

**SETTLEMENT AGREEMENT BETWEEN THE MISSOURI
STATE BOARD OF REGISTRATION FOR THE HEALING ARTS
AND OSCAR H. GONZALEZ, M.D.**

Come now Oscar H. Gonzalez, M.D. (hereinafter "Licensee"), and the State Board of Registration for the Healing Arts (hereinafter the "Board") and enter into this agreement for the purpose of resolving the question of whether Oscar H. Gonzalez's license as a physician and surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to section 621.045, RSMo¹.

1. Licensee acknowledges that he understands the various rights and privileges afforded 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 present evidence on his own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against the Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided to the Licensee by operation of law, the Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this agreement and agrees to abide by the terms of this document as they pertain to him.

2. The Licensee acknowledges that he may, at the time this agreement is effective or within fifteen days thereafter, submit this agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of the Licensee's license.

3. The Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. The parties stipulate and agree that the order agreed to by the Board and the Licensee in Part III herein is based only on the agreement set out in Parts I and II herein. The Licensee understands that the

¹ All statutory references are to the Revised Statutes of Missouri (2011) unless otherwise stated.

Board may take further action against him based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

5. The Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this agreement as an open record of the Board as required by Chapters 324, 334, and 610, RSMo, and will report this agreement to the National Practitioner's Data Bank (NPDB) and the Federation of State Medical Boards (FSMB).

I. JOINT STIPULATION OF FACTS

Based upon the foregoing, the Board and the Licensee herein jointly stipulate to the following:

6. The State Board of Registration for the Healing Arts is an agency of the State of Missouri created and established pursuant to section 334.120, RSMo for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

7. The Licensee is licensed by the Board as a physician and surgeon, License Number 34768, which was first issued on June 24, 1972. Licensee's license is current, and was current and active at all times relevant herein.

8. Licensee was an independent contractor reviewing charts and authorizing prescriptions for Shapers' clients. Shapers purported to be a weight loss clinic. It was owned and staffed by individuals without any type of health care license or qualifications.

9. Body Mass Index (BMI) is a measure of body fat based on height and weight. Normal BMI is between 18.5 and 24.9. A BMI of less than 18.5 indicates someone is underweight. A BMI of between 25.0 and 29.9 indicates someone is overweight. A BMI of 30 indicates someone is obese.

10. Phentermine is a schedule IV controlled substance pursuant to section 195.017.8(4)(i), RSMo.

11. Phendimetrazine is a schedule III controlled substance pursuant to section 195.017.6(1)(d), RSMo.

12. Patient 1 was a female, five feet, six inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 1.

Date	Medication	Dose	Number	Weight (lbs)	BMI
6/27/2011	Phentermine	37.5 mg	30	150.9	24
7/27/2011	Phentermine	37.5 mg	30	146.0	23
8/29/2011	Phentermine	37.5 mg	30	140.5	22
10/3/2011	Phentermine	37.5 mg	30	141.6	22
1/26/2013	Phentermine	37.5 mg	30	152.7	24
3/26/2013	Phentermine	37.5 mg	30	152.0	23
5/10/2013	Phentermine	37.5 mg	30	151.2	23

13. Patient 2 was a male, six feet, one inch tall. This chart shows the medications approved by Licensee along with the BMI of Patient 2.

Date	Medication	Dose	Number	Weight (lbs)	BMI
2/11/2013	Phentermine	37.5 mg	30	180.0	23
4/10/2013	Phentermine	37.5 mg	30	179.2	23
5/8/2013	Phentermine	37.5 mg	30	178.9	23
6/4/2013	Phentermine	37.5 mg	30	176.0	23
7/3/2013	Phentermine	37.5 mg	30	175.9	23

14. Patient 3 was a female, five feet, five inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 3.

Date	Medication	Dose	Number	Weight (lbs)	BMI
2/11/2013	Phentermine	37.5 mg	45	126.7	20
3/15/2013	Phentermine	37.5 mg	45	127.5	21
4/10/2013	Phentermine	37.5 mg	45	121.8	20
5/8/2013	Phentermine	37.5 mg	45	124.1	20
6/4/2013	Phentermine	37.5 mg	30	118.8	19
7/3/2013	Phentermine	37.5 mg	30	117.5	19

15. Patient 4 was a female, five feet, two inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 4.

Date	Medication	Dose	Number	Weight (lbs)	BMI
7/29/2011	Phentermine	37.5 mg	30	124.5	22
8/30/2011	Phentermine	37.5 mg	30	126.2	22
2/11/2013	Phentermine	37.5 mg	30	119.1	21
3/20/2013	Phentermine	37.5 mg	30	118.1	21
4/10/2013	Phentermine	37.5 mg	30	117.2	21

5/8/2013	Phentermine	37.5 mg	30	116.2	21
6/4/2013	Phentermine	37.5 mg	30	116.6	21
7/3/2013	Phentermine	37.5 mg	30	110.0	19

16. Patient 5 was a female, five feet, three inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 5.

Date	Medication	Dose	Number	Weight (lbs)	BMI
2/11/2013	Phendimetrazine	35 mg	180	127.3	22
	Bontril	105 mg	180		
3/20/2013	Phendimetrazine	35 mg	180	124.0	21
4/10/2013	Phendimetrazine	35 mg	180	121.7	21
5/8/2013	Phendimetrazine	35 mg	180	121.4	21
6/4/2013	Phendimetrazine	35 mg	180	121.8	21
7/3/2013	Phendimetrazine	35 mg	180	118.2	20

17. Patient 6 was a male, six feet, two inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 6.

Date	Medication	Dose	Number	Weight (lbs)	BMI
1/21/2013	Phentermine	37.5 mg	30	249.2	31

18. Patient 7 was a female, five feet, seven inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 7.

Date	Medication	Dose	Number	Weight (lbs)	BMI
6/22/2011	Phentermine	37.5mg	45	203.4	31
7/29/2011	Phentermine	37.5mg	45	202.0	31
9/2/2011	Phentermine	37.5mg	45	200.9	31
2/4/2013	Phendimetrazine	35 mg	180	210.2	32
3/28/2013	Phendimetrazine	35 mg	180	212.7	33
5/10/2013	Phendimetrazine	35 mg	180	204.8	31

19. Patient 8 was a female, five feet, three inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 8.

Date	Medication	Dose	Number	Weight (lbs)	BMI
3/27/2013	Phentermine	37.5mg	45	139.3	24
5/14/2013	Phentermine	37.5mg	45	137.3	24
7/10/2013	Phentermine	37.5mg	45	133.3	23

20. Patient 9 was a male, six feet, one inch tall. This chart shows the medications approved by Licensee along with the BMI of Patient 9.

Date	Medication	Dose	Number	Weight (lbs)	BMI
7/18/2011	Phentermine	30mg	30	235.9	31
1/21/2013	Phentermine	30mg	30	259.4	34

21. Patient 10 was a female, five feet, seven inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 10.

Date	Medication	Dose	Number	Weight (lbs)	BMI
2/19/2013	Phentermine	37.5mg	30	165.7	25
4/16/2013	Phentermine	37.5mg	30	171.4	26
5/22/2013	Phentermine	37.5mg	45	167.7	26
6/25/2013	Phentermine	37.5mg	45	166.0	25

22. Patient 11 was a male, six feet, three inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 11.

Date	Medication	Dose	Number	Weight (lbs)	BMI
6/13/2011	Phentermine	37.5mg	45	341.4	42
7/11/2011	Phentermine	37.5mg	45	341.0	42
8/8/2011	Phentermine	37.5mg	45	340.6	41
9/7/2011	Phendimetrazine	35mg	150	342.1	42
1/22/2013	Phendimetrazine	35mg	180	353.1	44
2/15/2013	Phendimetrazine	35mg	180	355.6	44
3/11/2013	Phendimetrazine	35mg	180	367.4	46
4/5/2013	Phendimetrazine	35mg	180	359.9	45
4/29/2013	Phendimetrazine	35mg	180	366.2	45
5/22/2013	Phendimetrazine	35mg	180	358.6	45
6/24/2013	Phendimetrazine	35mg	180	356.7	45

23. Patient 12 was a female, five feet, seven inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 12.

Date	Medication	Dose	Number	Weight (lbs)	BMI
7/19/2011	Phentermine	37.5mg	45	221.5	34
8/15/2011	Phentermine	37.5mg	45	222.8	34
9/12/2011	Phentermine	37.5mg	45	218.0	34
10/7/2011	Phentermine	37.5mg	45	216.7	33
1/23/2013	Phentermine	37.5mg	45	217.4	33
2/18/2013	Phentermine	37.5mg	45	217.5	33

24. Patient 13 was a female, five feet, five inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 13.

Date	Medication	Dose	Number	Weight (lbs)	BMI
1/21/2013	Phentermine	37.5mg	30	153.4	25
3/1/2013	Phentermine	37.5mg	30	147.8	24
4/12/2013	Phentermine	37.5mg	30	143.9	23
6/14/2013	Phentermine	37.5mg	30	143.2	23

25. Patient 14 was a female, five feet, six inches tall. This chart shows the medications approved by Licensee along with the BMI of Patient 14.

Date	Medication	Dose	Number	Weight (lbs)	BMI
7/19/2011	Phentermine	37.5mg	45	168.9	26
8/16/2011	Phentermine	37.5mg	45	172.0	27

COUNT I

26. Paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

27. Licensee would review forms that clients of Shapers or employees of Shapers filled out. These forms consisted of two pages which included vital signs, height, weight, and some basic information about the client's eating and exercise habits. There was no history, physical examination, review of symptoms, diagnosis, or plan of care documented on the forms. The forms also contained a notation of medications called into a pharmacy in Licensee's name (usually phentermine or phendimetrazine).

28. Licensee would sign the forms, which acknowledge that he had agreed with the prescription. He never met or examined the clients himself.

29. The above constitutes cause to discipline Licensee's license pursuant to sections 334.100.2(4) and (4)(h), RSMo.

COUNT II

30. Paragraphs 1 through 29, above, are incorporated by reference as if more fully set forth herein.

31. Section 195.070.1, RSMo (2000), states:

A physician, podiatrist, dentist, a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, 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.

32. 19 CSR 30-1.060 states:

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.

33. Title 21 CFR 1301.71(a) 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 Administrator shall use the security requirements set forth in Secs. 1301.72-1301.76 as standards for the physical security controls and operating procedures necessary to prevent diversion. Materials and construction which will provide a structural equivalent to the physical security controls set forth in Secs. 1301.72, 1301.73 and 1301.75 may be used in lieu of the materials and construction described in those sections.

34. 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.

35. Licensee authorized the prescribing of controlled substances in bad faith and in a manner not authorized by law in violation of section 195.070.1, RSMo and 19 CSR 30-1.060.

36. Licensee did not provide adequate controls to prevent the diversion of controlled substances pursuant to Title 21 CFR 1301.71(a) and 19 CSR 30-1.031(1).

37. Specifically, Licensee delegated professional responsibilities, including the phoning in of prescriptions for patients without being examined by Licensee, to an employee who was not qualified by

training, skill, experience or licensure to perform such responsibilities in violation of section 334.100.2(4)(d), RSMo.

38. By delegating such responsibilities to an employee, Licensee prescribed controlled substances in bad faith and in a manner not authorized by law.

39. By delegating such responsibilities to an employee, Licensee failed to provide adequate controls to prevent the diversion of controlled substances.

40. Sections 195.030.3, 195.070.1 and 195.252.1, RSMo and 19 CSR 30-1.017(2), 19 CSR 30-1.031(1) and 19 CSR 30-1.060 and are drug laws or rules of this state. Title 21 CFR 1301.71(a) is a drug rule of the federal government.

41. The above constitutes cause to discipline Licensee's license pursuant to section 334.100.2(4)(d) and .2(13), RSMo.

COUNT III

42. Paragraphs 1 through 41, above, are incorporated by reference as if more fully set forth herein.

43. Licensee delegated the evaluation of clients and the prescribing of controlled and non-controlled medication to Employee 1.

44. Employee 1 had no medical training or licensure.

45. The above constitutes cause to discipline Licensee's license pursuant to section 334.100.2(4) and (4)(d), RSMo.

II. JOINT CONCLUSIONS OF LAW

46. Cause exists to discipline Licensee's license pursuant to sections 334.100.2(4), (4)(d), (4)(h), (5) and (13), RSMo which state:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 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 the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:

(d) Delegating professional responsibilities to a person who is not qualified by training, skill, competency, age, experience or licensure to perform such responsibilities;

(h) Signing a blank prescription form; or dispensing, prescribing, administering or otherwise distributing any drug, controlled substance or other treatment without sufficient examination including failing to establish a valid physician-patient relationship pursuant to section 334.108, or for other than medically accepted therapeutic or experimental or investigative purposes duly authorized by a state or federal agency, or not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, except as authorized in section 334.104;

(13) Violation of the drug laws or rules and regulations of this state, including but not limited to any provision of chapter 195, any other state, or the federal government;

47. The Licensee's conduct, as established by the foregoing facts, falls within the intendments of section 334.100.2, RSMo.

48. Cause exists for the Board to take disciplinary action against the Licensee's license under section 334.100.2, RSMo.

III. JOINT AGREEMENT ON DISCIPLINE

Based on 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 section 621.110, RSMo. This agreement, including the disciplinary order, will be effective immediately on the date entered and finalized by the Board. The following are the terms of the disciplinary order:

49. License number 34768 issued by the Board to the Licensee, is hereby PUBLICLY REPRIMANDED.

50. If the Licensee is licensed in other jurisdictions, then he shall notify, in writing, the physician licensing authorities of those jurisdictions, within thirty (30) days of the effective date of this settlement agreement, of the Licensee's disciplinary status in Missouri. The Licensee shall forward a copy of this written notice to the Board contemporaneously with sending it to the relevant licensing authority. If the Licensee is not licensed in other jurisdictions, he shall notify the Board of that fact in writing within thirty (30) days of the effective date of this settlement agreement.
51. The Licensee shall notify, within thirty (30) days of the effective date of this agreement, all employers, hospitals, nursing homes, out-patient centers, clinics, and all other facilities where the Licensee practices or has privileges, of his disciplinary status. If the Licensee does not have an employer, does not have privileges or does not practice at any facility, he shall notify the Board of that fact in writing within thirty (30) days of the effective date of this settlement agreement.
52. The Licensee shall notify any allied health care professionals he supervises of the disciplinary action imposed within thirty (30) days of the effective date of this settlement agreement. Notification shall be in writing and the Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative. If the Licensee does not supervise any allied health professionals, he shall notify the Board of that fact in writing within thirty (30) days of the effective date of this settlement agreement.
53. For purposes of this agreement, unless otherwise specified in this agreement, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board in this Order shall be forwarded to the State Board of Registration for the Healing Arts, Attention: Investigations, P.O. Box 4, Jefferson City, Missouri 65102.
54. This agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by the Licensee not specifically mentioned in this document that are currently either known or unknown to the Board.
55. Licensee 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 attorney's fees and expenses, including any claims pursuant to section 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 agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

LICENSEE

BOARD

Oscar Gonzalez, MD

Date

Connie Clarkston
Executive Director

Date

Attorney for Licensee

Date

Frank B. Meyers
Associate General Counsel
Missouri Bar No. 60976

Date

EFFECTIVE THIS 14th DAY OF October, 2014.