

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND MICHAEL E. THUM, D.D.S.**

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

Pursuant to the terms of § 536.060, RSMo 2000¹, 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 the Board 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 the Board Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 012958 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2010 and Chapter 332, RSMo.

¹ Unless otherwise noted, all references to RSMo are to RSMo 2000.



Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo 2000, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Michael E. Thum, D.D.S. is licensed by the Board as a dentist, License No. 012958. Licensee's Missouri license was active and current at all relevant times.

3. On January 27, 2011, the Board received a copy of correspondence sent to Licensee by the Bureau of Narcotics and Dangerous Drugs (BNDD). The correspondence invited Licensee to a conference with BNDD on March 3, 2011 to discuss BNDD's investigation of Licensee. The correspondence also contained the results of BNDD's investigation. In summary, the investigation revealed that Licensee issued controlled substance prescriptions in his wife's maiden name rather than her current name. Licensee informed the BNDD investigator that he had done it to obtain insurance benefits when other practitioners had issued the same prescriptions to her in her married name for which benefits were paid by the same insurance company. The investigation also revealed that Licensee failed to document prescriptions for Hydrocodone and Oxycodone in his wife's and brother's charts.

4. On July 22, 2011, the Board received a copy of a Settlement Agreement between Licensee and BNDD signed by Licensee on July 18, 2011 with an effective date of July 19, 2011. A copy of the Settlement Agreement and a cover letter were also sent to Licensee. The Settlement Agreement resolved the question of whether Licensee's BNDD registration was subject to discipline. The Settlement Agreement placed Licensee's registration on probation for two years until July 19, 2013. The Settlement Agreement also placed approximately twenty terms of probation upon Licensee's BNDD registration including, but not limited to, precluding prescribing or administering for himself, immediate family and employees except in a life-threatening emergency, using a separate prescription blank for each controlled substance order, and initiating a procedure for maintaining records of telephone prescriptions.

5. The Settlement Agreement describes in detail Licensee's violations of state drug laws. The Settlement Agreement states the following:

- a. Licensee is registered with the BNDD to stock, prescribe, dispense and administer controlled substances under Missouri Controlled Substances Registration number 43 at



the practice location of 450 North Lindberg, Ste. 105, Creve Coeur, MO 63141 from July 30, 2009 through September 30, 2012.

- b. Licensee did not document the following prescriptions in his wife's chart:
 - i. March 12, 2009, hydrocodone/APAP 5/500, #15 at Schnucks Pharmacy.
 - ii. April 9, 2009, oxycodone/ASA 5/325, #15 at Walgreens Pharmacy.
 - iii. May 24, 2009, hydrocodone/APAP 5/500, #15 at Schnucks Pharmacy.
 - iv. June 27, 2009, oxycodone/ASA 5/325, #15 at Walgreens Pharmacy.
 - v. July 25, 2009, oxycodone/ASA 5/325, #15 at Walgreens Pharmacy.
 - vi. September 28, 2009, oxycodone/ASA 5/325, #15 at Walgreens Pharmacy.
 - vii. November 26, 2009, hydrocodone/APAP 5/500, #15 at Walgreens Pharmacy.
 - viii. March 6, 2010, hydrocodone/APAP 5/500, #15 at Walgreens Pharmacy.
 - ix. April 19, 2010, oxycodone/ASA 5/325, #15 at Walgreens Pharmacy.
 - x. July 3, 2010, hydrocodone/APAP 5/500, #12 at Walgreens Pharmacy.

- c. Licensee failed to document the following prescriptions in his brother's chart:
 - i. February 6, 2008, hydrocodone/APAP 5/500, #12 at Dierbergs Pharmacy.
 - ii. May 9, 2008, hydrocodone/APAP 5/500, #10 at Dierbergs Pharmacy.
 - iii. October 31, 2008, hydrocodone/APAP 5/500, #10 at Dierbergs Pharmacy.
 - iv. January 12, 2009, Roxicet™ 5/325, #12 at Dierbergs Pharmacy.
 - v. May 29, 2009, hydrocodone/APAP 5/500, #15 at Dierbergs Pharmacy.
 - vi. June 3, 2009, hydrocodone/APAP 5/500, #15 at Dierbergs Pharmacy.
 - vii. June 22, 2009, hydrocodone/APAP 5/500, #15 at Dierbergs Pharmacy.
 - viii. December 30, 2009, hydrocodone/APAP 5/500, #15 at Dierbergs Pharmacy.
 - ix. January 26, 2010, hydrocodone/APAP 5/500, #12 at Dierbergs Pharmacy.
 - x. February 4, 2010, hydrocodone/APAP 5/500, #12 at Dierbergs Pharmacy.
 - xi. February 12, 2010, hydrocodone/APAP 5/500, #12 at Dierbergs Pharmacy.
 - xii. March 10, 2010, oxycodone/APAP 5/325, #12 at Dierberg's Pharmacy.
 - xiii. November 4, 2010, hydrocodone/APAP 5/500, #12 at Dierbergs Pharmacy.
 - xiv. November 11, 2010, hydrocodone/APAP 5/500, #10 at Dierbergs Pharmacy.



- d. Hydrocodone/APAP is a combination drug containing hydrocodone, which is codified as a Schedule III controlled substance[] pursuant to § 195.017.6(4)(d), RSMo. Supp. 2010.
- e. Oxycodone/ASA is a combination drug containing oxycodone, which is codified as a Schedule II controlled substance[] pursuant to § 195.017.4(1)(a)n, RSMo, Supp. 2010.
- f. Roxicet™ is a brand name for a combination drug containing oxycodone, which is codified as a Schedule II controlled substance[] pursuant to § 195.017.4(1)(a)n, RSMo, Supp. 2010.
- g. Oxycodone/APAP is a combination drug containing oxycodone, which is codified as a Schedule II controlled substance[] pursuant to § 195.017.4(1)(a)n, RSMo, Supp. 2010.
- h. Licensee did not document all controlled substance activities in patients' charts as required by § 195.050.6, RSMo and 19 CSR 30-1.048(2).
- i. Licensee did not chart all prescriptions in patients' charts and therefore would not know from looking at the chart if a new prescription or refill was timely. Moreover, other doctors reviewing the charts would not be aware of previous drug activity for the patient. Licensee did not provide adequate security and controls to detect and prevent the diversion of controlled substances in violation of 19 CSR 30-1.031(1).
- j. Licensee did not document all prescriptions in his brother's chart and in his wife's chart for six years. Licensee did not maintain complete, current and accurate controlled substance records in violation of 19 CSR 30-1.044(1) and § 195.040, RSMo.

6. On or about September 21, 2011, Board Investigator Kevin Davidson visited Licensee at his practice address regarding the BNDD violations. Licensee stated that he had a good dental practice and also looked after his younger brother. He stated his brother has a lot of oral problems as well as Crohn's Disease. He stated that the BNDD investigation came about after he had performed a procedure on his brother and prescribed Hydrocodone and Oxycodone for him. Licensee stated that he failed to notate it in his chart and BNDD found the violation during an inspection. He stated that if Investigator Davidson were to look at the pharmacy records, there would be record of the prescriptions. He stated he only wrote prescriptions for his wife for dental issues. Licensee stated that his wife worked for him for many years before they married and when they married, she kept her maiden name and insurance and he kept his insurance. He stated that because her



insurance was in her maiden name, he wrote the prescriptions in her maiden name. He stated that he usually treated his wife at the end of the day and that he prescribed medications to her after a procedure but failed to notate the prescriptions in her chart. He stated he signed the Settlement Agreement with BNDD and is now forbidden to write prescriptions for himself and family members except in an emergency. He stated he also fully updates all patient charts before writing a prescription.

7. Section 195.040.7, RSMo 2000 states:

7. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department of health and senior services upon a finding that the registrant:

...

(4) Has violated any federal controlled substances statute or regulation, or any provisions of sections 195.005 to 195.425 or regulation promulgated pursuant to sections 195.005 to 195.425.

8. Section 195.050.6, RSMo 2000 states:

Every person registered to manufacture, distribute or dispense controlled substances under section 195.005 to 195.425 shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

9. Section 332.361, RSMo states, in pertinent part:

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

...

(4) The dentist possesses, has under his control, prescribes, administers, dispenses or distributes the controlled substance in accord with all pertinent requirements of the federal and Missouri narcotic drug and controlled substances acts, including the keeping of records and inventories when required therein.

10. Regulation 19 CSR 30-1.031(1) states:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 20-



1.032- 19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.

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

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

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

Each individual practitioner shall maintain a record of the date, full name and address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. This record may be maintained in the patient's medical record. When the controlled substance record is maintained in the patient's medical record and the practitioner is not the custodian of the medical record, the practitioner shall make the controlled substance record available as required in 19 CSR 30-1.041 and 19 CSR 30-1.044.

13. Licensee's actions as described in paragraphs 3 through 6 above constitute violations of a provision of chapter 332, RSMo and state drug laws as described in paragraphs 7 through 12 above for which the Board has cause to discipline Licensee's license.

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

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

...

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

...

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



Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo 2000: The terms of discipline shall include that the dental license, license number 012958, be placed on **PROBATION** for a period of two (2) 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 the Board Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

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

II. GENERAL REQUIREMENTS

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

B. Licensee shall 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.

C. 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.

D. 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.

E. 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.

F. 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 the Board Settlement Agreement.



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

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

III. ADDITIONAL REQUIREMENTS

A. Licensee shall not allow his license to lapse.

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

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

2. The terms of the Board Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither the Board Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

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



4. If no contested case has been filed against Licensee, Licensee has the right, either at the time the Board Settlement Agreement is signed by all parties or within fifteen days thereafter, to submit the Board Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Board Settlement Agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review the Board Settlement Agreement, Licensee may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

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

LICENSEE

Michael E. Thum, D.D.S.
Michael E. Thum, D.D.S.

Date 8/30/12

BOARD

Brian Barnett
Brian Barnett,
Executive Director
Missouri Dental Board

Date 8/24/12

