

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND MICHAEL A. WHITE, D.D.S.**

Come now Michael A. White, 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 2000<sup>1</sup>, 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 014107 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621, Cum. Supp. 2009 and Chapter 332, RSMo.

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<sup>1</sup> 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 A. White, D.D.S. is licensed by the Board as a dentist, License No. 014107. Licensee's Missouri license was active and current at all relevant times.

3. On August 23, 2010, the Board received a copy of a Settlement Agreement between Licensee and the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs (BNDD) signed by Licensee on July 2, 2010 with an effective date of July 8, 2010. A copy of the Settlement Agreement and a cover letter were also sent to Licensee and his attorney. 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 three years until July 8, 2013. The Settlement Agreement also placed thirty terms of probation upon Licensee's license including, but not limited to, notifying all practice locations of the Agreement; not ordering, purchasing or accepting any controlled substances, including samples; transferring all controlled substances in his possession to another registrant; indicating on all prescriptions for controlled substances whether they may be refilled; using a separate prescription blank for each controlled substance; instituting a policy for daily record of telephone prescriptions and refill authorizations; reviewing a chart prior to authorizing a refill; and giving access to Drug Enforcement Administration (DEA) and Board officials during regular business hours.

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

- a. Licensee is registered by BNDD to stock, prescribe, and administer controlled substances under registration number 63 at the practice location of 189 Baker Street, Webster Groves, Missouri 63119 from May 3, 2007 to June 30, 2010.
- b. Licensee stocks diazepam and triazolam. Diazepam is a Schedule IV controlled substance pursuant to § 195.017.8(2)(n), 2008 supp, RSMo. Triazolam is a Schedule IV controlled substance pursuant to § 195.017.8(2)(vv), 2008 supp, RSMo.



- c. Licensee did not maintain an initial inventory of the controlled substances in his possession as required by § 195.050.6, RSMo and 19 CSR 30-1.042(2).
- d. Licensee did not document the supplier's or receiver's DEA number and the date received on his controlled substance receipt records as required by § 195.050(6), RSMo and 19 CSR 30-1.048(1).
- e. Licensee did not document patients' addresses, the drug name, strength and dosage form on his controlled substance dispensing log for each controlled substance dispensed and did not keep it separate from the controlled substance records for the other doctor at his practice. Licensee did not maintain a complete controlled substance dispensing log. All of these deficiencies were in violation of § 195.060, RSMo and 19 CSR 30-1.048(1).
- f. Licensee dispensed controlled substances in paper envelopes and not in childproof containers as required by 19 CSR 30-1.066(1)(B).
- g. Licensee dispensed controlled substances without labels to identify the drug name, strength or dosage form, the name of practitioner and the name of the patient as required by § 195.100.5, RSMo and 19 CSR 30-1.066(1)(C).
- h. Licensee dispensed controlled substances without labels warning against illegal transfer of controlled substances to another person as required by § 195.100.3, RSMo.
- i. Licensee prescribed Vicodin ES™ to patient K.B. and did not document the quantity prescribed in patient's chart as required by § 196.050.6, RSMo and 19 CSR 30-1.048(2). Vicodin ES™ is a brand name for a drug containing hydrocodone, a Schedule III controlled substance pursuant to § 195.017.6(4)(d), RSMo.
- j. Licensee did not maintain complete, current and accurate controlled substance records as required by § 195.050.6, RSMo and 19 CSR 30-1.044(1).
- k. Without the required records of inventories, receipt records and accurate dispensing records, it was not possible to conduct an audit to determine how many controlled substances were missing.



I. Licensee did not provide adequate controls to detect and prevent the diversion of controlled substances as required by 19 CSR 30-1.031(1).

5. 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.

6. 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.

7. Section 195.100, RSMo 2000 states, in relevant part:

3. The label of a controlled substance in Schedule II, III or IV shall, when dispensed to or for a patient, contain a clear, concise warning that it is a criminal offense to transfer such narcotic or dangerous drug to any person other than the patient.

...

5. Whenever a pharmacist or practitioner sells or dispenses any controlled substance on a prescription issued by a physician, dentist, podiatrist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing his own name and address of the pharmacy or practitioner for whom he is lawfully acting; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the physician, dentist, podiatrist or veterinarian by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface, or remove any label so affixed.

8. 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.

9. Regulation 19 CSR 30-1.042 states, in relevant 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.

(B) Compliance with federal initial inventory date requirements is deemed satisfactory. Duplicate inventories are not required.

10. 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.

11. Regulation 19 CSR 30-1.048 states in relevant 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 milligrams (10 mg) tablet or ten milligram (10 mg) 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.

12. Regulation 19 CSR 30-1.066(1) states, in relevant part:

(1) An individual practitioner who dispenses controlled substances shall –

...

(B) Package all controlled substances dispensed from an individual practitioner's inventory in compliance with the Poison Prevention Packaging Act of 1970, 15 U.S.C. 1471-1476.

(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[.]

13. Licensee's actions as described in paragraphs 3 through 4 above constitute violations of state drug laws as described in paragraphs 5 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(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:

...

(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 014107, be placed on **PROBATION** until **July 8, 2013** ("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 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 the Board 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 the Board Settlement Agreement.

H. 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).

I. 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 make application to the Board for, or hold, any sedation permits pursuant to § 332.362, RSMo and any rules or regulations validly promulgated pursuant thereto.

B. Licensee shall not allow his license to lapse.

C. 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, and 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 A. White, D.D.S.

Date 5/20/2011

BOARD



Brian Barnett,  
Executive Director  
Missouri Dental Board

Date 5/31/11

