SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD 
AND RICHARD S. GILMAN, D.D.S.

Come now Richard S. Gilman, 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, 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 a preponderance of the 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/or 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 012701 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 Richard S. Gilman, D.D.S. is licensed by the Board as a dentist, License No. 012701. Licensee's Missouri license is and was at all times relevant herein, current and active.

3. On May 27, 2015, United States Drug Enforcement Administration (DEA) Diversion Investigators Judi Watterson and Patricia O'Malley met with Licensee at his office, 9233 Ward Parkway, Suite 330, Kansas City, Missouri, to conduct an inspection of controlled substances maintained by Licensee. Licensee was presented with a DEA Notice of Inspection of Controlled Substances which he reviewed and signed. Investigators conducted a physical inventory of controlled substances and records kept in relation thereto. Licensee provided the investigators with records from 2013 to the date of the inspection. Licensee was determined to be in possession of controlled substances Hydrocodone/Acetaminophen tablets, Hydrocodone/Ibuprofen tablets, Triazolam tablets, Midazolam liquid and Diazepam liquid.

4. Licensee told the investigators that he kept the controlled substances in his office for sedation and pain for the convenience of his patients. Licensee told investigators that he was the sole person responsible for the record keeping, maintaining dispensing logs and that he conducted an annual inventory. Licensee told investigators that he kept the controlled substances locked in a safe that only he, the office manager and another part-time Dentist have keys to access.

5. Investigators reviewed the dispensing logs dating back to 2013 and determined that no matter which strength of hydrocodone tablets were dispensed, each patient received 20 dosage units and each log entry was initialed by Licensee. Investigators determined from a review of the dispensing logs and a comparison to the controlled substance supply records that on multiple occasions the first recorded dispensed dates were prior to the receipt of the supply from the only supplier Licensee used, Pharmaceutical Systems, Inc.

6. Investigators interviewed a dental hygienist in the office who assisted Licensee with surgeries, and who has worked with Licensee for 18 years. The hygienist stated she was responsible for ordering non-controlled substances, but that Licensee personally ordered the Hydrocodone and when a shipment is received
all controlled substances are taken to Licensee's office. The hygienist stated that she does not know when Licensee orders additional Hydrocodone. The hygienist stated that patients are usually administered one Hydrocodone tablet during surgery and one after, but Hydrocodone tablets were not usually dispensed to patients in a prescription bottle to take home. The hygienist stated that patients are usually given a written prescription for pain medication when they go home.

7. Investigators interviewed a dental assistant who had worked for Licensee since August of 2013. The assistant told investigators that most patients are given a Hydrocodone prescription after surgery which is usually given to the patient's driver. The assistant told investigators that Licensee does not typically send Hydrocodone tablets home with the patient. The assistant stated that if a patient was given Hydrocodone, Licensee would retrieve it from the drug cabinet and it would be logged in the patient's chart as well as the controlled substance log. The assistant stated that Licensee was responsible for making the prescription labels.

8. Investigators interviewed the office manager who had been employed by Licensee for 21 years. The office manager confirmed that she had a key to the drug cabinet, but only as a backup as she had keys for all of the office locks. The office manager stated that Licensee was responsible for documenting the receipt of controlled substances, maintaining dispensing logs, packaging take home bottles and making the bottle labels. The office manager stated she was not involved in handling controlled substances at the office.

9. After interviewing employees and reviewing records, investigators asked Licensee to take the records with them to continue their review and he agreed.

10. On June 1, 2015 at approximately 3:00 p.m., DEA Investigators Watterson, O'Malley and Group Supervisor Todd Hixson interviewed Licensee at his office regarding several red flags regarding their review of his controlled substance records and logs and the suspicion of diversion of Hydrocodone. Licensee denied that there was diversion taking place and denied self-medicating with Hydrocodone. Licensee stated that staff members that were interviewed must not have understood the questions they were asked regarding the procedures for dispensing Hydrocodone. Licensee stated that the staff does not see him count and package the Hydrocodone and he personally hands the bottle to the patient as he walks the patient to their car in the parking lot. Investigators told Licensee that they would contact patients to confirm they were provided the indicated 20 tablets of Hydrocodone and they asked him if he thought they would verify they were provided the controlled substance. Licensee responded, "I think so" then further stated some patients might have amnesia and not
remember receiving the bottle containing the Hydrocodone tablets. Licensee stated that patients are given a package of several items to take home and they may not know they were receiving a bottle of Hydrocodone in the package. Licensee stated he did not think it was unusual to dispense a quantity of 20 dosage units to every patient regardless of the strength of Hydrocodone. Licensee stated some patients need an additional quantity of Hydrocodone after they finish using the tablets he dispensed, and that is why they were also given a written prescription. Licensee also stated the reason there are no log entries for one Hydrocodone tablet to a patient is because if he administers one tablet to a patient in the office he then dispenses only 19 tablets to take home. Licensee told investigators that he wanted 24 hours to think about the information they discussed and the interview ended.

11. On June 2, 2015, Licensee called Investigator Watterson via telephone and indicated that he wanted to voluntarily surrender his DEA registration. Licensee stated he had cancelled his patients for the next week and he was looking for work outside of practicing dentistry. At approximately 4:00 p.m., Licensee arrived at the Kansas City DEA office and met with Investigators Watterson, O'Malley and GS Hixson. Licensee stated he wanted to surrender his DEA registration. Licensee was presented a Voluntary Surrender of Controlled Substance Privileges, DEA Form 104, and it was explained to him by investigators. Licensee was told that a voluntary surrender was completely his decision and the government was not forcing him to do it. Investigators explained to Licensee that if he signed the surrender form that he could no longer administer, prescribe, possess or engage in activities with controlled substances. Investigators told Licensee to review the form. After further reviewing the voluntary surrender form, Licensee signed the form and agreed to voluntarily surrender his controlled substance privileges. Licensee also provided investigators with a duffel bag that contained the controlled substances that he wanted to surrender. Investigators inventoried and recovered the controlled substances.

12. The Missouri Dental Board also conducted an investigation into the controlled substance activities of Licensee. As part of the investigation, Joshua Fisher, Investigator for the Missouri Dental Board, contacted a sampling of Licensee's patients to determine if they actually received controlled substances which were documented on Licensee's drug dispensing log. In August 2015, Investigator Fisher contacted nine patients who were listed in Licensee's dispensing log as having each received 20 tablets of Hydrocodone from Licensee in the office after a procedure performed in 2014-2015. Each patient told Investigator Fisher that they
received a paper prescription for pain medicine to fill at a pharmacy and did not recall receiving actual pain pills to take home from Licensee’s office.

13. After surrendering his DEA controlled substance registration, investigators learned that Licensee continued to operate his dentist practice, and he performed additional procedures in which he administered controlled substance to patients for either sedation of pain.

14. On September 10, 2015, Investigator Watterson spoke with one of Licensee’s dental assistants who had been employed by Licensee since October 2014. The assistant stated that on September 4, 2015, Licensee performed a procedure on a male patient that Licensee sedated with Triazolam and Vistaril. The assistant stated that Licensee retrieved the Triazolam and Vistaril tablets from Licensee’s private bathroom and Licensee identified the drugs to her as Triazolam and Vistaril. Licensee instructed the assistant to not put a note in the patient’s chart or tell his wife that the patient was sedated, and his wife “did not like him to do it.” The assistant provided the name of the patient who received the sedation from Licensee.

15. On November 20, 2015, Investigator Watterson and Missouri Dental Board Investigator Joshua Fisher met with the patient identified as receiving controlled substances from Licensee during a dental procedure on September 4, 2015. The patient said that he was provided two pills by one of Licensee’s female assistants. The patient stated that the pills made him sleepy, but he remained conscious. The patient described the feeling as “warm and fuzzy.”

16. Licensee admits that on at least one occasion after surrendering his DEA controlled substance privileges he unlawfully administered controlled substances to a patient.

17. As part of his investigation, Investigator Fisher conducted a continuing education audit and an infection control inspection. Licensee submitted 62 hours of continuing education including BLS/ACLS certification and was therefore compliant with continuing education requirements. Licensee was compliant in the infection control inspection except for one area: spore testing. The testing log demonstrated no tests were completed the weeks of May 31, June 14 and July 12, 2015. The hygienist, T.W. stated this was a mistake with the testing provider. T.W. stated the office sends the tests every week to UMKC who sends them to the vendor. As of February 8, 2016, the office was compliant.

18. Section 332.052, RSMo, states, in relevant part:

1. Dentists shall maintain an adequate and complete patient record for each patient and may maintain electronic records
provided the record-keeping format is capable of being printed for review by the board.

19. Section 332.361, RSMo, states, in relevant part:

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.

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

Each individual practitioner shall maintain a record of the date, full name and address of the patient, the drug name, strength, dosage form and quantity for all controlled substances prescribed or administered. This record may be maintained in the patient's 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.

21. Licensee's conduct, as described in paragraphs 3 through 17 above, constitutes cause to discipline Licensee's license.

22. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6), (13), (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;
(5) 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;

...  

(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;

Joint Agreed Disciplinary Order

23. 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:

24. The terms of discipline shall include that Licensee's licensee shall be VOLUNTARILY SURRENDERED IN LIEU OF DISCIPLINE. Licensee's voluntary surrender shall be reportable discipline. Licensee shall return all indicia of licensure to the Board.

25. Licensee agrees that he will not reapply for a dental license in Missouri in the future.

26. 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 and 324, RSMo.

27. 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.

28. 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.

29. 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.**

30. 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 in to effect 15 days after the document is signed by the Executive Director of the Board.

**LICENSEE**

[Signature]

Richard S. Gilman, D.D.S

Date 12.30.16

**BOARD**

[Signature]

Brian Barnett
Executive Director
Missouri Dental Board

Date 1/10/2017