

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

**Agency Case Number 10-090
Administrative Action No. 10-KBD-_____**

Kentucky Board of Dentistry

Complainant

v.

Settlement Agreement

**Rebecca, Werner, D.M.D.
(License No. 7332)**

Respondent

* * * * *

Whereas, the Kentucky Board of Dentistry (hereafter “Board”) having information upon investigation of an initiating complaint that Rebecca Werner, D.M.D. (hereafter “Respondent”), 1038 Washington St., Shelbyville, KY. 40065, has acted in violation of KRS Chapter 313, for which disciplinary action may be taken pursuant to KRS 313.080 (2)(a), (c), (d) and (f);

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

- 1) At least one (1) count of a violation of KRS 313.080 (2)(a) by violating a provision of KRS 313.080 and/or an administrative regulation of the Board, and;
- 2) At least one (1) count of a violation of KRS 313.080(2)(c) by practicing dentistry, as defined by KRS 313.010(9), by negligently performing restorative procedures in a manner that is substandard and which is inconsistent with the practice of dentistry, and
- 3) At least one (1) count of a violation of KRS 313.080(2)(d) by being unable to practicing dentistry, specifically restorative procedures, with reasonable skill or safety and being incompetent to practice a discipline (restorative dentistry) regulated by the Board, and
- 4) At least one (1) count of a violation of KRS 313.080(2) (f) by failing to make essential entries on essential records.

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 313.090(19). 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 a 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 once adopted by the Board, 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 shall publish or report the contents of this Settlement Agreement in accordance with KRS 313.090 (20).

Effect Upon Licensure Status: Fine; Costs, and; Proof of Make-Up Continuing Dental Education

It is stipulated as the agreed upon disciplinary action:

1) The Respondent shall, within 120 days of the entry of an Order of the Board adopting this Settlement Agreement, successfully complete twenty (20) hours of clinical and didactic restorative education with clinical and didactic assessment and examination from a Board approved course provider. It is understood that said continuing education course is to be in addition to the hours otherwise required by 201 KAR 8:530, Section 9 and/or 201 KAR 8:531 (E/O), Section 9.

2) Respondent shall, within 120 days of the entry of an Order of the Board adopting this Settlement Agreement, successfully complete five (5) hours of documentation education from a Board approved course provider. It is understood that said continuing education course is to be in addition to the hours otherwise required by 201 KAR 8:530, Section 9 and/or 201 KAR 8:531 (E/O), Section 9.

3) The Respondent shall pay directly to the Board, with a fully executed Settlement Agreement the amount of \$1,500.00 as a fine and investigative costs associated with the prosecution of this action. The Respondent shall make this payment by check/cashier's check or money order, which must contain the Respondent's license number, case number, made payable to the "Kentucky

Board of Dentistry,” and mailed or delivered to the Board at 312 Whittington Parkway, Suite 101, Louisville, Kentucky 40222-4925.

4) The Respondent may complete the foregoing continuing dental education course(s) at the Respondent’s cost as pre-approved by the Board to satisfy the deficiency from the following provider according to the following schedule -- Oral Health Enrichment, LLC, Woodmere Village, Ohio (440)-554-3304:

- A) 20 hours: twenty (20) hours of restorative education with clinical and didactic assessment and examination, and;
- B) 5 hours: documentation/dental record keeping education.

Enforcement of Settlement Agreement – Late Penalty for Overdue Costs/Fines

The Respondent expressly understands failure to comply with and complete all terms of this Settlement Agreement constitutes misconduct for which the Board may take additional disciplinary action after notice and opportunity to be heard.

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, the Respondent has failed to comply with any provision of this Settlement Agreement.

In addition to any of the remedies above, the Respondent agrees the Board shall assess a late penalty of 10% of the outstanding balance owed by Respondent for each month the Respondent fails to pay in full the amount set forth in ¶ 3, above, beginning thirty (30) days from the date of entry of an Order of the Board adopting this Settlement Agreement, and assessed on the first of each month thereafter until the full amount set forth in ¶ 3, above, and any late penalties, are paid in full.

Enforcement of Settlement Agreement and Immediate, Temporary Suspension of License

The Respondent expressly understands that 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, court 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 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.

Acceptance by the Board

It is hereby agreed between the parties that this Settlement Agreement shall be presented to the Kentucky Board of Dentistry acting by and through its Law Enforcement Committee with a recommendation for approval from the Board's attorney at the next regularly-scheduled meeting. The Respondent understands that the Law Enforcement Committee is free to accept or reject this Settlement Agreement, and if rejected, a formal disciplinary hearing on the accusations against the Respondent may be scheduled. The Respondent hereby agrees to waive

any right the Respondent might have to challenge the impartiality of the Board, based solely upon the presentation of this Settlement Agreement, to hear the disciplinary accusation if, after review by the Law Enforcement Committee (LEC), this Settlement Agreement is rejected.

If the Settlement Agreement is not accepted by the LEC, it shall be regarded as null and void. Admissions by the Respondent in the Settlement Agreement will not be regarded as evidence against the Respondent at any subsequent disciplinary hearing. The Respondent will be free to defend and no inferences against the Respondent will be made from the Respondent's willingness to have entered into this agreement.

The Settlement Agreement will not be submitted for LEC consideration until after it has been agreed to and executed by the Respondent. The Settlement Agreement shall not become effective until it has been approved by a majority of the LEC and endorsed by a representative member of the LEC, or if approved, by General Counsel for the Board or the Executive Director of the Board.

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 seven (7) 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, subject only to approval by the LEC, as set forth above. The Respondent shall not rescind, revoke, or withdraw this Settlement Agreement prior to its presentation to the LEC at a regularly scheduled meeting of the LEC. It may not be altered, amended or modified without the express written consent of both parties.

RECEIVED

MAY 16 2011

KBD

~~Have Seen, Understood, and Approved:~~

Kentucky Board of Dentistry:

~~Rebecca Werner, D.M.D.
630 Comanche Trail
Frankfort, Kentucky 40601
Respondent~~

By:

William A. Bausch
William A. Bausch,
General Counsel
Kentucky Board of Dentistry
312 Whittington Pkwy., Suite 101
Louisville, Kentucky 40222
Counsel for the Board

Date:

5-14-11

Date:

5-28-11