BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT AGAINST

MICHAEL R. JENKINS, LIC. #1451
RESPONDENT.

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Rota Rosaschi, MPA, 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 Michael Jenkins, D.O. ("Dr. Jenkins") (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 ("IBM"), ascertained certain information regarding an agreement entered into between Dr. Jenkins and the Drug Enforcement Agency ("DEA") in March 2008 and the failure of a sister state to grant full licensure to Respondent in 2006. The information was ascertained as a result of the Board’s staff due diligence in investigating its applicants/licensees as well as from information received directly from Dr. Jenkins.

B. WHEREAS, the Investigative Board Member alleged that Dr. Jenkins failed to notify the Board of the issuance of a probationary license by Montana in 2009, rather than it issuing him a full unrestricted license. Dr. Jenkins claims that he reviewed the matter as a "positive action" and that it was an "oversight" on his part by not reporting the event to the Board. Such a failure is a violation of NRS 633.527.

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

D. NRS 633.131(1) defines “unprofessional conduct” as including “willfully making a false . . . statement . . . in applying for a license to practice osteopathic medicine or in applying for renewal of a license to practice osteopathic medicine.” Pursuant to NRS 633.511(1), “unprofessional conduct” is a ground for initiating a formal disciplinary proceeding; and pursuant to NRS 633.651, such discipline may include a fine, public reprimand, the suspension of the license to practice osteopathic medicine in the State of Nevada, and even the revocation of the license to practice osteopathic medicine in the State of Nevada.

E. NRS 622.400(1) states that a “regulatory body [such as this Board] may recover from a person reasonable attorney’s fees and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings against the person if the regulatory body” either enters a final order or enters into a settlement agreement.

F. WHEREAS, the parties have agreed to informally settle this matter, rather than requiring the Board to file a formal disciplinary complaint.

G. WHEREAS, the parties understand that this Agreement will be signed by the respective parties and will then be offered to the Board for the entire Board’s approval at the next 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. Jenkins 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. Jenkins 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. Jenkins 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. Jenkins 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. Jenkins has elected to enter into this Agreement to resolve this matter, and only the matters identified herein.

L. WHEREAS, Dr. Jenkins 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. Jenkins 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. Jenkins, nor have any
promises been made other than those reflected in this Agreement. Dr. Jenkins freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. Jenkins has executed this Agreement only after a careful
reading of it and a full understanding of all its terms.

N. WHEREAS, Dr. Jenkins is fully 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 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 compulsory process to secure the attendance of such
witnesses, the right to testify on his own behalf, the right to receive written findings of
fact and conclusions of law supporting the decision on the merits of the complaint and
the right to obtain judicial review of the Board’s decision. Should the Board accept this
Agreement, Dr. Jenkins voluntarily waives these rights.

O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
of the State of Nevada.

P. WHEREAS, this Agreement and Order contains a complete description of the
agreement between the parties and it supersedes any previous agreements between
the parties. All material representations, understandings and promises of the parties
are contained in this Agreement. Any modifications must be set forth in writing, signed
by all the parties, and approved by the Board.

III. TERMS OF THE AGREEMENT

A. Dr. Jenkins acknowledges that the failure to timely report allegation is true with
respect to his Montana license. Such failure is a violation of NRS chapter 633 and
discipline is permissible under Nevada law. In exchange for the Board not pursuing
an administrative action against Dr. Jenkins for the untimely reporting, and Dr.
Jenkins not pursuing subsequent reviews by the appropriate appellate Courts, the
parties have agreed to resolve the current matter, and only this matter.

ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND THE PARTIES DO
HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL NOT AND HAS NOT
BEEN FILED BY THE BOARD; 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, WHICH CLAIM OF UNPROFESSIONAL CONDUCT HAS BEEN
WAIVED BY THE BOARD.

B. Dr. Jenkins agrees to pay the sum of Five Hundred Dollars ($500.00) as the fine
imposed for having violated NRS 633.527(1) for the failure to timely report the
Montana action. This sum includes all fees and costs incurred by the Board up to
and including the approval of this settlement agreement by the Board at its next
scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall be
payable in the amount of $250.00 per month beginning on the 15th day of January,
2010, and such amount shall continue to be due thereafter on the 15th day of each
month, until the full amount of Five Hundred Dollars is paid.

C. Should Dr. Jenkins fail to satisfy and pay the indebtedness of $500.00 in a timely
manner as discussed herein, Dr. Jenkins understands and agrees that he will be
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.

D. The Respondent, Dr. Jenkins, agrees to bear his own fees and costs, including the fees and expenses of his own attorney(s) if applicable.

E. This Agreement and Order shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, personal representatives, assigns and successors in interest of each party.

F. This Agreement and Order shall be construed in accordance with the laws of the State of Nevada.

G. This settlement agreement consists of six (6) pages and embodies the entire agreement between the Board and the osteopathic physician. It may not be altered, amended or modified without the express consent of the parties, and any subsequent alteration, amendment, or modification shall be in writing and subject to approval by the Board.

H. In consideration for the execution of this Agreement, Dr. Jenkins 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, 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, the settlement thereof, and other matters relating thereto.

I. Dr. Jenkins, 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 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, Respondent 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 January, 2010.

MICHAEL JENKINS, D.O.

[Signature]

Osteopathic Physician

Dated: 12/21/09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: Rota Rosaschi, MPA,
Investigating Board Member

Dated: [Signature]

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By Dianna Hegedus, Executive Director - Board Counsel

Dated: [Signature]

ACKNOWLEDGEMENT

On this the 21st day of December, 2009, the said MICHAEL JENKINS, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, and under no duress.

Rhonda Nelson
Notary Public

RHONDA NELSON
NOTARY PUBLIC FOR THE STATE OF MONTANA.

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Jenkins fail to comply with any terms or conditions of this Agreement, Dr. Jenkins will be in breach of this Agreement; and this Agreement will be null and void. The Board may take whatever action it deems appropriate, including but not limited to proceeding with the administrative action against Dr. Jenkins.
K. **LASTLY**, by executing this agreement, Respondent 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 January, 2010.

MICHAEL JENKINS, D.O.

________________________
Osteopathic Physician

Dated: ______________________

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: _________________________
Rota Rosaschi, MPA,
Investigating Board Member

Dated: 12/29/09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By _________________________
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: 1-5-2010

ACKNOWLEDGEMENT

On this the ______ day of ____________, 2009, the said MICHAEL JENKINS,
D.O., personally appeared before me, a notary public, and signed the above document, freely
and voluntarily, and under no duress.

Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this ______ day of _______ 2010:

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY: ________________________________

Dr. Daniel K. Curtis, Chairman/President of the Board
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

MICHAEL R. JENKINS, LIC. #1451

RESPONDENT.

WITTEN NOTICE OF APPROVAL OF SETTLEMENT AGREEMENT
AND ENTRY OF ORDER

PLEASE TAKE NOTICE that on the __ day of January, 2010, I served a copy of the approved settlement agreement upon the following parties (a copy of which agreement is attached hereto) by depositing a true copy thereof in the U.S. mail, addressed to them at their last known address, postage thereon prepaid, addresses as follows:

Dr. Michael R. Jenkins
26 Ray Creek Road
Townsend, MT 59644

An employee of the Nevada State Board of Osteopathic Medicine