SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND KAREN T. MAYS, D.D.S.

Come now Karen T. Mays, 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 § 596.000, 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 she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to present evidence on her 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 her and, subsequently, the right to a disciplinary hearing before the Board at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against her license. Being aware of these rights provided her 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 her.

Licensee acknowledges that she has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline her 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 2000168343 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 Karen T. Mays, D.D.S. is licensed by the Board as a dentist, License No. 2000168343. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about May 17, 2011, the Board received a complaint regarding Licensee from A.R., a former patient of Licensee. A.R. alleged that Licensee provided her with ill-fitting dentures. A.R. stated that Licensee told A.R. she needed to have all of her teeth pulled and replaced with a full set of dentures. A.R. had the teeth pulled and Licensee provided her with dentures. A.R. stated that she returned to Licensee several times because the dentures do not fit correctly and fall out of her mouth. A.R. stated that when she bites into food, the dentures "flop out of her mouth." A.R. stated that since having the teeth pulled and the dentures made, she discovered she had a genetic gum disease and that her teeth could have been saved if Licensee would have correctly diagnosed her issues. A.R. stated that when she informed Licensee of the gum disease, Licensee "agreed [she] had it." A.R. stated that Licensee stated they would make another denture, using her current denture as the mold. A.R. stated that she cannot afford to go to another dentist.

4. As a result of A.R.'s complaint, the Board provided Licensee with a copy of A.R.'s complaint. On or about August 2, 2011, Licensee provided the Board with a written response to A.R.'s complaint. Licensee stated that A.R. presented to the office for extraction and full dentures. Licensee stated that A.R.'s patient history information form stated "need upper and lower dentures and extractions." Licensee stated that the office took a panoramic x-ray for A.R. and she reviewed the x-ray and patient history. Licensee examined A.R.'s mouth which showed very poor oral health including inflammation, gingival recession, supra and subgingival calculus, plaque, tooth mobility and generalized bone loss. Licensee stated that A.R. stated given the situation, she wanted the full mouth extraction and dentures. On August 11, 2010, Licensee stated she extracted A.R.'s teeth and fabricated the temporary denture. Licensee stated that she fully informed A.R. in writing and orally about the healing process and temporary denture. Licensee stated that A.R. returned on August 27, 2010 for adjustment. Licensee stated A.R. did not return until November 15, 2010 for final dentures but the tissue was
not yet stable. She visited May 17, 2011 for her permanent dentures and submitted complaints via email about her treatment before going to Licensee’s office that day. Licensee stated she was "highly offended" by Licensee’s accusations. Licensee stated she discussed periodontal disease with A.R. prior to providing treatment and did not coerce her into treatment. Licensee stated A.R. apologized to her about some of her complaints and was satisfied with her permanent denture.

5. As a result of the A.R. complaint, Licensee appeared before the Board on October 20, 2011 with counsel. Licensee stated she disagrees with the allegations in A.R.'s complaint and stands behind her treatment. She stated it is not her practice to extract clinically sound teeth. Licensee stated she did “regret that [she] didn’t include detailed notes of what we did at our exam.” Licensee stated she does not do a lot of periodontal charting in her practice but does some. Licensee admitted that the documentation in A.R.'s chart did not sufficiently describe the appointments she had with A.R. regarding treatment planning, diagnosis, and informed consent. Licensee stated she should have better documented what she and A.R. discussed about treatment options and periodontal involvement. Licensee stated that perhaps some of A.R.'s teeth could have been saved with perio maintenance therapy. Licensee stated her dental assistants also take impressions for denture fabrication.

6. On or about September 21, 2010, the Board received a complaint about Licensee from M.L., a former patient of Licensee's. M.L. stated Licensee made an ill-fitting denture. M.L. stated that on his first visit to Licensee's office on July 27, 2010, he did not see Licensee, instead he saw the dental assistant who relined his current denture. M.L. stated that after the assistant relined his bite was off and food got stuck under the upper plate. When he returned to Licensee’s office on August 12, 2010 to have it relined again, he stated he demanded to see Licensee. He stated that Licensee said his bite was five to six centimeters off with the plate in its current state. He stated that Licensee said he built up both sides but the left side was much longer than the right. He stated it caused his mouth to become very sore and he had difficulty eating. He stated on his third visit on August 23, 2010, Licensee spent five minutes with him and then told the dental assistant to take care of him. He stated he had lost ten pounds since his second visit to Licensee’s office. M.L. stated that the assistant took his plate, left the room and came back about fifteen minutes later. The assistant stated that his mouth was sore because the plate had been built up. M.L. stated he could not return to Licensee’s practice because they could not help him. M.L. stated he cannot chew with the plate Licensee and her dental assistant worked on and
cannot "complete a meal without taking my plate out and rinsing it off." M.L. did not send any additional
documents other than those related to payment for services with the complaint.

7. As a result of M.L.'s complaint, Board Investigator Kevin Davidson visited Licensee's practice
on February 3, 2012 regarding M.L.'s complaint. Licensee stated that she had one full-time and one part-time
dental assistant but that her full-time assistant was leaving the practice. Licensee stated that both of her
assistants were expanded function dental assistants (EFDA) in prosthodontics. Licensee stated with regard to
M.L.'s complaint, his name was familiar. Licensee pulled his patient record. She stated he came to the practice
for a reline for his upper plate because the fit was too loose. Licensee stated that her assistant, K.B., took care
of M.L. and relined the plate. Licensee stated it appeared from his record that he returned to the office on
August 12, 2010 and complained of looseness in the upper plate and that his bite was different than it had been.
Licensee stated she did not see M.L. on his first visit to her office so she could not determine what his bite was
like previously. Licensee stated she noted excessive horizontal overjet and relined his plate at no charge.
Licensee stated that if M.L. had come back to the practice and told her he was having a problem, she would
have tried to fix it. Investigator Davidson collected M.L.'s patient record from Licensee and completed an
infection control inspection during the February 3, 2012 visit.

8. Following receipt of the M.L. complaint, Licensee appeared before the Board on August 2, 2012
with counsel. Counsel for Licensee stated that the patient record for M.L. that the Board had was different than
the record that Licensee had. Counsel stated that the record the Board had, someone had altered the records
to remove Licensee's initials from the documentation for M.L.'s first visit to make it appear that Licensee was not
present at or reviewed M.L.'s first visit. Counsel stated someone also removed a sentence in the middle of the
record stating that M.L.'s denture was fifteen years old and Licensee recommended replacement. The Board
stated, however, that the records the Board had were the records that Licensee provided to Investigator
Davidson when he visited the practice on February 3, 2012. Counsel stated that the patient did not request his
record. Licensee stated that on his initial visit to the practice, M.L. presented for a reline of his upper denture
which was fifteen years old. She stated they relined it and delivered it to him the same day. She stated he
came for a second visit on August 12, 2010 because it was still loose and his bite was different. She stated they
relined it and recommended replacing it. She stated they delivered it, bent it, bent the pallet and adjusted the
acrylic where there was a bump on the right side. She stated he returned on August 23, 2010 for an
adjustment. Licensee stated during her appearance that she did see M.L. during the appointment. Licensee stated that her assistant would have taken the impression, submitted it to the lab and relined it. Licensee stated there was nothing in M.L.'s record as to his bite or occlusal situation for the first visit to compare it to during his second visit. The Board, in questioning Licensee during the appearance, reminded Licensee that during her interview with Investigator Davidson, Licensee stated she did not see M.L. on his first visit. Licensee stated that "I guess it's possible" that she did not see him on the first visit. Licensee read from M.L.'s patient record in response to a question from the Board and stated that dental assistant P.M. initially saw M.L. on his first visit and that dental assistant K.B. assisted with the delivery of the plate. Licensee also read from M.L.'s patient record from August 12, 2010. Licensee read "Patient complains of looseness full upper denture, realigned 7/27/10, patient also complains of bite being different than before, having not evaluated patient at previous visit I don't know what his occlusion was like to start, however it says horizontal overjet noted, realign at no charge. KM. Karen Mays." Licensee stated that she suspected that note was correct given that her initials were behind it.

9. On or about September 4, 2012, the Board received a complaint regarding Licensee from M.D. In her complaint, M.D. stated that she first saw Licensee on March 7, 2012. M.D. stated that at that appointment, Licensee informed her that she had periodontal disease and that there were several pieces of broken bones that Licensee would need to remove when she pulled M.D.'s teeth. M.D. stated she next saw Licensee on April 17, 2012 when Licensee pulled eighteen of M.D.'s teeth in 3 minutes and thirty seconds. M.D. stated that upon finishing pulling the teeth Licensee said eighteen teeth in three and a half minutes was a record for her. M.D. stated that Licensee and her staff were verbally abusive toward her while making the mold for her dentures and made her cry. M.D. stated that when she received the dentures, she was not able to wear them because of the pieces of bone sticking in several places in her gum. M.D. stated the pain was intolerable and she had to take pain medicine every six hours daily. M.D. stated what when Licensee saw her for first follow-up a month later on May 16, 2012, Licensee stated it was no wonder M.D. could not wear the denture because of bone fragments. M.D. stated that Licensee did not remove the fragments but only put soft material in her dentures and told her not to take the dentures out of her mouth. M.D. stated that when she asked for her x-rays to take to a subsequent treating dentist, Licensee's office staff was rude and made her wait for an hour and 45 minutes for the x-rays. As of August 2012, M.D. stated she had not received her dental records from Licensee despite asking for them in July. She stated that she could still not wear her dentures, could only eat soft foods,
and lost twenty pounds as a result of the bone fragments. M.D. stated that she went to a dental specialist and had oral surgery to repair her gums. M.D. stated that her subsequent treating dentist informed her that Licensee did not remove any of the bones or the roots of her teeth even though she paid her to do so.

10. As a result of M.D.'s complaint, the Board conducted an investigation into the complaint. The Board sent Licensee a copy of M.D.'s complaint. Licensee's attorney provided a response to M.D.'s complaint. The response stated that Licensee did not tell M.D. she had any broken bones in her gums at the initial appointment. Instead, Licensee stated she told M.D. that she had "boney irregularities" and that alveoloplasty would help smooth the bones so the dentures would fit more comfortably. Licensee stated that M.D. said she could not afford it at that time. Licensee stated that the teeth were removed without incident and that the staff was not abusive. Licensee stated she did not find bone fragments at the May, 2012 follow up visit. Licensee stated it was the uneven ridges or boney irregularities not bone fragments that caused the discomfort. Licensee's records for M.D. reflected a complex medical history including bleeding problems, heart murmur and high blood pressure. However, Licensee's treatment notes do not reflect asking M.D. about the need to alter or add any medications before surgery as a result of the medical conditions. Licensee's records did not reflect why she waited a month to see M.D. for a follow-up when the standard of care would have been 24-48 hours. Additionally, M.D.'s oral surgeon removed bilateral mandibular bone which was not reflected on Licensee's records for M.D.

11. Pursuant to regulation 20 CSR 2110-2.120:

(2) A registered and currently licensed dentist may not delegate to a dental assistant or certified dental assistant, as defined in subsections (1)(B) and (C) respectively, the performance of the following procedures:

(A) Diagnosis, including interpretation of dental radiographs and treatment planning;
(B) Cutting of tooth structure;
(C) Surgical procedures on hard and soft tissues including, but not limited to, the removal of teeth and the cutting and suturing of soft tissues;
(D) The prescription, injection and parenteral administration of drugs;
(E) The final bending of archwire prior to ligation;
(F) The scaling of teeth; and
(G) Administration of nitrous oxide-oxygen analgesia except that a dental assistant or certified dental assistant may assist in the administration of and monitor nitrous oxide-oxygen analgesia with specific training as provided in section (3) of this rule.
(3) A dental assistant or certified dental assistant may assist the administration of and monitor nitrous oxide analgesia under direct supervision if s/he—

(A) Has successfully completed formal certified training in a course approved by the Missouri Dental Board; and
(B) Has successfully passed an approved competency test regarding the clinical and didactic training; or
(C) Has been certified in another state to assist the administration and monitor nitrous oxide subsequent to equivalent training and testing. The dental assistant may qualify to perform this function by presenting proof of competence of this equivalent training and testing to the Missouri Dental Board;
(D) The responsibility of the dental assistant or certified dental assistant shall be to provide the Missouri Dental Board proof of competence; and
(E) Upon presentation to the dental board of proof of competency that the dental assistant or certified dental assistant has complied with the requirements imposed by subsections (3)(A), (B) or (C) of this rule, and remitted the appropriate fee as specified in 4CSR 110-2.170, the Missouri Dental Board will issue the appropriate certification to the dental assistant or certified dental assistant.

(4) 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 subsequent to submission to the Missouri Dental Board of the following satisfactory proof of competence:

(A) After June 1, 1995, all certified dental assistants graduating from accredited dental assisting programs in Missouri will have competency testing for all functions listed in subsection (4)(D) of this rule and may be delegated those functions by a currently licensed dentist;
(B) Certified dental assistants graduating prior to June 1, 1995, or from programs outside Missouri, may be delegated the functions in subsection (4)(D) of this rule with proof of competence issued by their educational institutions and may be delegated other specific functions if they have completed an approved course, passed an approved competency examination, and can provide proof of competency as defined in subsection (1)(D);
(C) Dental assistants, as defined in subsection (1)(B), may be delegated any specific function listed in subsection (4)(D) of this rule if they have successfully completed a basic dental assisting skills mastery examination approved by the board, completed an approved course, passed an approved competency examination, and can provide proof of competence as defined in subsection (1)(D);
(D) Functions delegable upon successful completion of competency testing are—

1. Placement of post-extraction and sedative dressings;
2. Placing periodontal dressings;
3. Size stainless steel crowns;
4. Placing and condensing amalgam for Class I, V, and VI restorations;
5. Carving amalgam;
6. Placing composite for Class I, V, and VI restorations;
7. Polishing the coronal surfaces of teeth (air polisher);
8. Minor palliative care of dental emergencies (place sedative filling);
9. Preliminary bending of archwire;
10. Removal of orthodontic bands and bonds;
11. Final cementation of any permanent appliance or prosthesis;
12. Minor palliative care of orthodontic emergencies (that is, bend/clip wire, remove broken appliance);
13. Making impressions for the fabrication of removable prosthesis;
14. Placement of temporary soft liners in a removable prosthesis;
15. Place retraction cord in preparation for fixed prosthodontic impressions;
16. Making impressions for the fabrication of fixed prosthesis;
17. Extra-oral adjustment of fixed prosthesis;
18. Extra-oral adjustment of removable prosthesis during and after insertion; and
19. Placement and cementation of orthodontic brackets and/or bands; and

(5) Upon request by the Missouri Dental Board, the licensed and supervising dentist must provide copies of proof of competence of dental auxiliaries.

(6) A currently licensed dentist may delegate under direct supervision to a dental assistant or certified dental assistant any functions not specifically referenced in sections (2)–(4) of this rule and not considered either the practice of dentistry or the practice of dental hygiene as defined in sections 332.071 and 332.091, RSMo, and 4 CSR 110-2.130.

(7) Pursuant to section 332.031.2., RSMo, the dentist is ultimately responsible for patient care. Nothing contained in the authority given the dentist by this rule to delegate the performance of certain procedures shall in any way relieve the supervising dentist from liability to the patient for negligent performance by a dental assistant or certified dental assistant.

12. Licensee's delegation of duties including diagnosing a patient on his first visit to the practice in that the dentist did not see the patient, diagnose and provide the treatment plan, as described in paragraphs 3 through 10 above constitute improper delegation in violation of regulation 20 CSR 2110-2.120 for which the Board has cause to discipline Licensee's license.
13. Licensee's actions as described in paragraphs 3 through 10 above constitute incompetency and/or misconduct, in the functions and duties of a licensed dentist in that Licensee provided care below the standard of care of a licensed dentist for which the Board has cause to discipline Licensee's license.

14. Licensee's actions as described in paragraphs 3 through 10 above constitute violation of a professional trust or confidence in that Licensee provided care below the standard of care of a licensed dentist for which the Board has cause to discipline Licensee's license.

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

   ... 

(13) Violation of any professional trust or confidence[.]

Joint Agreed Disciplinary Order

16. 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:

17. The terms of discipline shall include that the dental license be placed on PROBATION for a period of five (5) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided she adheres to all of the terms of this Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS
A. Licensee shall take and pass the Board’s jurisprudence examination within twelve (12) months of this Agreement becoming effective. Licensee shall contact the Board office to request a current law packed 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 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 this Agreement.

B. Education. Licensee shall successfully complete sixty (60) hours of continuing education at Oral Health Enrichment in Cleveland, Ohio within nine (9) months of the beginning of Licensee’s period of probation. Licensee shall complete twenty (20) hours in diagnosis and treatment planning with an emphasis on periodontal management, twenty (20) hours in emergency medicine and twenty (20) hours in removable prosthetics. Following completion of the 60 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 nine (9) months of the beginning of Licensee’s period of probation 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 keep the Board apprised of her 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 her 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 herself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of her current place of business and residence, the time of her 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 her 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 the 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 her license 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.

18. 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.

19. 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.

20. Licensee, together with her heirs and assigns, and her 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.

21. 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.
22. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee’s license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee’s license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee’s license, the agreed upon discipline set forth herein shall go into effect. 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**

Karen T. Mays, D.D.S.

Date 12/19/2012

**BOARD**

Brian Barnett,
Executive Director
Missouri Dental Board

Date 1/16/13