

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 **IN THE MATTER OF THE COMPLAINT** }
3 **AGAINST** }
4 **DARRIN F. HOUSTON, D.O., LIC. #961,** }
5 **RESPONDENT.** }

Case No. **MA0908087**
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE
Filed: **DEC 09 2009**
FILED
Executive Director

6
7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

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

14 **II. RECITALS**

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

- 16
- 17 A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain
18 information regarding prior lawsuits filed against Dr. Houston. The information was
19 ascertained as a result of the Board's staff due diligence in investigating its
20 applicants/licenseses.
- 21 B. WHEREAS, the Investigative Board Member alleged (1) that Dr. Houston was sued by
22 patient "M.H." with service of the complaint on or before April 2006 and that such
23 lawsuit was resolved in September 2008, allegedly in favor of Dr. Houston; (2) that
24 patient "W.R." filed a complaint in the U.S. District Court on February 2, 2009, which
25 was dismissed on September 22, 2009 in favor of Dr. Houston, but subsequently refiled
26 in the 8th Judicial District Court; (3) that the matter pertaining to "M.H." was not reported
27 on the physician's 2007 and 2009 renewal applications; and (4) that the investigation of
28 the non-reporting allegations was not referenced in the 2010 renewal application
submitted to the Board on October 5, 2009. Failure to timely report a lawsuit filed and
served by a patient and the settlement thereof are violations of NRS 633.527.
- C. NRS 633.527(1) states that an "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

1 settlement, award, judgment or other disposition; and (d) any sanctions imposed
2 against the osteopathic physician that are reportable to the National Practitioner Data
3 Bank not later than 45 days after the sanctions are imposed. NRS 633.527(2) states
4 that should the Board find "that an osteopathic physician has violated any provision of
5 this section, **the Board may impose a fine of not more than \$5,000** against the
6 osteopathic physician **for each violation, in addition to any other fines or penalties**
7 **permitted by law.**" (Emphasis added.) This statute was added to the law in 2003. By
8 the use of the word "shall" by the Nevada State Legislature in this statute, the
9 Legislature intended to mandatorily require all osteopathic physicians to report any of
10 the four (4) events mentioned in the statute.

- 11 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
12 . . . statement . . . in applying for a license to practice osteopathic medicine or in
13 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
14 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
15 proceeding; and pursuant to NRS 633.651, such discipline may include public
16 reprimands, the suspension of the license to practice osteopathic medicine in the State
17 of Nevada, and even the revocation of the license to practice osteopathic medicine in
18 the State of Nevada. The 2009 Nevada Legislature amended NRS 633.651 to allow
19 the Board to assess a fine of not more than \$5,000 per violation of NRS chapter 633.
- 20 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
21 person reasonable attorney's fees and costs that are incurred by the regulatory body as
22 part of its investigative, administrative and disciplinary proceedings against the person
23 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 24 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
25 Board to file a formal disciplinary complaint.
- 26 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
27 parties and will then be offered to the Board for the entire Board's approval at the next
28 Board meeting, with the recommendation of the Investigating Board Member that this
matter be settled. The Agreement shall not become effective until it has been
approved by a majority of the Board and endorsed by a representative member of the
Board.
- H. WHEREAS, Dr. Houston understands that the Board is free to accept or reject this
Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
and a hearing scheduled on the same. The Board members who review this matter for
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. Houston
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. Houston 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. Houston 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. Houston has elected to enter into this
Agreement to resolve this matter, and only the matters/issues raised herein.

- 1 L. WHEREAS, Dr. Houston acknowledges that once accepted by the Board, this
2 Agreement and all associated documentation become a matter of public record (with
3 the exception of medical information related to the patient).
4 M. WHEREAS, Dr. Houston has had the opportunity to obtain the advice from competent
5 counsel of his choice concerning the terms and conditions of this Agreement and the
6 execution thereof. No coercion has been exerted upon Dr. Houston, nor have any
7 promises been made other than those reflected in this Agreement. Dr. Houston freely
8 and voluntarily entered into this agreement, motivated only by a desire to resolve the
9 issues addressed herein. Dr. Houston has executed this Agreement only after a
10 careful reading of it and a full understanding of all its terms.
11 N. WHEREAS, Dr. Houston is fully aware of his rights to contest the charges pending
12 against him. These rights include: representation by an attorney at his own expense,
13 the right to a public hearing on any charges or allegations filed, the right to confront and
14 cross-examine witnesses called to testify against him, the right to present evidence on
15 his own behalf, the right to compulsory process to secure the attendance of such
16 witnesses, the right to testify on his own behalf, the right to receive written findings of
17 fact and conclusions of law supporting the decision on the merits of the complaint and
18 the right to obtain judicial review of the Board's decision. Should the Board accept this
19 Agreement, Dr. Houston voluntarily waives these rights.
20 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
21 of the State of Nevada.
22 P. WHEREAS, this Agreement and Order contains a complete description of the
23 agreement between the parties and it supersedes any previous agreements between
24 the parties. All material representations, understandings and promises of the parties
25 are contained in this Agreement. Any modifications must be set forth in writing, signed
26 by all the parties, and approved by the Board.

27 III. TERMS OF THE AGREEMENT

- 28 A. Dr. Houston acknowledges that the failure to timely report allegations are true with
respect to the lawsuit filed by patient "M.H.," and such acts (i.e., failure to timely
report) are violations of NRS chapter 633 and discipline is permissible under
Nevada law. In exchange for the Board not pursuing an administrative action
against Dr. Houston for the alleged inaccurate information contained within the
renewal application and the untimely reporting, and Dr. Houston not pursuing
subsequent reviews by the appropriate appellate Courts, the parties have agreed to
resolve the current matter, and only this matter as described in Section II, "B." Dr.
Houston will henceforth insure that all lawsuits involving him will be timely and
accurately reported to the Board, and the failure to do so may result in the Board
bringing a disciplinary action against the osteopathic medical license issued by the
Board to Dr. Houston. If any lawsuit is not reported to the Board, such will be in
violation of this agreement as well as the applicable statutes. **ADDITIONALLY,
THE BOARD ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE,
THAT A DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY
THE BOARD WITH RESPECT TO THE ALLEGATIONS MENTIONED HEREIN;
AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN ADMINISTRATIVE
FINE BEING ASSESSED FOR THE NON-REPORTING VIOLATION, I.E., NOT
FOR ANY ALLEGATIONS REGARDING UNPROFESSIONAL CONDUCT
AND/OR REGARDING THE PHYSICIAN'S COMPETENCY.**

- 1 B. Dr. Houston agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the fine
2 imposed for having violated NRS 633.527(1) for the failure to timely report the
3 filing/service of the lawsuit and the settlement. This sum **includes** all fees and
4 costs incurred by the Board up to and including the approval of this settlement
5 agreement by the Board at its next scheduled board meeting pursuant to NAC
6 633.470(2)(b)(6). Such amount shall be paid at the time of the execution of this
7 agreement. As noted immediately above, the Board has waived any fees or fines
8 with respect to any allegations concerning inaccurate/incomplete renewal
9 applications.
- 10 C. Should Dr. Houston fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
11 manner as discussed herein, Dr. Houston understands and agrees that he will be
12 considered in default of this Agreement, and this agreement will be null and void,
13 with the Respondent receiving credit for payments made to date. The Board may
14 take whatever action it deems appropriate, including but not limited to reducing the
15 balance to judgment pursuant to NRS chapter 353C.
- 16 D. The Respondent, Dr. Houston, agrees to bear his own fees and costs, including the
17 fees and expenses of his own attorney(s) if applicable.
- 18 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
19 the parties hereto and their respective heirs, personal representatives, assigns and
20 successors in interest of each party.
- 21 F. This Agreement and Order shall be construed in accordance with the laws of the
22 State of Nevada.
- 23 G. This settlement agreement consists of six (6) pages and embodies the entire
24 agreement between the Board and the osteopathic physician. It may not be altered,
25 amended or modified without the express consent of the parties, and any
26 subsequent alteration, amendment, or modification shall be in writing and subject to
27 approval by the Board.
- 28 H. In consideration for the execution of this Agreement, Dr. Houston hereby releases
and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
and the Nevada State Attorney General's Office (as counsel for the Board), and
each of their representatives, members, investigators, and employees, in their
individual and representative capacity (collectively the State of Nevada Agencies)
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, may have had, 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 in this matter, including those
noted in the administrative complaint on file herein, and other matters relating
thereto.
- I. Dr. Houston, for himself, his heirs, executors, administrators, successors and
assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
State Board of Osteopathic Medicine, the Nevada Attorney General's office and
each of their members, agents and employees in their individual and representative
capacities against any and all claims, suits, demands, actions, debts, damages,
costs, charges, and expenses, including court costs and attorney's fees against any
persons or entities 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 disciplinary action,
this settlement or its administration.

- 1 J. This document may be prepared in multiple counterparts. Each counterpart,
2 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
3 shall be deemed an original hereof if executed by each of the Parties hereto.
4 K. LASTLY, by executing this agreement, Respondent Physician hereby expressly,
5 knowingly, and intentionally waive the 21-working days notice requirement pursuant
6 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
7 the agenda for the Board's approval in the month of December, 2009.

8 DARRIN HOUSTON, D.O.

9 
10 _____
11 Osteopathic Physician

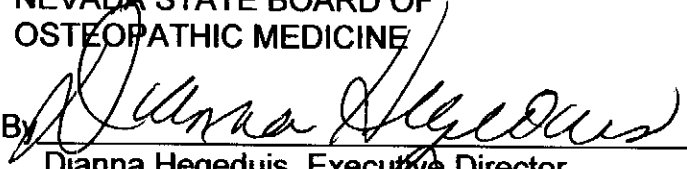
12 Dated: 11-13-09

13 NEVADA STATE BOARD OF
14 OSTEOPATHIC MEDICINE

15 BY: _____
16 Rota Rosaschi, MPA
17 Investigating Board Member

18 Dated: _____

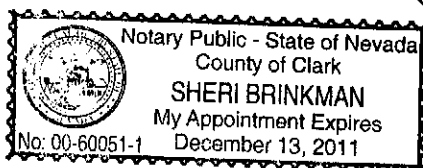
19 NEVADA STATE BOARD OF
20 OSTEOPATHIC MEDICINE

21 BY: 
22 _____
23 Dianna Hegeduis, Executive Director -
24 Board Counsel

25 Dated: 11-17-09

26 **ACKNOWLEDGEMENT**

27 On this the 13 day of November, 2009, the said DARRIN HOUSTON, D.O.,
28 personally appeared before me, a notary public, and signed the above document, freely and
voluntarily, and under no apparent duress.



32 **ORDER OF THE BOARD**

33 **IT IS SO ORDERED.**

34 **IT IS FURTHER ORDERED** that should Dr. Houston fail to comply with any terms or
35 conditions of this Agreement, Dr. Houston will be in breach of this Agreement; and this

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2 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
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7 the agenda for the Board's approval in the month of December, 2009.

8 DARRIN HOUSTON, D.O.

9 _____
10 Osteopathic Physician

11 Dated: _____

12 NEVADA STATE BOARD OF
13 OSTEOPATHIC MEDICINE

14 BY: _____

15 *Rota Rosaschi*
16 Rota Rosaschi, MPA
17 Investigating Board Member

18 Dated: 11/17/09

19 NEVADA STATE BOARD OF
20 OSTEOPATHIC MEDICINE

21 By _____

22 Dianna Hegeduis, Executive Director -
23 Board Counsel

24 Dated: _____

25 **ACKNOWLEDGEMENT**

26 On this the _____ day of _____, 2009, the said DARRIN HOUSTON, D.O.,
27 personally appeared before me, a notary public, and signed the above document, freely and
28 voluntarily, and under no apparent duress.

Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Houston fail to comply with any terms or
conditions of this Agreement, Dr. Houston will be in breach of this Agreement; and this

1 Agreement will be null and void. The Board may take whatever action it deems appropriate,
2 including but not limited to proceeding with the administrative action against Dr. Houston.
3 Should this Agreement become null and void by Dr. Houston's failure to comply with terms or
4 conditions of this Agreement, the Board may not only pursue an administrative action against
5 Dr. Houston, but the Board may also seek the maximum fees, fines, and costs.

6 DATED this 7th day of DECEMBER, 2009.

7 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

8
9 BY:



10 Dr. Daniel Curtis, Chairman/President of the
11 Board

