SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND MARK F. ADAMS, D.M.D.

Come now Mark F. Adams, D.M.D. ("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\(^1\), 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.

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 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 2008003837 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

\(^1\) All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.
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, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Mark F. Adams, D.M.D. is licensed by the Board as a dentist, License No. 2008003837. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about June 1, 2010, the Board received a complaint against Licensee from S.S. S.S. alleged that she paid Licensee $2,564 for mini implants and dentures. S.S. alleged that after paying for the implants in February 2010, Licensee placed four implants. S.S. alleged that Licensee did not like the way that implant #3 looked and so he removed implant #3 and reinserted it in another location on the same visit. S.S. waited for a few weeks for the implants to heal, however, implant #3 did not heal so she went back to see Licensee in March. S.S. alleged that she was in a lot of pain following the placement of the implants. Licensee placed another implant behind #3, totaling five implants he placed. S.S. alleged that she informed Licensee at that time that the left side of her lip was numb. S.S. alleged that Licensee informed S.S. the numbness would improve with time, that he thought it would be "alright," and she should "give it a month." S.S. alleged that the pain and numbness did not improve. S.S. alleged she ended up going to the emergency room due to pain and numbness in her lower lip. She alleged that the emergency room informed her that she had a very bad abscess in her mouth and she was referred to a doctor who removed the abscess. She alleged that when she returned to Licensee, he removed two more of the implants and gave her a temporary denture which did not fit. She alleged that she has permanent damage and numbness in her lower lip. She alleged that Licensee never provided her with the permanent implants and Licensee charged her an extra $350.

4. As a result of S.S.'s complaint, the Board conducted an investigation into the complaint. In particular, the Board sought the independent review of S.S.'s dental records by Dr. Michael Barbick, D.M.D., M.D.. Dr. Barbick reviewed S.S.'s patient record and x-rays. Additionally, Dr. Barbick examined S.S. himself as a result of a referral from another dentist, Dr. David Krobath.

5. On or about March 11, 2011, Dr. Barbick saw S.S. based on the referral from Dr. Krobath. Dr. Barbick's patient consultation note states he saw her for "evaluation of her numbness involving her left lip and chin." Dr. Barbick noted that he had multiple failed attempts at placement of mini-implants and during one
attempt he “noted numbness afterwards that failed to return involving her lip and chin. She told the dentists about this but was reassured it would return. They were unable through multiple attempts [to] integrate these implants and she has thus not returned to their practice. She currently has a lower denture that attaches to 3 implants which rocks in the left posterior region causing sores and missing 2 teeth in the right maxilla due to fracture of these crowns during a[n] impression that the dentist took during this process. She states this numbness has not improved[]."

6. On March 22, 2011, Dr. Barbrick issued a letter stating that he had reviewed the dental records of Licensee for S.S. and had examined and treated S.S. himself. He stated: “It is my opinion to a reasonable degree that [Licensee] failed to use such care as a reasonable, prudent and careful healthcare provider would have used under similar circumstances and such failure to use reasonable care directly caused or directly contributed to the cause of permanent nerve damage. The damage has left [S.S] numb along the distribution of the left anterior alveolar nerve which affects the sensation of the lip, chin and sensation of her gingival mucosa along the left side of her face.”

7. On or about April 26, 2011, Dr. Barbrick provided a second letter with regard to his review and care of S.S. Dr. Barbrick’s letter states that he reviewed Licensee’s surgical notes and that based on Dr. Barbrick’s assessment, he believes Licensee damaged S.S.’s nerve during treatment between February 25 and March 22, 2010 either during the placement of the implants or injections. Dr. Barbrick also stated in his April 26, 2011 letter that Licensee’s progress notes did not properly document what occurred during treatment on February 25 and 26, 2010 or on March 24, 2010. Dr. Barbrick stated that there were also not adequate post-operative films taken. Dr. Barbrick also stated that there was inadequate treatment planning, documentation and pre-operative and post-operative x-rays taken by Licensee, including failure to take panorex x-rays to be able to visualize the implant and nerve. However, based on his review of S.S. and the review of Licensee’s records, Dr. Barbrick concluded that Licensee likely damaged the nerve during placement of the implants as nerve damage is rare during injections.

8. Licensee’s actions as described above in paragraphs 2 through 7 constitute incompetency and misconduct 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 due to his
inferior quality of care in treatment planning, documentation and placement of mini implants for which the Board has authority to discipline Licensee’s license.

9. Licensee’s actions as described above in paragraphs 2 through 7 constitute violation of a professional trust or confidence in that Licensee failed to meet the minimum standard of care due to his inferior quality of care in treatment planning, documentation and placement of mini implants for which the Board has authority to discipline Licensee’s license.

10. 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:

11. The terms of discipline shall include that the dental license, license number 2008003837, be SUSPENDED for a period of thirty (30) days effective ten (10) days after the date of this Order. Following the period of suspension, Licensee’s license shall immediately 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.

B. Education. Licensee shall successfully complete one hundred (100) hours of continuing education in implant placement at Oral Health Enrichment in Cleveland, Ohio within the first two hundred seventy (270) days of the beginning of Licensee’s period of probation. Following completion of the one hundred (100) hours of education as detailed above at Oral Health Enrichment, Licensee shall take and pass a written outcome assessment test on the education with a score of at least 80%. Failure to complete the education and pass the written outcome assessment test on the education within 270 days shall constitute a violation of the Board Settlement Agreement. Licensee shall complete the education by obtaining the materials from Oral Health Enrichment and completing the written outcome assessment at the Division of Professional Registration in Jefferson City, Missouri.

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 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 imposition of revocation) following a hearing before the Board.

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, license number 2008003837, to lapse.

B. 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.

C. Licensee shall not perform any implant treatment until he successfully takes and passes the compotony examination as detailed above in paragraph I.B.

12. 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.

13. 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.

14. 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.

15. 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:
16. 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 fact 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. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

**LICENSEE**

Mark F. Adams, D.M.D.

Date November 18, 2012

**BOARD**

Brian Barnett, Executive Director
Missouri Dental Board

Date 11/20/12
The Missouri Dental Board ("Board") hereby issues its ORDER granting a PROBATED license to Mark Adams, D.M.D. ("Adams") pursuant to the provisions of §620.149, RSMo 2000. As set forth in §620.149.2, RSMo, Adams may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board’s decision issuing a probated license to Adams. Such written request must be submitted to the Administrative Hearing Commission within thirty (30) days of the delivery or mailing of this Order by certified mail. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman Building Rm. 604, Jefferson City, MO 65102-1557. If no written request for review is received by the Administrative Hearing Commission within the thirty (30) day period, the right to seek review of the Board’s decision shall be considered waived.

Based upon the foregoing, the Board hereby states:

1. The 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, RSMo.

2. On or about May 24, 2007, Adams submitted an application for licensure as a dentist ("Application"). Adams was previously licensed as a dentist by the Board, License No. 013862. This license was revoked by the Board pursuant to a Disciplinary Order dated May 3, 2004.

3. Licensee has a history of prescribing to himself, improperly storing and failing to maintain records on controlled substances.

4. On February 26, 2004, in the case styled Missouri Dental Board v. Mark Adams, D.M.D., Case No. 03-2048DB, the Administrative Hearing Commission issued its Decision finding cause to discipline Adams’ dental license for violations of section 332.321.2(5), (6), (13), and (15),
RSMo. On eight occasions between August 7, 2001 and October 7, 2001, Adams prescribed Stadol, a schedule IV controlled substance, for himself to keep in his office stock. Adams also failed to maintain controlled substances in a locked cabinet, maintain an initial inventory and annual inventory of controlled substances, record all patient information when he administered or prescribed a controlled substance and maintain controlled substance receipts.

5. Dentistry is defined to include the administration of medications which can and often do include controlled substances with high abuse potentials.

6. Cause exists for the Board to take disciplinary action against Licensee’s license under § 332.321.2(5), (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;

(13) Violation of any professional trust or confidence;

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

7. A dentist may prescribe drugs only in the course of his professional practice. Section 195.070 provides, in relevant part:

1. A physician, podiatrist, dentist, or a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, RSMo, in good faith and in the course of his or her professional practice only, may prescribe, administer, and dispense controlled substances or he or she may cause the same to be administered or dispensed by an individual as authorized by statute.
8. Licensee failed to use that degree of skill and learning that a dentist ordinarily uses under the same or similar and violated professional trust and confidence by writing prescriptions for himself that were not in the course or scope of Licensee's professional practice.

9. Licensee violated the drug laws of this state by violating provisions of Chapter 195, RSMo.

10. Pursuant to § 332.321, RSMo the Board may refuse to issue any certificate of registration or authority, permit or license required pursuant to Chapter 332 for one or any combination of causes stated in subsection 2 of this section.

11. Adams' conduct in prescribing controlled substances to himself and his failure to follow the laws and regulations governing the stocking and maintenance of controlled substances is reasonably related to the qualifications, functions and duties of a licensed dentist and constitutes a violation of Chapter 195 and 332, RSMo.

12. Relicensure of an individual whose license has been revoked shall be at the discretion of the board after compliance with all the requirements of Chapter 332 relative to the licensing of an applicant for the first time.

The Board hereby issues this ORDER in lieu of denial of Adams’ request for a license to practice dentistry in Missouri.

TERMS AND CONDITIONS

Licensee shall be issued a license to practice dentistry in the State of Missouri subject to THREE (3) YEARS PROBATION ("disciplinary period"). Licensee shall be entitled to engage in the practice of dentistry, provided he adheres to the terms of this Order. The terms of the disciplinary period shall be:
I. REQUIREMENTS REGARDING CONTINUING EDUCATION

A. Licensee shall complete the fifty (50) in-classroom continuing education hours in prosthodontics. Licensee shall also complete an additional twenty-five (25) in-classroom hours of in general education for a total of 75 hours of continuing education.

B. All continuing education hours shall be completed in the first twelve (12) months of the disciplinary period.

C. These hours are in addition to those hours required by law for renewal and must be in-classroom/out of office hours. NO correspondence or internet courses will be accepted by the Board. These additional continuing education hours cannot carry over into the next reporting period. Licensee shall provide the Board with proof of attendance of the continuing education hours no later than thirty (30) days after attending the course. Failure to attend the required continuing education programs and/or submit the required documentation to the Board will be a violation of the terms of discipline.

II. GENERAL REQUIREMENTS

A. During the disciplinary period, Licensee shall not own or operate a solo or private dental practice. Licensee shall only practice dentistry as an employee under the direct supervision of another practicing dentist.

B. 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.

C. 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.

D. 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.
E. 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.

F. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirement necessary to maintain Licensee's license in a current and active state.

G. 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.

H. 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 Order.

I. If Licensee fails to comply with the terms of this Order, in any respect, the Board may impose such additional or other discipline that it deems appropriate, including revocation.

J. This Order 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 Order, 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 Board will maintain this Order as an open and public record of the Board as provided in Chapters 332, 610, and 620, RSMo.
3. Upon the expiration of said discipline period, Licensee’s dental license 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 Order, the Board may, in its discretion, after an evidentiary hearing before the Board, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensee.

4. No order shall be entered by the Board pursuant to the preceding paragraph of this Order 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 Order, 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 Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED EFFECTIVE THIS 6th DAY OF FEBRUARY 2008.

MISSOURI DENTAL BOARD

Brian Barnett
Executive Director
ORDER REVOKING LICENSE
EFFECTIVE
MAY 3, 2004
BEFORE THE MISSOURI DENTAL BOARD
STATE OF MISSOURI

MISSOURI DENTAL BOARD, )
) Petitioner,
) ) No. 03-2048 DB

v. )
) MARK ADAMS, D.M.D.,
) Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER

Statement of the Case

On February 26, 2004, the Administrative Hearing Commission entered its
Findings of Fact and Conclusions of Law in the case of Missouri Dental Board v. Mark
Adams, D.M.D., Case No. 03-2048 DB. In that Findings of Fact and Conclusions of
Law, the Administrative Hearing Commission found that Respondent's dental license is
subject to disciplinary action by the Missouri Dental Board ("Board") for violating
§ 332.321.2(5), (6), (13), and (15), RSMo 2000.

The Board has received and reviewed the record of the proceedings before the
The Findings of Fact and Conclusions of Law of the Administrative Hearing Commission
is incorporated herein by reference.
The Board set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondent in a proper and timely fashion.

Pursuant to notice and § 621.110, RSMo, the Board held a hearing on April 24, 2004, at the Plaza Conference Center, 3257 William Street, Cape Girardeau, Missouri, for the purpose of determining the appropriate disciplinary action against Respondent's license. The Board was represented by Daniel N. McPherson, Assistant Attorney General. Respondent did not appear and was not represented by counsel. Nanci Wisdom, Attorney at Law, served as hearing advisor. Seven members of the Board were present and participated in the Board's deliberation, vote, and order.

Findings of Fact

1. Respondent, Mark Adams, is licensed by the Board as a dentist, License No. 013862.

2. In accordance with the Administrative Hearing Commission's February 26, 2004, Findings of Fact and Conclusions of Law, the dental license of Respondent is subject to disciplinary action by the Board pursuant to § 332.321.2(5), (6), (13), and (15), RSMo 2000.

Conclusions of Law

3. The Board has jurisdiction over this proceeding pursuant to § 621.110, RSMo 2000 and § 332.321.3, RSMo 2000.
Order

THEREFORE, having fully considered all the evidence before this Board, and giving full weight to the Findings of Fact and Conclusions of Law of the Administrative Hearing Commission, it is the Order of the Missouri Dental Board that Respondent's license to practice as a dentist in the state of Missouri, License No. 013862, is hereby REVOKED. Respondent shall immediately return all indicia of licensure to the Board. Pursuant to the provisions of § 332.321.3, RSMo 2000, Respondent shall not apply for licensure for a period of not less than one year following the effective date of this Order.

SO ORDERED EFFECTIVE THIS 3rd day of May, 2004.

MISSOURI DENTAL BOARD

[Signature]
Sharlene Rimiller
Executive Director
Before the
Administrative Hearing Commission
State of Missouri

MISSOURI DENTAL BOARD,

Petitioner,

vs.

MARK ADAMS, D.M.D.,

Respondent.

No. 03-2048 DB

DECISION

Mark Adams, D.M.D., is subject to discipline for prescribing to himself, improperly storing, and failing to maintain records on, controlled substances.

Procedure

The Missouri Dental Board (Board) filed a complaint on October 22, 2003. On January 6, 2004, the Board filed a motion for summary determination. Pursuant to § 536.073.3, RSMo 2000,¹ our Regulation 1 CSR 15-3.440(3)(B) provides that we may decide this case without a hearing if any party establishes facts that no party disputes and entitle any party to a favorable decision. ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 380-82 (Mo. banc 1993). To establish the facts material to its claim, the Board cites the request for admissions that it served Adams on December 1, 2003. Under § 536.073.2, RSMo 2000, our Regulation 1 CSR 15-3.420(1), and Supreme Court Rule 59.01, the failure to answer a request for

¹Statutory references are to the 2003 Supplement to the Revised Statutes of Missouri unless otherwise noted.
admissions establishes the matters in the request conclusively. We gave Adams until January 28, 2004, to respond to the motion, but he did not respond. Therefore, the following facts, established by Adams' failure to respond to the request for admissions, are undisputed.

Findings of Fact

1. At all relevant times, Adams conducted a solo practice in Cape Girardeau, Missouri, under a dentist license from the Board and a certificate of registration from the Bureau of Narcotics and Dangerous Drugs (BNDD).

2. On eight occasions between August 7, 2001, and October 7, 2001, Adams prescribed Stadol, a Schedule IV controlled substance, for himself to keep in his office stock.

3. As of November 5, 2001, Adams failed to:
   - maintain controlled substances in a secure, locked cabinet;
   - maintain an initial and annual inventory for controlled substances that he stored and dispensed in his practice;
   - record all required patient information when he administered or prescribed a controlled substance; and
   - maintain controlled substance receipt records separately from prescribing records.


5. On March 15, 2002, the BNDD issued Adams a letter of censure based on Findings 2 through 4.

Conclusions of Law

We have jurisdiction to hear the Board's complaint. Section 332.321.2. The Board has the burden to prove that Adams has committed an act for which the law allows discipline.

*Missouri Real Estate Comm'n v. Berger, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).*
I.

The Board cites the provisions of § 332.321.2 that allow discipline for:

(6) Violation of... 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[.]

Adams is deemed to have admitted that he violated the following provisions. Section 332.361, RSMo 2000, provides:

1. Any duly registered and currently licensed dentist in Missouri may write, and any pharmacist in Missouri who is currently licensed under the provisions of chapter 338, RSMo, and any amendments thereto, may fill any prescription of a duly registered and currently licensed dentist in Missouri for any drug necessary or proper in the practice of dentistry, provided that no such prescription is in violation of either the Missouri or federal narcotic drug act.

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.

Regulation 19 CSR 30-1.034(1)(B) provides:

Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. However, pharmacies may disperse these substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft or diversion of the controlled substances.
Regulation 19 CSR 30-1.042 provides:

(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.

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*

(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.

Regulation 19 CSR 30-1.048 provides:

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

*
*
*

(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[.]

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*

(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.

* * *

(6) A prescription may not be issued for an individual practitioner to obtain controlled substances for dispensing or administering to patients.

The above are provisions of Chapter 332, regulations adopted pursuant to that chapter, and state drug laws. Therefore, we conclude that Adams is subject to discipline under § 332.321.2(6) and (15).

II.

The Board cites the provisions of § 332.321.2 that allow discipline for:

(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[.]

Adams is deemed to have admitted that he is subject to discipline under those provisions.

Incompetency is a general lack of (1) professional ability or (2) disposition to use a professional ability. Forbes v. Missouri Real Estate Comm'n, 798 S.W.2d 227, 230 (Mo. App., W.D. 1990). Professional trust is the reliance on the special knowledge and skills that professional licensure evidences. Trieseier v. Helmbacher, 168 S.W.2d 1030, 1036 (Mo. 1943). We conclude that Adams is subject to discipline for incompetency and his violation of professional trust.

Misconduct is the willful doing of a wrongful act. Grace v. Missouri Gaming Comm'n, 51 S.W.3d 891, 900-01 (Mo. App., W.D. 2001). Gross negligence is a deviation from the
standard of care so egregious as to demonstrate a conscious indifference to a professional duty. *Duncan v. Missouri Bd. for Arch'ts, Prof'l Eng'rs & Land Surv'rs*, 744 S.W.2d 524, 533 (Mo. App., E.D. 1988). Those mental states are mutually exclusive. We infer from the record that Adams' violations were willful. Therefore, we conclude that he is subject to discipline for misconduct, but not gross negligence.

Fraud is an intentional perversion of truth to induce another person to act in reliance upon it. *Hernandez v. State Bd. of Registration for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997). Misrepresentation is a falsehood or untruth made with the intent of deceit rather than inadvertent mistake. *Id.* at 899 n.3. Dishonesty is a lack of integrity, a disposition to defraud or deceive. *Merriam-Webster's Collegiate Dictionary* 333 (10th ed. 1993). Adams admitted that he is subject to discipline under this subdivision, but did not admit facts that constitute fraud, misrepresentation or dishonesty. Therefore, we find that he is not subject to discipline for fraud, misrepresentation or dishonesty.

**Summary**

Adams is subject to discipline under 332.321.2(5), (6), (13), and (15).


[Signature]

JOHN J. KOPP
Commissioner
BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

MISSOURI DENTAL BOARD
3605 Missouri Boulevard
P.O. Box 1367
Jefferson City, MO 65102

Petitioner,

v.

MARK ADAMS, D.M.D.
230 North Middle
P.O. Box 1350
Cape Girardeau, MO 63702

Respondent.

No. 03-2048 DB

COMPLAINT

Petitioner, by and through the Attorney General of the state of Missouri, states for its cause of action against Respondent:

1. The Missouri Dental Board ("the 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 provisions of Chapter 332, RSMo.

2. The Respondent ("Licensee") was licensed by the Board as a dentist, License No. 013862. Licensee's Missouri license was at all times relevant herein, and is now, current and active.
3. At the time of the events alleged herein, Licensee worked as an individual practitioner in his dentistry practice located in Cape Girardeau, Missouri.

4. As part of his dentistry practice, Licensee was registered with the Drug Enforcement Administration and the Bureau for Narcotics and Dangerous Drugs to prescribe and dispense controlled substances.

5. From August 7, 2001 through October 7, 2001, Licensee wrote prescriptions in his name and purchased Stadol, or its generic, on eight occasions for his office stock.

6. Pursuant to § 195.017, RSMo; 19 CSR 30-1.010; 21 U.S.C. § 812; and 21 C.F.R. § 1308, Stadol is a Schedule IV controlled substance.

7. Pursuant to 19 CSR 30-1.048(6), "[a] prescription may not be issued for an individual practitioner to obtain controlled substances for dispensing or administering to patients."

8. Licensee’s conduct is in violation of § 332.361, RSMo 2000, which states:

   1. Any duly registered and currently licensed dentist in Missouri may write, and any pharmacist in Missouri who is currently licensed under the provisions of chapter 338, RSMo, and any amendments thereto, may fill any prescription of a duly registered and currently licensed dentist in Missouri for any drug necessary or proper in the practice of dentistry, provided that no such prescription is in violation of either the Missouri or federal narcotic drug act.

   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:

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(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.

9. On or about November 5, 2001, the Missouri Department of Health and Senior Services' Bureau of Narcotics and Dangerous Drugs ("BNDD") conducted an inspection of Licensee’s dental practice to evaluate his compliance with state drug laws.

10. During the BNDD inspection, it was found that Licensee failed to properly maintain controlled substances; in that, they were stored in a wooden cabinet without a locking a device.

11. Pursuant to 19 CSR 30-1.034(1)(B), Schedule III, IV and V controlled substances must be maintained in a "securely locked, substantially locked cabinet."

12. During the BNDD inspection, it was found that Licensee failed to maintain an initial or annual inventory for controlled substances that he stored and dispensed from his practice.

13. Pursuant to 19 CSR 30-1.042(2)(A) and (3), an initial and annual inventory must be taken for all controlled substances in stock.
14. During the BNDD inspection, it was found that Licensee failed to record all of the requisite information in the patient’s file or elsewhere when controlled substances were administered or prescribed.

15. Pursuant to 19 CSR 30-1.048(2), “[e]ach 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.”

16. During the BNDD inspection, it was found that Licensee failed to maintain his controlled substance receipt records separate from his prescribing records.

17. Pursuant to 19 CSR 30-1.048(1)(C) and (3), controlled substance receipt records must be maintained separately from the prescribing records.

18. On or about January 14, 2002, BNDD conducted a second inspection of Licensee’s practice, during which controlled substance administration records were requested within three working days.

19. On or about February 1, 2002, Licensee informed the BNDD investigator that he had not maintained controlled substance administration or prescribing records.

20. Pursuant to 19 CSR 30-1.048(2), records must be maintained for all controlled substances prescribed and administered.

21. As a result of the conduct alleged in paragraphs 9 through 20, on or about March 15, 2002, BNDD issued Licensee a Letter of Censure.
22. Cause exists for the Board to take disciplinary action against Licensee’s license under § 332.321.2(5), (6), (13), and (15), RSMo 2000, 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 certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, 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;

   (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;

   ....

   (13) Violation of any professional trust or confidence;

   ....

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

   ....
WHEREFORE, Petitioner requests this Administrative Hearing Commission to conduct a hearing, if necessary, in this case pursuant to §§ 621.015 to 621.205, RSMo, and thereafter issue its findings of fact and conclusions of law that Petitioner may take disciplinary action against the license of Respondent for violations of Chapter 332, RSMo.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
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Attorneys for Petitioner

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