NV STATE BOARD OF OSTEOPATHIC MEDICINE
JUN 15 2016
FILED

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF:	Case No. AD1511001
MITCHEL PHILLIPS, D.O. License No. 291,	REMEDIATION AGREEMENT AND ORDER
Respondent.	

The Nevada State Board of Osteopathic Medicine (the Board), by and through its investigating board member Paul Mausling, D.O., hereby enters into this remediation agreement with Mitchel Phillips, D.O. (License No. 291). Pursuant to chapter 233B and chapter 633 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), it is hereby stipulated and agreed, by and between the parties in the above-entitled matter that this matter shall be fully and finally settled and resolved upon terms and conditions set out herein.

PERTINENT FACTS

1. On February 8, 1979, Dr. Phillips became licensed by the Board to practice as an osteopathic physician in Nevada (License No. 291). Dr. Phillips's practice address of record with the Board is Phillips Clinic, 5970-C South Rainbow Boulevard #100 in Las Vegas, Nevada. The Board's records show that Dr. Phillips is board certified in Family Medicine and that he has had not previously been disciplined by the Board.

2. In November 2015, the Board's staff commenced an investigation of Dr. Phillips based upon a review of the controlled substances prescriptions being written by Dr. Phillips and PA Gary Manley, a physician assistant employed by and supervised by Dr. Phillips, which showed large quantities of various opioids and other controlled substances were being prescribed by Dr. Phillips and PA Manley. As of the date of this Remediation Agreement and Order, PA Manley is not employed by and has no other relationship with Phillips Clinic or Dr. Phillips.

3. The Board's investigation included obtaining and reviewing Dr. Phillips' and PA Manley's records related to various patients being treated at Phillips Clinic. The investigation also involved a review of patient records for patients who were also Dr. Phillips' employees or various of the employees' family members. The Board's investigation also included obtaining a review of Dr.

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

MP

Phillips' records by a board-certified practitioner of Pain Medicine. Also, on March 8, 2016, Dr. Phillips met personally with the IBM and Board staff to discuss issues raised in the course of the Board's investigation. The investigation determined the following practice issues that will be remediated through the working of this Remediation Agreement:

(a) Dr. Phillips' treatment of patients at Phillips Clinic who suffered from chronic pain could be improved through the incorporation of some best practices related to the treatment of patients with chronic pain.

(b) Dr. Phillips' treatment of employees and family members of employees of Phillips Clinic presented concerns with objectivity of the treatment and issues related to boundaries of the various relationships created thereby such as employer/employee, patient/physician, and friend/physician.

(c) Dr. Phillips' supervision of PA Manley did not meet the Board's statutes and regulations.

(d) Dr. Phillips' and Phillips Clinic's recordkeeping using an electronic health records system regarding the assessment and treatment of patients was deficient and in need of improvement.

4. The Board's investigation was not based upon a patient complaint, so the Board's investigation did not seek or find any patient harm resultant from the acts of Dr. Phillips, PA Manley, or Phillips Clinic.

ACKNOWLEDGMENTS AND APPLICABLE LAW

5. In an effort to avoid the cost and uncertainty of a hearing, the parties have agreed to settle this matter. In settling this matter, Dr. Phillips makes no admission of wrongdoing, however he acknowledges that the facts contained in the preceding four paragraphs are true and correct. Dr. Phillips further acknowledges that certain facts contained in the preceding four paragraphs could be found to constitute violations of provisions of the Nevada Revised Statutes chapter 633 the Nevada Administrative Code chapter 633 had this matter proceeded to a Board hearing. Notwithstanding the preceding, the Board has agreed not to file an Accusation in this matter and the parties agree, instead, that the Board should rule upon this Remediation Agreement and Order as containing all necessary elements of due process to authorize the Board to take such action. Both parties acknowledge that the purpose of this Remediation Agreement and order is to assist Dr. Phillips in improving his practice and is not intended to punish him in any way. If the Board approves this Remediation Agreement and

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

Order, it shall be deemed and considered disciplinary action by the Board against Dr. Phillips. Because the intent of this agreement is the remediation of Dr. Phillips's future practice and does not involve any restriction of Dr. Phillips's practice or ability to treat patients, this Remediation Agreement and Order will not be reported to the National Practitioner's Data Base.

6. Dr. Phillips and Dr. Mausling, the Investigating Board Member in this matter, agree that it is in the best interests of Dr. Phillips and the Board to resolve this matter without a full hearing on the merits.

7. Dr. Phillips is aware of, understands, and has been advised of the effect of this Remediation Agreement, which he has carefully read and fully acknowledged. Dr. Phillips acknowledges that he reviewed this Remediation Agreement and that he was provided the opportunity to review this Remediation Agreement with legal counsel of his own choice, which he declined so to do.

8. Dr. Phillips has freely and voluntarily entered into the Remediation Agreement, and he is aware of his rights to contest the charges pending against him. These rights include representation by an attorney at his own expense, the right to a public hearing on any charges or allegations formally filed, the right to confront and cross-examine witnesses called to testify against him, the right to present evidence on his own behalf, the right to testify on his own behalf, the right to obtain any other type of formal judicial review of this matter, and any other rights which may be accorded to him pursuant the provisions of Chapters 233B, 622, 622A, and 633 of the NRS and the NAC. Dr. Phillips is voluntarily waiving all these rights in exchange for the Board's acceptance of this Remediation Agreement.

9. Should the Remediation Agreement be rejected by the Board, it is agreed that presentation to and consideration by the Board of such proposed Remediation Agreement or other documents or matters pertaining to the consideration of this Remediation Agreement shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration, adjudication, or resolution of these proceedings and that no Board member shall be disqualified or challenged for bias. Likewise, should this Remediation Agreement be rejected by the Board, it is agreed that the terms of the Remediation Agreement, and any facts contained herein, shall not be used against Dr. Phillips in any future prosecution or other action by the Board.

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

10. Dr. Phillips for himself, his executors, administrators, successors, and assigns hereby releases and forever discharges and holds harmless the State of Nevada, the Nevada Board of Osteopathic Medicine and each of their members, agents, investigators and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suit, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Licensee 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 agreement or its administration.

11. In consideration for the execution of this Remediation Agreement, Dr. Phillips hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada Attorney General's Office (as counsel for the Board), and each of their representatives, investigators, and employees, in their individual and representative capacity from any and all manner of actions, causes of actions, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law and in equity, that he may have had, now has, or claim to have against any and all of the persons and entities named in this paragraph arising out of or by reason of the investigation of the allegations raised herein and other matters relating thereto.

12. Dr. Phillips acknowledges that the Remediation Agreement shall only become effective after both the Board and he have duly executed it.

13. Dr. Phillips enters into this Remediation Agreement voluntarily after being fully advised of his rights and as to the consequences of this Remediation Agreement. This Remediation Agreement embodies the entire agreement reached between the Board and Dr. Phillips. It may not be altered, amended, or modified without the express consent of the parties.

14. Both parties acknowledge that the Board has jurisdiction to consider and ratify this Remediation Agreement and order because Dr. Phillips is an osteopathic physician licensed by the Board. Dr. Phillips expressly, knowingly, and intentionally waives the 21-day notice requirement contained in the Nevada Open Meeting Law and acknowledges that this Remediation Agreement and order may be presented to the Board for its consideration and potential ratification at the Board's meeting on June 14, 2016.

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

WP

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

AGREED REMEDIATION

THE PARTIES DO HEREBY AGREE that based upon the information in paragraphs 1 through 14 above the following remediation is fair and appropriate and should be imposed by the Board by way of resolution of this matter:

1. Dr. Phillips shall pay the Board's administrative fees and costs in this matter totaling $4,272.00, payable by cashier's or certified check or money order made payable to: "Nevada State Board of Osteopathic Medicine." Payment shall be due within 90 days of the effective date of this Remediation Agreement and Order, but if Dr. Phillips cannot make payment in full by that time, he may make payment arrangements with and as are acceptable to the Board's Executive Director.

2. To remediate and improve his practice of osteopathic family medicine regarding the prescribing of opioids for chronic pain, Dr. Phillips agrees to the following:

(a) Neither Dr. Phillips nor any other practitioner employed by or practicing from Phillips Clinic will provide any treatment for an employee or a member of an employee's family or household that would include the prescribing, administering, or dispensing of any controlled substance, but Dr. Phillips and Phillips Clinic may provide treatment of any other type that does not include the prescribing, administering, or dispensing of any controlled substance with the exception of testosterone. For any employee or a member of an employee's family or household for whom controlled substances might be appropriate or needed as part of a course of treatment, Dr. Phillips shall refer that person to another practitioner outside the practice of Phillips Clinic.

(b) Dr. Phillips will develop written policies and procedures related to his supervision of and the practices of all APRNs or PAs employed by or otherwise practicing from Phillips Clinic. The policies and procedures shall assure that all APRNs and PAs fully comply with Nevada law, including the Board's statutes and regulations regarding the supervision and practices of PAs. Dr. Phillips shall submit the written policies and procedures to the Board's office within 60 days of the effective date of this Remediation Agreement and Order. Board staff and the IBM shall review the policies and procedures and shall work with Dr. Phillips as necessary to assure that the policies and procedures comply with this subparagraph. Once the IBM approves the policies and procedures, Dr. Phillips and Phillips Clinic shall immediately implement them in the practice.

(c) Dr. Phillips shall improve the making, contents, and keeping of patient medical records. Dr. Phillips shall create a written policy and procedure regarding the making and keeping of patient medical records at Phillips Clinic. The policy and procedure shall assure that the records comply with Nevada law and contain all the elements of SOAP recordkeeping (Subjective, Objective, Assessment, and Plan). Dr. Phillips shall submit the written policies and procedures to the Board's office within 60 days of the effective date of this Remediation Agreement and Order. Board staff and the IBM shall review the policies and procedures and shall work with Dr. Phillips as necessary to assure that the policies and procedures comply with this subparagraph. Once the IBM approves the policies and procedures, Dr. Phillips and Phillips Clinic shall immediately implement them in the practice.

(d) Within 60 days of the effective date of this Remediation Agreement and Order, Dr. Phillips shall refer all patients he is presently treating for pain with opioids to a pain management and pain medicine specialist for a consultation. For any patients Dr. Phillips may treat for pain with opioids after the effective date of this Remediation Agreement and Order, if the treatment with opioids will exceed 90 days, Dr. Phillips shall refer all such patients to a pain management and pain medicine specialist for consultation. Dr. Phillips shall incorporate into his treatment plan of each patient the findings and recommendations for that patient made by the pain management and pain medicine specialist which may include co-managing patients along with the pain management and pain medicine specialist.

(e) Within 60 days of the effective date of this Remediation Agreement and Order, Dr. Phillips will read the following:

(1) The Model Policy for the Use of Opioid Analgesics in the Treatment of Chronic Pain (July 2013 edition) published by the Federation of State Medical Boards;

(2) The Clinical Guidelines for the Use of Chronic Opioid Therapy in Chronic Noncancer Pain published in the Journal of Pain, Volume 10, Number 2 (February 2009); and

(3) The CDC Guideline for Prescribing Opioids for Chronic Pain – United States, 2016 published by the Center for Disease Control and Prevention of the United States Department of Health and Human Services.

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

After reading the above-listed documents, Dr. Phillips' and Phillips Clinic's treatment of patients with opioids for pain shall demonstrate that he and the practice are incorporating the concepts and strategies contained in the above-listed documents into his and the practice's treatment of pain with opioid therapies. Board staff and the IBM may request patient records to verify that Dr. Phillips and Phillips Clinic have incorporated and implemented the concepts and strategies contained in the above-listed documents into his and the practice's treatment of pain with opioid therapies and shall work with Dr. Phillips as necessary to assure that the his and the practice's treatments comply with this paragraph.

3. For a period of one year from the effective date of this Remediation Agreement and Order, Dr. Phillips will provide such patient medical records as may be requested from time to time by the Board's staff so that the records can be reviewed by the Board's staff and the IBM. The intent of the obtaining and reviewing of Dr. Phillips's patient medical records is to ascertain that Dr. Phillips has made the remediations and improvements to his practice agreed to in this Remediation Agreement and Order. The Board's staff may, if it deems it necessary, have the medical records reviewed by a board-certified practitioner of osteopathic Family Medicine or by a board-certified practitioner of Pain Management or Pain Medicine. The Board's staff will notify Dr. Phillips in writing of the results of its review of each set of medical records and may, as may be necessary, make additional suggestions or observations intended to further remediate and improve Dr. Phillips's practice. If the Board's staff is satisfied from its occasional review of Dr. Phillips's records that he has remediated his practice as required in this Remediation Agreement and Order, it shall so notify Dr. Phillips and the Remediation Agreement and Order shall be deemed satisfied (as long as all other terms herein are also satisfied). Dr. Phillips will pay any and all reasonable costs associated with the review of his medical records.

4. The parties acknowledge that it is not the present intent of the Board to report this Remediation Agreement and Order to the National Practitioners Data Bank ("Data Bank"), as the action taken by the Board is a monetary reimbursement of administrative fees and costs unaccompanied by other licensure action, such as revocation, suspension, censure, reprimand, probation or surrender; provided however, if a report to the Data Bank is determined to be legally

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

required nothing in this Remediation Agreement and Order shall prohibit such report in accordance with law.

5. Dr. Phillips shall meet with the Board or its representatives upon request and shall cooperate with such representatives in their supervision, monitoring, investigation, or auditing to assure compliance with the terms and conditions of this order. Dr. Phillips shall pay any and all reasonable and necessary costs incurred by the Board resultant from this paragraph.

6. Dr. Phillips's failure to materially comply with any term of this Remediation Agreement and Order may result in discipline by the Board, up to and potentially including revocation of his license. Board Staff may take any and all actions it deems necessary to collect any sums ordered that remain unpaid. If Board Staff is required to pursue judicial action to effect such collections, it shall be entitled to recover its attorney's fees and costs incurred in pursuing such judicial action.

Signed this 2 day of June, 2016.

Respondent Mitchel Phillips

By _____
Mitchel Phillips, D.O,
Respondent

Nevada State Board of Osteopathic Medicine

By _____
Paul Mausling, D.O.
Investigating Board Member

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

ORDER

WHEREAS, on June 14, 2016, the Nevada State Board of Osteopathic Medicine approved and adopted the terms and conditions set forth in the Agreed Remediation and Order with Mitchel Phillips, D.O. IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 14 day of June, 2016.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Ronald Hedger, D.O.
Chairman

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 • Henderson, NV 89074
(702) 732-2147

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT	) Case No.: AD1511001
AGAINST	)
MITCHEL PHILLIPS, D.O.,	)
RESPONDENT.	)

NV STATE BOARD OF OSTEOPATHIC MEDICINE
JUN 15 2016
FILED

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, 2016, I served a copy of the ABOVE Notice with attachment upon the parties to this matter, via U.S. Postal Service, postage thereon prepaid, addressed as follows:

Mitchel Phillips, D.O.
5970-C S. Rainbow Blvd #100
Las Vegas, NV 89118

An employee of the Nevada State Board of Osteopathic Medicine

Nevada State Board of Osteopathic Medicine
2275 Corporate Circle, Suite 210 · Henderson, NV 89074
(702) 732 - 2147