

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

Agency Case Number K-13-001

Kentucky Board of Dentistry

Complainant

v. Settlement Agreement

**M. Joan Kluemper, D.M.D.
License No. 4605**

Respondent

* * * * *

Whereas, the Kentucky Board of Dentistry (hereinafter “Board”) having information upon investigation of an initiating complaint that M. Joan Kluemper, D.M.D. (hereinafter “Respondent”), 1636 Nicholasville Road, Lexington, Kentucky 40503, has acted in violation of KRS Chapter 313, for which disciplinary action may be taken pursuant to KRS 313.080(2)(c);

Whereas, the Board conducted an investigation and reviewed the evidence collected during the investigation, which included patient records, and determined Respondent:

1. Failed to register for an account with the Kentucky All Scheduled Prescription Electronic Reporting System (hereinafter “KASPER”) within 30 days of the deadline of September 15, 2012;
2. Failed to review a KASPER report prior to prescribing a controlled substance;
3. Acted negligently in the diagnosis and treatment of oral disease; and
4. Failed to properly document patient assessments, diagnoses, treatment plans, and prescribed medications.

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

At least one (1) count of violating KRS 218A.202(2), KRS 313.080(2)(a), and 201 KAR 8:540, § 5(5) by failing to timely register with KASPER;

At least two (2) counts of violating KRS 313.080(2)(a) and 201 KAR 8:540 § 4(1) by failing to review a KASPER report prior to prescribing a controlled substance;

At least one (1) count of violating KRS 313.080(2)(c) by acting negligently in a manner inconsistent with the practice of the discipline for which she is licensed; and

At least twenty-three (23) counts of violating 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 carefully reading it and developing 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 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, 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 is free to make any use of the contents of this agreement as it deems appropriate. Such uses shall include, but not be limited to, publishing the agreement on the Board website and reporting its contents to the National Practitioner Data Bank pursuant to KRS 313.090(20).

Effect Upon Licensure Status: Fines; Continuing Education

It is stipulated as to the agreed upon disciplinary action that:

1. Respondent shall pay a fine of \$4,000 within thirty (30) days of signing this agreement (\$500 for failing to register for KASPER, \$500 for failing to review KASPER reports prior to prescribing controlled substances, \$1,500 for

acting negligently in a manner inconsistent with her discipline, and \$1,500 for failing to make essential entries on essential patient records); and

2. Within ninety (90) days of signing this agreement, Respondent shall undergo six (6) hours of Remedial Education through a program approved by the Board on the topic of diagnosis and treatment of oral disease; and twelve (12) hours of Remedial Education through a program approved by the Board on the topic of documentation of patient records; and
3. Respondent shall enter into and comply with a Well-being contract with the Board for a period of one (1) year.

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, 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. This Settlement Agreement may not be altered, amended or modified without the express written consent of both parties.

Have Seen, Understood, and Approved: Kentucky Board of Dentistry

M. Joan Kluemper, D.M.D. By: Brent T. Asseff
M. Joan Kluemper, D.M.D. Brent T. Asseff, General Counsel
1636 Nicholasville Road 312 Whittington Parkway, Suite 101
Lexington, Kentucky 40503 Louisville, Kentucky 40222
Respondent *Counsel for the Board*

Date: May 1, 2013

Date: 5/6/13