

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

RICHARD HILER, D.O., Lic. # 1055

Respondent.

)
) CASE NO. MA 1005003
)
)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

SEP 08 2010

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Rota Rosaschi, MPH, Investigative Board Member ("Ms. Rosaschi" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Richard Hiler, D.O. ("Dr. Hiler") (collectively referred to as "the Parties").

II. RECITALS

As a preamble to this Agreement, the Parties agree to the following:

- A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain information regarding litigation filed against Dr. Hiler. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licenseses.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
 - (1) Re: patient "M.L." Suit was filed against the physician in Nevada in October 2009. The IBM has alleged that the physician did not timely report the commencement of the lawsuit to the Board, i.e., within 45 days of either event. Additionally, the physician responded "no" to the question about medical malpractice cases in the 2010 renewal application, submitted in 2009; and the proper response should have been "yes" because of the "M.L." lawsuit. The IBM has alleged these are violations of NRS chapter 633 as discussed hereinafter.
- C. WHEREAS, NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the Board: (a) any action for malpractice against the osteopathic physician not later than 45 days after the osteopathic physician receives service of a summons and complaint for the action; (b) any claim for malpractice against the osteopathic physician that is submitted to arbitration or mediation not later than 45 days after the claim is submitted to arbitration or mediation; (c) any settlement, award, judgment or other disposition or any action or claim described in paragraphs (a) or (b) not later than 45 days after the settlement, award, judgment or other disposition; and (d) any sanctions imposed against the osteopathic physician that are reportable to the National Practitioner Data Bank not later than 45 days after the sanctions are imposed. NRS 633.527(2) states that should the Board find "that an osteopathic physician has violated any provision of this section, **the Board may impose a fine of not more than \$5,000** against the osteopathic physician **for each violation, in addition to any other**

1 **fines or penalties permitted by law.** (Emphasis added.) This statute was added to
2 the law in 2003. By the use of the word “shall” by the Nevada State Legislature in this
3 statute, the Legislature intended to mandatorily require all osteopathic physicians to
4 report any of the four (4) events mentioned in the statute.

- 5 D. NRS 633.131(1) defines “unprofessional conduct” as including “willfully making a false
6 . . . statement . . . in applying for a license to practice osteopathic medicine or in
7 applying for renewal of a license to practice osteopathic medicine.” Pursuant to NRS
8 633.511(1), “unprofessional conduct” is a ground for initiating a formal disciplinary
9 proceeding; and such discipline may include public reprimands, the suspension or
10 revocation of the license to practice osteopathic medicine in the State of Nevada, and
11 an assessment of a fine not to exceed \$5,000 per violation.
- 12 E. WHEREAS, NRS 622.400(1) states that a “regulatory body [such as this Board] may
13 recover from a person reasonable attorney’s fees and costs that are incurred by the
14 regulatory body as part of its investigative, administrative and disciplinary proceedings
15 against the person if the regulatory body” either enters a final order or enters into a
16 settlement agreement.
- 17 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
18 Board to file a formal disciplinary complaint.
- 19 G. WHEREAS, the parties understand that this Agreement will be signed by the
20 respective parties and will then be offered to the Board for the entire Board’s approval
21 at the next Board meeting, with the recommendation of the Investigating Board
22 Member that this matter be settled. The Agreement shall not become effective until it
23 has been approved by a majority of the Board and endorsed by a representative
24 member of the Board.
- 25 H. WHEREAS, Dr. Hiler understands that the Board is free to accept or reject this
26 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
27 and a hearing scheduled on the same. The Board members who review this matter for
28 approval of this Agreement may be the same members who ultimately hear the
disciplinary complaint if this Agreement is not approved by the Board. Dr. Hiler hereby
agrees to waive any rights he might have to challenge the impartiality of the Board to
hear the disciplinary complaint, based on prior knowledge obtained by the Board
through consideration of this Agreement, if after review by the Board, this Agreement is
rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
as null and void.
- I. WHEREAS, Dr. Hiler acknowledges that the Board will retain jurisdiction over this
matter until all terms and conditions set forth in this Agreement and Order have been
met to the satisfaction of the Board.
- J. WHEREAS, Dr. Hiler acknowledges that the Board had a reasonable basis to believe
that the statutes and/or regulations regulating the practice of Osteopathic Medicine in
the State of Nevada may have been violated.
- K. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
and to save further costs and expenses, Dr. Hiler has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Hiler acknowledges that once accepted by the Board, this Agreement
and all associated documentation become a matter of public record (with the exception
of medical information related to the patient).
- M. WHEREAS, Dr. Hiler has had the opportunity to obtain the advice from competent
counsel of his choice concerning the terms and conditions of this Agreement and the
execution thereof. No coercion has been exerted upon Dr. Hiler, nor have any
promises been made other than those reflected in this Agreement. Dr. Hiler freely and

- 1 voluntarily entered into this agreement, motivated only by a desire to resolve the issues
2 addressed herein. Dr. Hiler has executed this Agreement only after a careful reading
3 of it and a full understanding of all its terms.
- 4 N. WHEREAS, Dr. Hiler is fully aware of his rights to contest the charges pending against
5 him. These rights include: representation by an attorney at his own expense, the right
6 to a public hearing on any charges or allegations filed, the right to confront and cross-
7 examine witnesses called to testify against him, the right to present evidence on his
8 own behalf, the right to compulsory process to secure the attendance of such
9 witnesses, the right to testify on his own behalf, the right to receive written findings of
10 fact and conclusions of law supporting the decision on the merits of the complaint and
11 the right to obtain judicial review of the Board's decision. Should the Board accept this
12 Agreement, Dr. Hiler voluntarily waives these rights.
- 13 O. WHEREAS, this Agreement and Order contains a complete description of the
14 agreement between the parties and it supersedes any previous agreements between
15 the parties. All material representations, understandings and promises of the parties
16 are contained in this Agreement. Any modifications must be set forth in writing, signed
17 by all the parties, and approved by the Board.

11 III. TERMS OF THE AGREEMENT

- 12 A. Dr. Hiler acknowledges that the failure to report allegations are true, and each such
13 act is a violation of NRS chapter 633 for which discipline is permissible under
14 Nevada law. In exchange for the Board not pursuing an administrative action on the
15 non-reporting allegations or the inaccurate renewal application allegations, and Dr.
16 Hiler not pursuing subsequent reviews by the appropriate appellate Courts, the
17 parties have agreed to resolve the current matter, and only this matter. Dr. Hiler will
18 henceforth insure that all lawsuits involving him will be timely and accurately
19 reported to the Board, and the failure to do so may result in the Board bringing a
20 disciplinary action against the osteopathic medical license issued by the Board to
21 Dr. Hiler. If any lawsuit is not reported to the Board, such will be in violation of this
22 agreement as well as the applicable statutes. **ADDITIONALLY, THE BOARD
23 ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A
24 DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE
25 BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
26 ADMINISTRATIVE FINE BEING ASSESSED SOLELY TO RESOLVE THE NON-
27 REPORTING ISSUE. ALL OTHER ALLEGATIONS HAVE BEEN WAIVED BY
28 THE BOARD.**
- 22 B. Dr. Hiler agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
23 imposed for having violated NRS chapter 633. This sum **includes** all fees and
24 costs incurred by the Board up to and including the approval of this settlement
25 agreement by the Board at its next scheduled board meeting pursuant to NAC
26 633.470(2)(b)(6). Such amount shall be payable in monthly installments of \$250.00
27 each with the first payment being due on the _____ day of _____
28 2010, and continuing thereafter until paid in full. *pd in full*
- 26 C. Should Dr. Hiler fail to satisfy and pay the indebtedness of \$500.00 in a timely
27 manner as discussed herein, Dr. Hiler understands and agrees that he will be
28 considered in default of this Agreement, and this agreement will be null and void,
with the Respondent receiving credit for payments made to date. The Board may
take whatever action it deems appropriate, including but not limited to reducing the
balance to judgment pursuant to NRS chapter 353C.

- 1 D. The Respondent, Dr. Hiler, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s) if applicable.
- 2 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
3 the parties hereto and their respective heirs, personal representatives, assigns and
4 successors in interest of each party.
- 5 F. This Agreement and Order shall be construed in accordance with the laws of the
6 State of Nevada.
- 7 G. This settlement agreement consists of five (5) pages and embodies the entire
8 agreement between the Board and the osteopathic physician. It may not be
9 altered, amended or modified without the express consent of the parties, and any
10 subsequent alteration, amendment, or modification shall be in writing and subject to
11 approval by the Board.
- 12 H. In consideration for the execution of this Agreement, Dr. Hiler hereby releases and
13 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and
14 the Attorney General's Office, and each of their representatives, investigators, and
15 employees, in their individual and representative capacity (collectively the State of
16 Nevada Agencies) from any and all manner of actions, causes of actions, suits,
17 debts, judgments, executions, claims, and demands whatsoever known or
18 unknown, in law and in equity, that he may have had, now has, may have had, or
19 claim to have against any and all of the persons and entities named in this
20 paragraph arising out of, or by reason of, the investigation of the allegations raised
21 in this matter, and other matters relating thereto.
- 22 I. Dr. Hiler, for himself, his heirs, executors, administrators, successors and assigns,
23 hereby indemnifies and holds harmless the State of Nevada, the State Board of
24 Osteopathic Medicine, the Attorney General's office and each of their members,
25 agents and employees in their individual and representative capacities against any
26 and all claims, suits, demands, actions, debts, damages, costs, charges, and
27 expenses, including court costs and attorney's fees against any persons or entities
28 as well as all liability, losses, and damages of any nature whatsoever that the
persons and entities named in this paragraph shall have or may at any time sustain
or suffer by reason of this investigation, this settlement or its administration.
- J. This document may be prepared in multiple counterparts. Each counterpart,
whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
shall be deemed an original hereof if executed by each of the Parties hereto.
- K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and
intentionally waive the 21-working days notice requirement pursuant to Nevada's
Open Meeting Laws and acknowledges that this Agreement shall be on the agenda
for the Board's approval in the month of September, 2010 and that
upon payment of the fine mentioned above, an order of fulfillment will be scheduled
for approval by the Board in the month of October, 2010.

RICHARD HILER, D.O.

By: 
Osteopathic Physician

Dated: 7/29/10

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: Rota Rosaschi
4 Rota Rosaschi, MPA
Investigating Board Member

By _____
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: 8-5-10

Dated: _____

6 **ACKNOWLEDGEMENT**

7 On this the _____ day of _____, 2010, the said RICHARD HILER,
8 D.O., personally appeared before me, a notary public, and signed the above document, freely
9 and voluntarily, under no duress.

10 _____
11 Notary Public

12 **ORDER OF THE BOARD**

13 **IT IS SO ORDERED.**

14 **IT IS FURTHER ORDERED** that should Dr. Hiler fail to comply with any terms or
15 conditions of this Agreement, Dr. Hiler will be in breach of this Agreement; and this
16 Agreement will be null and void. The Board may take whatever action it deems appropriate,
17 including but not limited to proceeding with the administrative action against Dr. Hiler. Should
18 this Agreement become null and void by Dr. Hiler's failure to comply with terms or conditions
19 of this Agreement, the Board may not only pursue an administrative action against Dr. Hiler,
20 but the Board may also seek the maximum fees, fines, and costs.

21 DATED this _____ day of _____, 2010.

22 NEVADA STATE BOARD OF
23 OSTEOPATHIC MEDICINE

24 BY: _____
25 Dr. Daniel K. Curtis, President of the Board

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: _____
4 Rota Rosaschi, MPH
Investigating Board Member

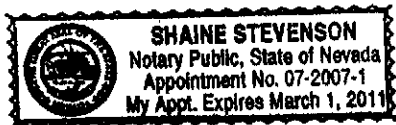
By Dianna Hegeduis
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: _____

Dated: 8-1-10

6
7 **ACKNOWLEDGEMENT**

8 On this the 29th day of July, 2010, the said RICHARD HILER,
9 D.O., personally appeared before me, a notary public, and signed the above document, freely
and voluntarily, under no duress.



12 Shaine Stevenson
13 Notary Public

14 **ORDER OF THE BOARD**

15 **IT IS SO ORDERED.**

16 **IT IS FURTHER ORDERED** that should Dr. Hiler fail to comply with any terms or
17 conditions of this Agreement, Dr. Hiler will be in breach of this Agreement; and this
18 Agreement will be null and void. The Board may take whatever action it deems appropriate,
19 including but not limited to proceeding with the administrative action against Dr. Hiler. Should
20 this Agreement become null and void by Dr. Hiler's failure to comply with terms or conditions
21 of this Agreement, the Board may not only pursue an administrative action against Dr. Hiler,
22 but the Board may also seek the maximum fees, fines, and costs.

23 DATED this 7th day of September, 2010.

24
25 NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

26 BY: Daniel K. Curtis
27 Dr. Daniel K. Curtis, President of the Board
28

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

RICHARD HILER, D.O., Lic. # 1055

Respondent.

CASE NO. MA 1005003

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

SEP 08 2010

FILED

WRITTEN NOTICE OF ENTRY OF ORDER APPROVING SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE that an order was entered regarding the Settlement Agreement in the above-referenced matter and a copy of the same is attached hereto.

DATED THIS 8th day of September, 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By

Dianna Hegeduis
Dianna Hegeduis, Executive Director –
Board Counsel
901 American Pacific Dr., # 180
Henderson, NV 89014

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of September, 2010, I served a copy of the foregoing notice, with attached Settlement Agreement/Order, upon the respective parties to this matter by depositing a true copy thereof in the U.S. mail, addressed to them at their last known address on file with the Board, postage thereon prepaid.

M. L. [Signature]

An employee of the NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147