

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND JAMES P. WEHNER, D.D.S.**

Come now James P. Wehner, 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 010842 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2010 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 James P. Wehner, D.D.S. is licensed by the Board as a dentist, License No. 010842. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. On November 17, 2010, the Board received a Missouri Dental License Renewal Application for Licensee. On question number fourteen, Licensee answered "yes" to the question "[s]ince the preceding renewal period, have you had a judgment rendered against you based upon fraud, misrepresentation, deception or malpractice related to your practice as a dentist?" Included with Licensee's renewal application was his explanation to the answer to question fourteen. Licensee stated there was a medical malpractice case against him because a patient had an instrument become lodged in his throat during a treatment which resulted in the patient being transported to the emergency room. Also included was documentation from Licensee's insurance provider confirming closure of the claim filed against him.
4. As a result of Licensee's answer to question fourteen and his response, on March 10, 2011, the Board requested additional information from Licensee including a more detailed response and the patient records for the injured patient.
5. On March 21, 2011, the Board received Licensee's response and the patient record. Licensee stated that he "inadvertently lost the file out of his hemostat and the file became lodged in the back of the patient's throat." Licensee also stated he was unable to retrieve the file and had his assistant transport the patient to the emergency room where the file was removed while the patient was sedated. Licensee stated the matter was resolved for \$10,000. Licensee did not take the patient to the hospital himself due to a family emergency he learned of during the procedure.
6. The injured patient's records stated that Licensee was treating him for an emergency visit for a broken filling in tooth #18. Licensee removed the filling and found decay going into the pupal space. Licensee tried to use an endo file to partially instrument tooth # 8 but the instrument came loose from the hemostat he was using to hold the instrument and the file went down the patient's throat. Licensee tried to find the file but



could not see it. Licensee did not use a rubber dam barrier during the procedure. Licensee saw the patient the next day in his office.

7. Licensee's actions as described above in paragraphs 3 through 6 constitute incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform the functions or duties of any profession licensed or regulated by this chapter in that Licensee failed to meet the minimum standard of care by failing to use a rubber dam barrier while treating a patient which resulted in an instrument being lodged in the patient's throat during treatment for which the Board has authority to discipline Licensee's license.

8. Licensee's actions as described above in paragraphs 3 through 6 constitute violation of a professional trust or confidence in that Licensee failed to meet the minimum standard of care by failing to use a rubber dam barrier while treating a patient which resulted in an instrument being lodged in the patient's throat during treatment for which the Board has authority to discipline Licensee's license.

9. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5) 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, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

...

(13) Violation of any professional trust or confidence;

Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo 2000:

1. The terms of discipline shall include that the dental license, license number 010842, be

**CENSURED.**



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.

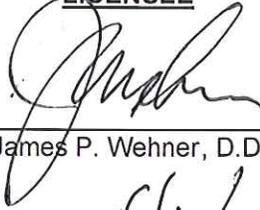
5. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties 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

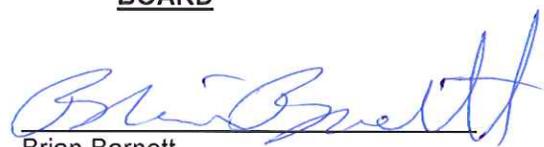


agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

  
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James P. Wehner, D.D.S.  
Date 4/16/12

BOARD

  
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Brian Barnett,  
Executive Director  
Missouri Dental Board  
Date 4/23/12

