SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND GARY L. SELBY, D.D.S.

Come now Gary L. Selby, 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 were cause to discipline his license, along with citations to law and/or regulations the Board believes were 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 011414 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 Gary L. Selby, D.D.S. is licensed by the Board as a dentist, License No. 011411. Licensee's Missouri license is and was at all times relevant herein, current and active.

3. On March 14, 2018, Licensee made application with the Missouri Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs (BNDD) for a controlled substance registration. Licensee previously held a controlled substance registration from BNDD. Licensee's previous registration expired on February 28, 2014 when Licensee failed to renew it despite receiving reminders from BNDD to renew the registration. Licensee has had no controlled substance authority in Missouri since February 28, 2014. On his application for registration, Licensee answered "yes" to previous discipline against his Missouri dental license.

4. As part of the review of Licensee's 2018 application for a registration, BNDD conducted an investigation and inspection. BNDD's inspection, performed on April 10, 2018, and investigation revealed the following which was provided to Licensee:

   a. BNDD's inspection and investigation revealed violations of state and federal drug laws.

      i. During the inspection, Licensee provided BNDD with an expired Drug Enforcement Agency (DEA) certificate. The certificate had expired February 28, 2015. Licensee corrected the violation, providing BNDD a certificate on April 16, 2018 with a February 28, 2021 expiration date. (21 C.F.R. 1301-35(c)).

      ii. Licensee prescribed controlled substance in the absence of a Missouri Controlled Substance Registration between February 28, 2014 and the time of his application, approximately 364 tablets of controlled substances from one pharmacy chain alone. (Section 195.030.2, RSMo, and 19 CSR 30-1.017(2)).
iii. Licensee failed to document controlled substance prescriptions in patient's medical records including a November 23, 2015 prescription for T.S. and a September 1, 2016 prescription for R.R. (section 195.050.6, RSMo and 19 CSR 30-1.048(2).

iv. Licensee caused controlled substances to be distributed in a manner not authorized by law in that his prescriptions were not legal or valid because of the lapse in his registration. Pharmacies, including Walgreens, dispensed drugs based on Licensee’s prescriptions which constitutes unlawful distribution pursuant to sections 195.030 and 579.084, RSMo.

v. Licensee prescribed controlled substances outside the scope of his professional practice in that he prescribed T.S. Tramadol, a controlled substance, because of pain in her neck caused by neck surgery performed by another doctor, not for a dental condition. (Sections 195.070.1 and 332.052, RSMo.).

vi. Licensee did not provide adequate controls to guard against the diversion of controlled substances. State and federal regulations require registrants to provide effective controls to guard against diversion of controlled substances, including when drugs leave the normal and legal channels not authorized by law. This occurred when Licensee prescribed the controlled substances without a current registration, in turn, causing pharmacies to dispense based on unlawful prescriptions. (19 CSR 30-1.031(1)).

b. As part of its investigation and inspection, BNDD identified two previous instances of public discipline by the Board of Licensee’s dental license.

i. In 1987, Licensee and the Board entered into a Consent Order wherein the Board suspended Licensee’s license for thirty days but suspended the imposition of the period of suspension and placed Licensee on one year of probation. The Board disciplined Licensee’s license as a result of Licensee’s unlawful prescription of controlled substances to three patients: 25 tablets of diazepam to A.W. for non-dental treatment purposes; 100 tablets of Tepanil Ten-Tab, an appetite suppressant to J.S. with whom he had no patient relationship and for non-dental treatment purposes; and on
approximately thirty occasions, 25 tablets of diazepam to T.S., a family member, who was not a patient for non-dental related purposes.

ii. In 1989, Licensee and the Board entered into a Consent Order wherein the Board placed Licensee’s license on three years’ probation pursuant to section 332.321.2(13) and (15), RSMo, as a result of Licensee’s purchase of 800 tablets of 5 mg diazepam for his use and the use of his family. Licensee purchased the tablets on January 9 and March 25, 1986. The Board received an Interstate Drug Exchange printout about the purchases on July 5, 1988. The Consent Order also stated that Licensee failed to disclose these purchases to the Board during his September 26, 1986 appearance.

c. As part of its inspection and investigation, BNDD requested Licensee’s controlled substance prescribing records from Walgreens. The report from Walgreens showed that from May 6, 2014 through November 10, 2017, Licensee prescribed 364 tablets of controlled substances.

d. As part of its inspection and investigation, BNDD selected three patient names from the Walgreens prescription profile and reviewed the charts to confirm the controlled substance prescribed was identified in the chart.

   i. Licensee prescribed patient N.B. a 5-day supply of 30 tablets of Diazepam 2 mg on August 29, 2016 which was documented in N.B.’s chart.

   ii. Licensee prescribed patient R.R. a 5-day supply of Hydrocodone 50 mg on September 1, 2016 which was not documented in R.R.’s chart.

   iii. Licensee prescribed patient T.S., a family member, a 5-day supply of 40 tablets of Tramadol on November 23, 2015. The prescription was not in T.S.’s chart. Licensee stated it was because T.S. had neck surgery and was in pain, needing more than her surgeon prescribed. Licensee stated it was “over the weekend” and he forgot to put it in the chart when he returned to work. Records from Walgreens show that Licensee wrote the prescription on Monday, November 23, 2015 and it was filled on November 27, 2015.

e. In response BNDD’s questions during the inspection, Licensee stated that he “was practicing as if I had [a registration],” that he did not apply sooner because he “forgot,” and that he had been
practicing since February 28, 2014 and "had prescribed controlled substances during the period he was expired."

f. Further, Licensee provided BNDD a letter dated April 16, 2018. He stated that "I regret that I have not handled drugs in the required manner. I want you to know that I greatly regret not keeping these records before being confronted with my failures. I will not write any inappropriate prescriptions in the future." "I wish I could correct past mistakes but I can promise I will not make the same mistakes in the future."

5. As a result of its investigation, on May 23, 2018, BNDD denied Licensee’s application for a controlled substance registration pursuant to section 195.040, RSMo. In the May 23, 2018 denial letter, BNDD stated that when determining whether to issue a registration, BNDD had to follow section 195.040.3(1), (2), (4) and (7), RSMo and take into account maintenance of effective controls against diversion, compliance with state and local law, past experience of the applicant in effective controls against diversion and other factors relevant to public health and safety. As a basis for denial, BNDD:

a. Cited the two previous disciplinary actions taken against Licensee’s license: 1) February 18, 1987 when Licensee’s dental license was suspended for 30 days which was suspended in lieu of one year of probation based on Licensee’s prescription of controlled substances to A.W. and J.C., neither of whom Licensee had patient relationship and the prescriptions were not for dental related conditions and the prescription on 32 occasions of controlled substances to T.S., also with whom Licensee had no patient relationship and the treatment was not for dental purposes; and 2) January 26, 1989 when the Board placed Licensee’s dental license on probation for three years as a result of Licensee purchasing 800 doses of a Schedule IV controlled substance for personal use by Licensee and Licensee’s family.

b. Cited violations identified during the April 10, 2018 inspection of Licensee’s compliance with BNDD requirements for controlled substance security and record keeping.

i. In violation of section 195.030.2, RSMo and 19 CSR 30-1.017(2), Licensee conducted activities with controlled substances in the absence of a Missouri Controlled Substances Registration as detailed in paragraphs 3 and 4 above.
ii. In violation of sections 195.030.3 and 195.070.1, RSMo and 19 CSR 30-1.060, thus committing a class E felony pursuant to section 579.084, RSMo, Licensee prescribed an opioid controlled substance to T.S., a family member for whom Licensee unlawfully prescribed in the absence of a dentist-patient relationship and for non-dental treatment as detailed in paragraphs 3 and 4 above.

iii. In violation of sections 195.050.6 and 332.032, RSMo, and 19 CSR 30-1.048(2), Licensee did not document all controlled substance prescriptions in a chart as required by law as described in paragraphs 3 and 4 above.

iv. In violation of 21 C.F.R. 1301-35(c), Licensee did not maintain a federal DEA Registration Certificate in a readily retrievable manner that could be produced at the time of the inspection. Licensee produced an expired certificate and later provided a copy of a current one six days after the inspection.

v. In violation of 19 CSR 30-1.031(1), there was diversion in Licensee’s practice in that Licensee caused controlled substance to leave their normal and legal channels and get diverted because Licensee did not have a current registration as described in paragraphs 3 and 4 above.

6. On or about June 26, 2018, BNDD filed a complaint against Licensee with the Board alleging that he was denied the renewal of his BNDD registration as described in paragraphs 3 through 5 above. BNDD also provided the Board a copy of its investigation, inspection, denial letter and all the attachments to those documents.

7. On or about August 2, 2018, the Board invited Licensee to appear before it at its regular board meeting on October 25, 2018 to discuss the BNDD complaint. Licensee declined to accept the Board’s invitation to appear.

8. Section 195.030, RSMo, states, in relevant part:

   2. No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare, distribute, dispense or prescribe any controlled substance and no person as a wholesaler shall supply the same, without having first obtained a registration issued by the department of health and senior services in accordance with rules and
regulations promulgated by it. No registration shall be granted for a term exceeding three years.

3. Persons registered by the department of health and senior services pursuant to this chapter to manufacture, distribute, or dispense or conduct research with controlled substances are authorized to possess, manufacture, distribute or dispense such substances, including any such activity in the conduct of research, to the extent authorized by their registration and in conformity with other provisions of this chapter and chapter 579.

9. Section 95.050.6, RSMo, states, in relevant part:

Every person registered to manufacture, distribute or dispense controlled substances under this chapter shall keep records and inventories of all such drugs in conformance with the record keeping and inventory requirements of federal law, and in accordance with any additional regulations of the department of health and senior services.

10. Section 95.070.1, RSMo, states, in relevant part:

A physician, podiatrist, dentist, a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, or an assistant physician in accordance with section 334.037 or a physician assistant in accordance with section 334.747 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.

11. 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.

2. Patient records remaining under the care, custody and control of the licensees shall be maintained by the licensee, or the licensee's designee, for a minimum of seven years from the date of when the last professional was provided or in the case of a minor, seven years from the age of majority.

3. Any correction, addition, or change in any patient record made more than forty-eight hours after the final entry is entered in the record as an addendum shall be clearly marked and identified as such, and the date, time and name of the person making the correction, addition, or change shall be included, as well as the reason for the correction, addition, or change.

12. Section 579.084, RSMo, states, in relevant part:

1. A person commits the offense of distribution of a controlled substance in violation of registration requirements if he or she:
(1) is subject to the provisions of sections 195.005 to 195.198, and knowingly distributes or dispenses a controlled substance in violation of section 195.030;
(2) is a registrant, and knowingly distributes or dispenses a controlled substance not authorized by that person's registration to another person or other authorized person; or
(3) Knowingly refuses or fails to make, keep or furnish any record, notification, order form, statement, invoice or information required under section 195.050.

2. The offense of distribution of a controlled substance in violation of registration requirements is a class E felony when the offense is a violation of subdivision (1) or (2) of subsection 1 of this section.

13. Regulation 19 CSR 30-1.017(2) states:

(2) Period of Registration.

(A) Any registration shall be current and effective for twelve (12) months from the date issued or until the expiration date assigned at the time the registration is issued. No person who is required to be registered shall conduct any activity for which registration is required without a current registration. No controlled substance activities shall take place after a registration expires until a new registration has been issued.

(B) At the time any registration is issued, the registration shall be assigned to one of twelve (12) groups which shall correspond to the months of the year. The expiration date of all registrations within any group shall be the last day of the month designated for that group.

(C) Registrations for manufacturers and distributors may be assigned to a single group, and the expiration date may be less than twelve (12) months from the date the registration was issued.

(D) Training program registrations may be assigned to a single group, and the expiration date may be less than twelve (12) months from the date the registration was issued.

(E) A certificate of registration shall be made available online and printable to the registrant which shall include the name and address of the registrant, the expiration date of the registration, and a registration number for the convenience of identifying a registration or a registrant. The same registration number may be used for a new registration for the same person.

14. Regulation 19 CSR 30-1.031(1) states:

All applicants and registrants shall provide effective controls and procedures to guard against theft and diversion of controlled substances. In order to determine whether a registrant has provided effective controls against diversion, the Department of Health shall use the security requirement set forth in 19 CSR 30-1.032-19 CSR 30-1.034 as standards for the physical security controls and operating procedures necessary to prevent diversion. Substantial compliance with these standards may be deemed sufficient by the Department of Health after evaluation of the overall security system and needs of the applicant or registrant.
15. 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.

16. Regulation 19 CSR 30-1.060 states, in relevant part:

When determining if controlled substances are being lawfully prescribed, dispensed and administered by practitioners, the Department of Health shall enforce Chapter 195 RSMo, the Department of Health rules in 19 CSR 30 pertaining to controlled substances, and the federal Controlled Substances Act 21 U.S.C. 801-966, and its regulations, 21 CFR 1300-1399. In determining lawful prescribing, dispensing and administering of controlled substances, the Department of Health also shall consider the provisions of Chapters 330, 332, 334, 335, 336, 338 and 340, RSMo, the rules in 4 CSR 110, 4 CSR 150, 4 CSR 200, 4 CSR 210, 4 CSR 220, 4 CSR 230 and 4 CSR 270, and protocols relating to the respective practitioners established and on file at the respective licensing boards.

17. 21 CFR 1301.35(c) states, in relevant part:

The Certificate of Registration (DEA Form 223) shall contain the name, address, and registration number of the registrant, the activity authorized by the registration, the schedules and/or Administration Controlled Substances Code Number (as set forth in part 1308 of this chapter) of the controlled substances which the registrant is authorized to handle, the amount of fee paid (or exemption), and the expiration date of the registration. The registrant shall maintain the certificate of registration at the registered location in a readily retrievable manner and shall permit inspection of the certificate by any official, agent or employee of the Administration or of any Federal, State, or local agency engaged in enforcement of laws relating to controlled substances.

18. Licensee's conduct, as described in paragraphs 3 through 7 above, constitutes cause to discipline Licensee's license.

19. 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;

(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;

...

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

Joint Agreed Disciplinary Order

20. 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:

21. The terms of discipline shall include that Licensee’s licensee shall be VOLUNTARILY SURRENDERED AND SHALL BE REPORTABLE DISCIPLINE. Licensee shall return all indicia of licensure to the Board.

22. 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.

23. 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.

24. 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.

25. 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, P.O. Box 1557, United States Post Office Building, 131 West High St, Jefferson City, MO 65102.

26. 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**

Gary L. Selby, D.D.S.

Date **11-15-2018**

**BOARD**

Brian Barnett,
Executive Director
Missouri Dental Board

Date **11/20/2015**