SETTLEMENT AGREEMENT BETWEEN
STATE BOARD OF PODIATRIC MEDICINE
AND ROBERT R. SHEMWELL

Comes now Robert R. Shemwell ("Licensee") and the State Board of Podiatric Medicine ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a podiatric physician will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 1994, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the state of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo 1994, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

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 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 Complaint filed with the
Board, the investigative report, and other documents relied upon by the Board in
determining there was cause for discipline against Licensee's license. For the purpose of
settling this dispute, Licensee stipulates that the factual allegations contained in this
agreement are true and stipulates with the Board that Licensee's license as a podiatric
physician, numbered 314, is subject to disciplinary action by the Board in accordance with
the provisions of Chapter 621 and Chapter 330, RSMo 1994.

Joint Stipulation of Fact

1. The State Board of Podiatric Medicine ("the Board") is an agency of the
   state of Missouri created and established pursuant to § 330.100, RSMo 1998, for the
   purpose of executing and enforcing provisions of Chapter 330, RSMo.

2. The Respondent ("Licensee") is licensed by the Board as a podiatric
   physician, license number 314. 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 was practicing podiatric
   medicine in Jackson County, Missouri.

4. On or about October 10, 1994, patient P.T. presented to Licensee.

5. P.T. complained that she experienced pain in both feet when walking.
6. Licensee performed a manual examination of P.T.'s feet and took x-rays.

7. Licensee diagnosed P.T.'s condition as bilateral Morton's neuromas of the second/third metatarsal interspace and third/fourth metatarsal interspace of the right foot and a mild hallux valgus deformity (bunion) of the great toe of the right foot.

8. These are several different treatments for the condition from which P.T. suffered, including surgery, cortisone injections, use of an inner sole in the patient's shoe, and custom orthotic footwear.

9. Licensee presented cortisone injections as an alternative to surgery on P.T.'s feet.

10. Licensee failed to discuss the other conservative treatments, use of an inner sole and use of custom orthotic footwear, with P.T.

11. At the time of her visit to Licensee on or about October 10, 1994, Licensee scheduled P.T. to have a surgical procedure to remove the bunion on P.T.'s right great toe.

12. Licensee scheduled P.T.'s surgery for October 17, 1994, at Cameron Community Hospital in Cameron, Missouri ("the hospital").

13. Licensee failed to obtain adequate informed consent from P.T. during the October 10, 1994, examination.

14. On or about October 17, 1994, P.T. presented to the hospital as scheduled for excision of Morton's neuromas and performance of a Modified McBride procedure to correct the bunion on P.T.'s right great toe.
15. Upon arrival at the hospital, Licensee diagnosed bilateral Morton's neuromas of the second/third metatarsal interspace and third/fourth metatarsal interspace of P.T.'s left foot.

16. Licensee failed to obtain adequate informed consent prior to performing surgery on P.T.'s feet.

17. On or about October 17, 1994, Licensee performed surgery for excision of Morton's neuromas on both feet and performance of a Modified McBride procedure to correct the bunion on P.T.'s right great toe.

**Joint Conclusions of Law**

18. Cause exists for Petitioner to take disciplinary action against Licensee's license pursuant to § 330.160.2(5) and (13), RSMo 1994, which provides 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 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 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 1994.

1. Licensee’s license as a podiatric physician is immediately placed on PROBATION for a period of two (2) years. The terms of the probation shall be:

   A. Licensee shall obtain an additional twelve hours per year of continuing medical education in the area of risk management, with emphasis in informed consent, documentation, and patient evaluation.

   B. Within thirty days Licensee shall submit to the Board a written consent form developed for use in his office. Licensee shall also provide evidence to the Board of his use of the consent form in his office.

   C. 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.

   D. Licensee shall immediately submit documents showing compliance with the requirements of this agreement to the Board when requested.
E. Licensee shall inform the Board within ten days of any change of home address or home telephone number.

F. Licensee shall not violate Chapter 330, RSMo, and shall not allow his license to lapse.

G. The terms of probation apply even if Licensee places his license on inactive status.

H. If Licensee fails to comply with the terms of this agreement, in any respect, the Board may impose such additional or other discipline which it deems appropriate.

2. The State Board of Podiatric Medicine shall maintain this Agreement as an open and public record of the Board as provided in Chapters 330, 610, and 620, RSMo.

3. Upon the expiration of said discipline period, Licensee’s license as a podiatric physician 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 Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline the Licensee.

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

6. Respondent hereby waives and releases the Board, its 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 attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this Litigation, or from the negotiation or execution of this Settlement and Release Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement and Release Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement and Release Agreement or any portion thereof void or unenforceable.

LICENSEE AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE

REQUESTS

[Signature]

DOES NOT REQUEST

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THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING LICENSEE'S LICENSE AS A PODIATRIC PHYSICIAN.

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 has not requested review by the Administrative Hearing Commission, the agreement goes in to effect 15 days after the document is signed by the Executive Director

RESPONDENT

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9/1/99
Attorneys for Petitioner