

Commonwealth of Kentucky  
Before the Kentucky Board of Dentistry  
312 Whittington Parkway, Suite 101  
Louisville, Kentucky 40222

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Agency Case Number K-12-002

Kentucky Board of Dentistry

Complainant

v. **Settlement Agreement**

Joshua McAlpin, D.M.D.  
(License No. 8695)

Respondent

\* \* \* \* \*

**Whereas**, the Kentucky Board of Dentistry (hereinafter “Board”) having information upon investigation of an initiating complaint that Joshua McAlpin, D.M.D. (hereinafter “Respondent”), 219 Burke Drive, Somerset, Kentucky 42501, has acted in violation of KRS Chapter 313, for which disciplinary action may be taken pursuant to KRS 313.080;

**Whereas**, the Respondent admits for the purposes of this Settlement Agreement the Board would be able to prove as follows:

Respondent has been convicted in 2010 and 2012 for operating a motor vehicle under the influence of drugs or alcohol in violation of KRS 313.080 (g); respondent is currently under indictment for 2<sup>nd</sup> degree possession of a controlled substance; and, if convicted, it would be a violation of KRS 313.080 (i)(d).

**Whereas**, the parties mutually desire to settle the issue in an expeditious manner, without the need for a formal hearing;

It is hereby stipulated and agreed between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**Voluntary Waiver of Rights**

The Respondent has had the opportunity at all times to seek the advice from competent counsel of choice. No coercion has been exerted upon the Respondent, nor have any promises been made other than those reflected in this agreement. The Respondent has freely and

voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. The Respondent has executed this Settlement Agreement only after a careful reading of it and a full understanding of all of its terms.

The Respondent is fully aware of the Respondent's rights to contest charges in a formal hearing. These rights include: representation by an attorney at the Respondent's own expense, the right to a public hearing on any charges or allegations filed, the right to confront and cross-examine witnesses called to testify against the Respondent, the right to present evidence on the Respondent's own behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on the Respondent's own behalf, the right to receive written findings of fact and conclusions of law supporting the decision on the merits of the charges, the right to obtain judicial review of the Board's decision, and the right to appeal any final order of the Board to the Circuit Court of the county in which the Board met as otherwise allowed by KRS 313.150(3). All of these rights are being voluntarily waived by the Respondent in exchange for the Board's acceptance of this Settlement Agreement.

### **Jurisdiction**

The Respondent acknowledges that the Board has jurisdiction over the Respondent and the conduct which has precipitated this settlement. The Respondent also acknowledges that the Board has the legal power to take disciplinary action up to and including revocation of the Respondent's license to practice dentistry upon proof of the allegations in the Formal Complaint pending against the Respondent.

The Respondent acknowledges that the Board will retain jurisdiction over this matter until all terms and conditions set forth in this Settlement Agreement have been met to the satisfaction of the Board.

### **Publication of Settlement**

The Respondent acknowledges that this Settlement Agreement may be considered a public document available for inspection at any time by any member of the public under the Kentucky Open Records Act. Further, the Respondent understands that the Board is free to make any use it deems appropriate of the contents of this agreement which shall include the Board's ability to share the content of this Settlement Agreement with any governmental or professional Board or organization and Board newsletter and availability via the Board website.

### **Effect Upon Licensure Status: Reprimand and Agreed Upon Discipline**

It is stipulated as the agreed upon disciplinary action that:

- 1) Within ten (10) days of signing this agreement, Respondent shall voluntarily surrender his DEA license and provide written proof of having surrendered said license; Respondent may request the Board to permit re-instatement of his DEA license if the pending controlled substance charges are dismissed;
- 2) Respondent shall undergo an in-patient well-being assessment to ensure he does not have any substance addiction which would adversely impact on his fitness to practice dentistry; this assessment process shall be coordinated with the Board's Well-Being Coordinator, Brian Fingerson; the Board shall be provided with a report of this in-patient assessment which will be reviewed by the Board's Law Enforcement Committee which may take additional action if the in-patient assessment report indicates Respondent may be unable to or unfit to practice dentistry with reasonable skill or safety.

### **Enforcement of Settlement Agreement and Immediate, Temporary Suspension of License**

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement constitutes misconduct for which the Board, its Law Enforcement Committee, or its Executive Director, shall issue an immediate, temporary suspension of the Respondent's dental license for a period of not less than twelve (12) months, and a fine of not less than \$500.00 as administrative costs of the Board, prior to a hearing with the right to appeal such action as provided under KRS 13B.125.

The Respondent agrees to indemnify the Board for any costs, including reasonable attorney's fees, if the Board finds, after notice and opportunity to be heard, that the Respondent has failed to comply with any provision of this Settlement Agreement.

### **Release of Liability**

In consideration of execution of this Settlement Agreement, the Respondent for the Respondent personally, the Respondent's executors, administrators, successors and assigns, hereby releases and forever discharges the Commonwealth of Kentucky, the Kentucky Board of Dentistry, and the Kentucky Attorney General and each of their members, agents, and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that the Respondent ever had, now has, may have or claim to have against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement or its administration.

### **Cooperation with the Board**

The Respondent agrees to permit and cooperate with the Board, its members, agents, and employees to monitor the Respondent's compliance with the terms and conditions of this Settlement Agreement.

### **Complete Agreement**

This Settlement Agreement consists of five (5) pages, and embodies the entire agreement between the Board and the Respondent. This Settlement Agreement shall constitute a binding contract between the Respondent and the Board and it may not be altered, amended or modified without the express written consent of both parties.

Have Seen, Understood, and Approved:

Kentucky Board of Dentistry

Josh McAlpin D.M.D.

Joshua McAlpin, D.M.D.  
219 Burke Drive  
Somerset, Kentucky 42501  
*Respondent*

Date: 1-3-13

Adam K. Rich D.M.D.

By: \_\_\_\_\_  
Adam K, Rich, D.M.D., President  
Kentucky Board of Dentistry  
312 Whittington Parkway, Suite 101  
Louisville, Kentucky 40222

Date: 1-4-13