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**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND ROBERT THOMURE, D.D.S.**

MISSOURI DENTAL BOARD

Come now Robert Thomure, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 2000.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 013361 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 Robert Thomure, D.D.S. is licensed by the Board as a dentist, License No. 013361. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On or about August 13, 2008, Board Inspector Mark Dudenhoeffer (Dudenhoeffer) visited Dr. Thomure's office for the purpose of conducting an on-site inspection for Deep Sedation General Anesthesia site certificate. Dr. Thomure contracted with Premier Dental Anesthesia to provide sedation services for his patients.
4. During Dudenhoeffer's inspection, Dudenhoeffer learned that Dr. Thomure was providing enteral conscious sedation (ECS) without an ECS permit. The Board forwarded Dudenhoeffer's report of the August 13, 2008 inspection to the Board for authorization for additional investigation. The Board authorized additional investigation.
5. On or about August 17, 2009, Board Investigator Joseph Sears (Sears) conducted additional investigation of Dr. Thomure.
6. Prior to his visit to Dr. Thomure's office, Sears conducted a sweep of local pharmacies to collect controlled substance profiles on Dr. Thomure for all controlled substances authorized from June 1, 2007 to June 16, 2009. The medications proscribed by Thomure included: APAP/Codeine, Ambien CR, Diazepam, Floricet/Codeine, Hydroco/APAP, Hydorcod/IBU, Oxycod/APAP, Propo-N/APAP and Zolpidem.
7. On or about June 25, 2009, Sears visited Thomure at his dental practice in St. Louis. Dr. Thomure confirmed he was the only dentist practicing at the location.
8. Dr. Thomure also stated during the June 25, 2009 visit that it was his belief he could offer deep or conscious sedation, including ECS, after completing his DOCS certification. Sears informed him of regulation 20 CSR 1220-4.020(1) which required a permit for deep or conscious sedation.
9. Dr. Thomure stated he administers .25 mg of Triazolam sublingually and 5 mg of Valium. He stated the patients are not "totally out," but they are "sedated." He also stated he used the sedation for "long procedures and grinding."

10. Sears also conducted a controlled substances audit during the course of his investigation.

Sears reviewed Dr. Thomure's stocked controlled substances and also his controlled substances procedures.

- a. Dr. Thomure stated he uses computer generated prescriptions and confirmed that he both administers and dispenses the controlled substances he stocks.
- b. Upon inspection, Sears determined that Dr. Thomure stocks diazepam, lorazepam and triazolam.
- c. Dr. Thomure stated that the controlled substances he stocks are for the purpose of providing ECS to his patients.
- d. Sears requested Dr. Thomure's controlled substance records. Dr. Thomure only provided a DOCS log book with several records labeled inventory page and his dispensing records. Based on these records Sears was unable to confirm whether the contents were accurate. However, Sears did attempt to confirm whether the controlled substances stocked matched the totals contained within.
- e. Sears confirmed that the number of diazepam and lorazepam tablets indicated in the records matched the number stocked.
- f. Sears also determined that the number of triazolam in the records did not match the number stocked. According to Thomure's records, he had stocked 100 tablets of triazolam on July 12, 2007 (ten bottles of ten tablets). However, on June 25, 2009, Thomure's stock consisted of sixty-two tablets (six unopened bottles of ten tablets and one open bottle of two tablets). A difference of thirty-eight tablets. Moreover, Thomure's dispensing records indicate he dispensed twenty-three tablets of triazolam during the relevant time period. Thus, fifteen unaccounted for tablets. However, according to Thomure's triazolam inventory page, he dispensed twelve tablets of triazolam. Thus, twenty-six unaccounted for tablets.
- g. Sears identified that the controlled substances taiwin (one one ml vial) and midazolam (two five mg vials) were contained in Dr. Thomure's emergency kit but not included in his dispensing records.

11. During his investigation, Sears also reviewed Dr. Thomure's controlled substance records.

Sears' investigation of Dr. Thomure's controlled substances records revealed:

- a. Dr. Thomure's controlled substance records did not contain any records of transferring controlled substances to or from another controlled substances registrant.
- b. Dr. Thomure's controlled substance documents entitled "inventory page," did not contain record of all stocks of controlled substances on hand when he first engaged in the "manufacture, distribution or dispensing of controlled substances."
- c. Dr. Thomure's controlled substance dispensing records did not all contain the patient's name, address, drug name, drug strength, quantity, date, or initials of Dr. Thomure. Additionally, the records were not kept separate from patient records.
- d. As of August 17, 2009, Dr. Thomure's controlled substances records did not contain an annual inventory of controlled substances completed after July 2008.

12. Sears also reviewed several of Dr. Thomure's patient records as part of his investigation. Dr. Thomure's records should contain the date, full name and address of the patient, drug name, strength, dosage form and quantity for all controlled substances administered. Sears' review of patient records revealed:

- a. Prescription records for patient R.C.¹ did not contain the required prescription strength and dosage form information for R.C.'s fiorinal, Tylenol 3 or vicodin prescriptions.
- b. Prescription records for patient P.D. did not contain the required dosage form information for P.D.'s vicodin prescription.
- c. Prescription records for patient D.E. did not contain the required prescription strength and dosage form information for D.E.'s fiorinal prescription.
- d. Prescription records for patient M.M. did not contain the required dosage form information for M.M.'s valium prescription.
- e. Prescription records for patient S.N. did not contain the required prescription strength and dosage form information for S.N.'s valium prescription.
- f. Prescription records for patient R.O. did not contain the required prescription strength and dosage form information for his vicodin prescription. Additionally, prescription records for patient R.O. did not contain the required dosage for information for his valium prescription.

¹ All patients will be referred to by first and last initial only.

- g. Prescription records for patient A.U. did not contain the required dosage form information for her valium prescription.
 - h. Prescription records for patient B.Z. did not contain the required dosage form for her valium prescription. Additionally, prescription records for patient B.Z. did not contain the required strength and dosage form information for her Tylenol #3 prescription.
13. Sears also reviewed the controlled substance profiles on Dr. Thomure. Sears identified the following as standing out as due content, quantity or duration of the prescription:
- a. Dr. Thomure prescribed twelve 12.5 mg tablets of Ambien CR to patient C.H. on September 13, 2007 because "C.H. was having a lot of work done, including a bridge, and was going to take a lengthy trip after his appointment."
 - b. Dr. Thomure prescribed ten 10 mg tablets of zolpidem to K.T. on March 16, 2009. K.T. is Dr. Thomure's wife and a TMJ patient.
 - c. Dr. Thomure prescribed sixty 2 mg tablets of Diazepam to patient A.C. on May 27, 2008. A.C. is a TMJ patient.
 - d. Dr. Thomure wrote five prescriptions for patient R.W. between January 5, 2009 and January 20, 2009. R.W. is a TMJ patient.
 - i. Twelve tablets of APAP/Codeine 300, 30 mg on January 8, 2009;
 - ii. Sixty tablets of Hydrirci/APAP 5- 500 mg between January 5 and 19, 2009; and
 - iii. Twenty tablets of Oxycod/APAP 5- 325 mg on January 20, 2009.
 - e. Dr. Thomure wrote nine prescriptions to patient L.E.J. between May 16, 2008 and January 9, 2009. L.E.J. is a TMJ patient.
 - i. Ninety tablets of Diazepam 2 mg between May 16, 2008 and July 21, 2008;
 - ii. Fifty-six tablets of Propo-N/APAP 100-650 mg between August 11, 2008 and November 17, 2008; and
 - iii. Eighty-four tablets of Hydroco/APAP 5- 500 mg between December 7, 2008 and January 9, 2009.
 - f. Dr. Thomure wrote fifty-one prescriptions to patient B.H. between June 14, 2007 and June 4, 2009. B.H. is a TMJ patient.

- i. One thousand two hundred sixty capsules of Floricet/Codeine between June 14, 2007 and April 3, 2009; and
 - ii. Two hundred ten capsules of BUT/ASA/CAF/Cpdeine 30 mg between January 9, 2008 and June 4, 2009.
- g. Regarding the extent of the prescriptions for patient B.H., Dr. Thomure stated he had treated B.H. for several years and he believe that B.H. had called in for refills more often than he had realized. He also stated his staff must have authorized the additional refills which he did not know of. Sears spoke with Dr. Thomure's staff regarding prescriptions and staff consistently stated they do not call in prescriptions without the doctor's orders.
- h. Also regarding patient B.H., Dr. Thomure stated that he had attempted to refer B.H. to a specialist for her TMJ but she would never show up for the appointments. Dr. Thomure stated to Sears: how he should proceed with a patient that may be abusing medications he is providing.

14. On June 26, 2009, Sears contacted Dr. Thomure's office to follow-up on the investigation. Sears was placed on hold. While on hold, Sears heard the following recorded message: "Dr. Thomure offers sedation dentistry, patients can receive sedation to alleviate their anxiety during procedures," ... "procedures can be performed while the patient is in a sleep-like state."

15. Sears also spoke with Dr. Thomure during the investigation regarding the dispensing of controlled substances. Sears' investigation revealed:

- a. Dr. Thomure "usually" administers his controlled substances and "sometimes" dispenses the medications as well.
- b. Dr. Thomure provided a copy of the controlled substance label he uses for all controlled substances he dispenses.
- c. Dr. Thomure's controlled substances label does not contain the date of dispensing or address of the dispensing practitioner.

16. Dr. Thomure possesses a deep sedation/general anesthesia (DSGA) site certificate which allows his location to offer deep sedation/general anesthesia. The site permit expires June 1, 2013. Dr. Thomure has no DSGA permit or other permits regarding administration of controlled substances.

17. Section 332.362, RSMo states, in pertinent part:

1. All duly registered and currently licensed dentists in Missouri who prescribe and administer deep sedation or general anesthesia agents in the course of providing dental services shall possess a deep sedation or general anesthesia permit issued by the board. All duly registered and currently licensed dentists in Missouri who prescribe and administer conscious sedation agents in the course of providing dental services shall possess a conscious sedation permit issued by the board.

2. Dentists prescribing or administering deep sedation or general anesthesia or conscious sedation agents shall do so in accordance with rules set forth by the board.

3. Any dental office where deep sedation or general anesthesia or conscious sedation agents are administered shall possess a site certificate issued by the board and comply with the board's minimum standard for site certificates.

4. The board may promulgate rules specifying the criteria by which deep sedation or general anesthesia permits, conscious sedation permits, and site certificates may be issued, renewed, or revoked and standards for prescribing and administering deep sedation or general anesthesia or conscious sedation agents within the dental setting. Such rules shall only apply to entities regulated under this chapter.

18. Regulation 19 CSR 30-1.048 states, in pertinent part:

(1) Each individual practitioner, institutional practitioner and pharmacy shall maintain records with the following information for each controlled substance received, maintained, dispensed or disposed:

(A) The name of the substance;

(B) Each finished form (for example, ten milligram (10 mg) tablet or ten milligram (10mg) concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (for example, 100 tablet bottle or three milliliter (3 ml) vial);

(C) The number of commercial containers of each finished form received from other persons, including the date of and number of containers in each receipt and the name, address and registration number of the person from whom the containers were received;

(D) The number of units or volume of the finished form dispensed including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed and the written or typewritten name or initials of the individual who dispensed or administered the substance;

(E) The number of units or volume of the finished forms, commercial containers, or both, disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

(2) 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.

(3) Individual practitioners shall maintain the records listed in subsections (1)(A)-(E) of this rule separately from patient medical records.

(4) A registrant who transfers a controlled substance to or receives a controlled substance from another registrant shall maintain a written record of the transfer which contains the following information: the date of transfer, drug name, strength, dosage form, quantity, name, address and registration number of the transferring registrant and the name, address and registration number of the receiving registrant.

19. Regulation 20 CSR 2110-4.020(1) states, in pertinent part:

(1) No dentist shall administer enteral and/or parenteral conscious sedation unless the dentist possesses a conscious sedation permit issued by the Missouri Dental Board. (A dentist is not required to possess a permit for the prescription or administration of drugs prescribed for anxiolysis and/or pain control.) This permit shall be renewed by June 1 every five (5) years from the year of issuance.

20. Regulation 19 CSR 30-1.042 states, in pertinent part:

(2) Initial Inventory Date.

(A) Every person required to keep records who is registered with the Department of Health after May 1, 1971 and who was not registered previously shall take an inventory of all stocks of controlled substances on hand on the date s/he first engages in the manufacture, distribution or dispensing of controlled substances.

(3) Annual Inventory Date. After the initial inventory is taken, the registrant shall take a new inventory of all stocks of controlled substances on hand at least once a year. The annual inventory may be taken on any date that is within one year of the previous annual inventory date.

21. Regulation 19 CSR 30-1.066(1)(C) states, in pertinent part:

(1) An individual practitioner who dispenses controlled substances shall

(C) Permanently affix a label to the exterior of the drug container which includes: the date, the name and

address of the dispensing practitioner, the name of the patient, directions for use, and the exact name and strength of the drug dispensed for all controlled substances dispensed[.]

22. Dr. Thomure's conduct in failing to maintain patient records and controlled substances records as described in paragraphs 10-13 and 15 above violates state drug regulations 19 CSR 30-1.048(1), (2), (3) and (4), 19 CSR 1.042(2)(A) and (3) and 19 CSR 30-1.066(1)(C).

23. Dr. Thomure's conduct in performing ECS without an ECS permit as described in paragraphs 7, 8, 9 and 14 violates § 332.362, RSMo and 20 CSR 2110-4.020(1).

24. Dr. Thomure's conduct in over prescribing for patients as described in paragraph 13 above constitutes incompetency or misconduct in the performance of the duties of a licensed dentist.

25. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6), (10), (13) 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:

...

(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;

...

(15) Violation of the drug laws or rules and regulations of this 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:

1. The terms of discipline shall include that the dental license 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 he adheres to all of the terms of his Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

- A. Licensee shall take and complete a Board approved continuing education course on Ethics. This course must be taken within the first twelve (12) months of Licensee's period of probation. Licensee shall provide the Board with written evidence of the completion of the course no later than thirty (30) days after attending the course. Failure to provide the required documentation to the Board will result in a violation of the terms of this Settlement Agreement.
- B. 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 this agreement.

II. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall submit reports to the Missouri Dental Board, P.O. Box 1367, Jefferson City, Missouri 65102, stating truthfully whether he has complied with all the terms and conditions of this Settlement Agreement by no later than January 1 and July 1 during each year of the disciplinary period.
- C. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- 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 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.
- F. 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.

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

III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. The terms of discipline apply even if Licensee places his license on inactive status.
- C. Licensee shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

2. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 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.

7. If Licensee does not request review by the Administrative Hearing Commission, the agreement goes in to effect fifteen (15) days after the document is signed by the Executive Director.

LICENSEE

Robert Thomure *RTS*
Robert Thomure, D.D.S.

Date 2/25/2010

BOARD

Brian Barnett
Brian Barnett,
Executive Director
Missouri Dental Board

Date 3/11/2010