

APR 14 2011

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

MISSOURI DENTAL BOARD

Comes now Robert J. Wheeler, 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 012043 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. Robert J. Wheeler ("Dr. Wheeler") is licensed by the Board as a dentist, License No. 012043. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. Licensee practices dentistry at 13408 New Halls Ferry Road, Florissant, Missouri ("the office"). Licensee practices with approximately two dental assistants and one dental hygienist.
4. "Dental Assistant" is defined in section 332.011(5) as an employee of a duly registered and currently licensed dentist in Missouri, other than either a dental hygienist or a certified dental assistant.



5. Under section 332.011(6) an “Expanded-functions dental assistant” is any dental assistant who has passed a basic dental assisting skills mastery examination or a certified dental assistant, either of whom has successfully completed a board-approved expanded-functions course, passed a competency examination, and can show proof of competency in a specific expanded function to the Board.

6. At all times relevant herein, Licensee’s dental assistants were not “expanded functions dental assistants” (“EFDA”) as that term is defined in section 332.011(6), RSMo.

7. Pursuant to section 332.093 a currently registered and licensed dentist may delegate to a dental assistant, certified dental assistant or expanded functions dental assistant, under their direct supervision, such reversible acts that would be considered the practice of dentistry provided such delegation is done pursuant to the terms and conditions of a rule adopted by the Board.

8. Regulation 20 CSR 2110-2.120 expands the functions a dental assistant may perform under a dentist’s direct supervision. Under this regulation 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.

9. At dates certain known only to Licensee, Licensee delegated to non-EFDA certified dental assistants such reversible acts that would be considered the practice of dentistry in violation of sections 332.093 and 332.321.2(6), RSMo and 20 CSR 2110-2.120(4)(D).

10. Pursuant to 20 CSR 2110-2.120(6) Licensee 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.



11. Licensee's conduct constitutes misconduct in the performance of his functions and duties as a licensed dentist in violation of § 332.321.2(5).

12. Licensee's conduct constitutes a violation of § 332.321.2(10), RSMo.

13. Licensee's conduct constitutes a violation of § 332.321.2(13), RSMo.

14. 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

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:



1. The terms of discipline shall include that Licensee's dental license numbered 012043 be placed on **PROBATION for a period of three (3) years** ("disciplinary period"). During the disciplinary period, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of this Settlement Agreement. The terms of the probation shall be:

I. REQUIREMENTS REGARDING CONTINUING EDUCATION

Jurisprudence Exam

Licensee shall take and pass the Board's designated jurisprudence examination within six (6) months of the start of the disciplinary period. 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 six (6) 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



- 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 the 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 § 332.321.9, 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 this Settlement Agreement.
- G. 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 revocation.
- H. 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 324, 332, 610, RSMo.
3. Upon the expiration of said discipline, Licensee's license to practice dentistry in Missouri shall be fully restored if all other requirements of law have been satisfied; provided however, that in the event the Board determines that the Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline the Licensee.
4. No order shall be entered by the Board pursuant to the preceding paragraph of this Settlement Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.
5. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether



a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

6. 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.

7. 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.

8. 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.

9. 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



ROBERT J. WHEELER, D.D.S.

ROBERT J. WHEELER D.M.D

Date 10 Apr 2011

BOARD



BRIAN BARNETT
Executive Director
Missouri Dental Board

Date 4/18/11

