee present as described in paragraphs 3



through 13 above is improper delegation in violation of regulation 20 CSR 2110-2.120 for which the Board has cause to discipline Licensee's license.

16. Licensee's delegation of duties including class II-IV restoratives, suturing, scaling of teeth, final bending or archwires, and administering nitrous oxide without Licensee present as described in paragraphs 3 through 13 above is misconduct in the performance of the functions or duties of a licensed dentist for which the Board has cause to discipline Licensee's license.

17. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5) and (6), 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[.]

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:

1. The terms of discipline shall include that the dental license be placed on **PROBATION** for a period of thirty (30) months ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of his Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

A. Licensee shall take and pass the Board's jurisprudence examination within twelve (12) months of this Agreement becoming effective. 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 this Agreement.



II. REQUIREMENTS REGARDING EMPLOYEE AFFIDAVITS

- A. Licensee shall provide the Board a list of all employees and their positions within the office not later than thirty (30) days after the disciplinary period begins. Licensee shall provide the Board with an updated list no later than thirty (30) days after any change in employees occurs. Licensee shall require all present and future employees other than dentists and hygienists to execute a notarized statement indicating that he or she will not now or in the future perform duties that cannot be delegated to him or her. Said notarized statements shall be executed and Licensee shall provide the same to the Board no later than 30 days after the date the disciplinary period begins and not later than thirty (30) days after any future employee begins assisting in Licensee's practice.

III. GENERAL REQUIREMENTS

- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. 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.
- H. 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.
- I. 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 imposition of the revocation).
- J. 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.



IV. ADDITIONAL REQUIREMENTS

- K. Licensee shall not allow his license to lapse.
- L. 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 332, 610, 324, 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. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this 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.

6. 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 agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

BOARD


Bernard R. Tellez, D.D.S.


Brian Barnett,
Executive Director
Missouri Dental Board

Date 12/05/2011

Date 12/6/11

