

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)

DAVID KENT, D.O., LIC. #1305,)

Respondent.)

CASE NO. MA 1004017

NV STATE BOARD OF OSTEOPATHIC MEDICINE

OCT 06 2010

FILED

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 David Kent, D.O. ("Dr. Kent") through his attorneys, Michael Stein, Esq. and Richard Gordon, Esq. (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. Kent. 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 "S.P." Suit was filed against the physician in December 2006 in Michigan and it was dismissed in December 2007, with no finding of liability against Dr. Kent and no money being paid on behalf of Dr. Kent. The IBM has alleged that the physician did not timely report the commencement or the dismissal of the lawsuit to the Board, i.e., within 45 days of the event. Additionally, the physician responded "no" to the questions about medical malpractice cases in the 2007 and 2008 renewal applications when the proper responses should have been "yes" because of the lawsuit. The IBM has alleged these are violations of NRS chapter 633.
- C. WHEREAS, Respondent alleges that he was unaware of the statutory requirement to report such lawsuits when there is no finding of malpractice liability against the licensed physician.
- D. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint and/or prove their allegations.
- E. 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.

- 1 F. WHEREAS, Dr. Kent understands that the Board is free to accept or reject this
2 Agreement and, if rejected by the Board, a disciplinary complaint may be filed and a
3 hearing scheduled. The Board members who review this matter for approval of this
4 Agreement may be the same members who ultimately hear the disciplinary complaint if
5 this Agreement is not approved by the Board. Dr. Kent hereby agrees to waive any
6 rights he might have to challenge the impartiality of the Board to hear the disciplinary
7 complaint, based on prior knowledge obtained by the Board through consideration of
8 this Agreement, if after review by the Board, this Agreement is rejected. Furthermore, if
9 the Board does not accept the Agreement, it shall be regarded as null and void.
- 10 G. WHEREAS, Dr. Kent acknowledges that the Board will retain jurisdiction over this
11 matter until all terms and conditions set forth in this Agreement and Order have been
12 met to the satisfaction of the Board.
- 13 H. WHEREAS, Dr. Kent acknowledges that the Board had a reasonable basis to believe
14 that the statutes and/or regulations regulating the practice of Osteopathic Medicine in
15 the State of Nevada may have been violated.
- 16 I. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
17 and to save further costs and expenses, Dr. Kent has elected to enter into this
18 Agreement to resolve this matter, and this matter only.
- 19 J. WHEREAS, Dr. Kent acknowledges that once accepted by the Board, this Agreement
20 and all associated documentation become a matter of public record (with the exception
21 of medical information related to any patient).
- 22 K. WHEREAS, Dr. Kent has had the opportunity to obtain the advice from competent
23 counsel of his choice concerning the terms and conditions of this Agreement and the
24 execution thereof. No coercion has been exerted upon Dr. Kent, nor have any
25 promises been made other than those reflected in this Agreement. Dr. Kent freely and
26 voluntarily entered into this agreement, motivated only by a desire to resolve the issues
27 addressed herein. Dr. Kent has executed this Agreement only after a careful reading of
28 it and a full understanding of all its terms.
- L. WHEREAS, Dr. Kent 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. Kent voluntarily waives these rights.
- M. 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. In exchange for the Board not pursuing an administrative action on the non-
reporting allegations or the inaccurate renewal applications/unprofessional conduct
allegations, and Dr. Kent not pursuing subsequent reviews by the appropriate
appellate Courts, the parties have agreed to resolve the current matter, and only
this matter. Dr. Kent will henceforth insure that all malpractice lawsuits raising

1 direct allegations of professional negligence against Dr. Kent individually will be
2 timely and accurately reported to the Board, regardless of the ultimate finding of
3 liability, and the failure to do so may result in the Board bringing a disciplinary action
4 against the osteopathic medical license issued by the Board to Dr. Kent for violation
5 of the applicable statutes. **ADDITIONALLY, THE BOARD ACKNOWLEDGES,
6 AND THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION
7 WILL NOT AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE
8 PARTIES HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING
9 ASSESSED SOLELY TO RESOLVE THE NON-REPORTING ISSUE.** The Board
10 waives all other claims and/or allegations regarding any alleged inaccurate renewal
11 applications.

- 12 B. Dr. Kent agrees to pay the sum of Five Hundred Dollars (\$500.00) as an
13 administrative fine. This sum **includes** all fees and costs incurred by the Board up
14 to and including the approval of this settlement agreement by the Board at its next
15 scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall be
16 payable upon execution of this agreement.
- 17 C. Should Dr. Kent fail to satisfy and pay the indebtedness of \$500.00 in a timely
18 manner as discussed herein, Dr. Kent understands and agrees that he will be
19 considered in default of this Agreement, and this agreement will be null and void,
20 with the Respondent receiving credit for payments made to date. The Board may
21 take whatever action it deems appropriate, including but not limited to reducing the
22 balance to judgment pursuant to NRS chapter 353C.
- 23 D. The Respondent, Dr. Kent, agrees to bear his own fees and costs, including the
24 fees and expenses of his own attorney(s) if applicable.
- 25 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
26 the parties hereto and their respective heirs, personal representatives, assigns and
27 successors in interest of each party.
- 28 F. This Agreement and Order shall be construed in accordance with the laws of the
State of Nevada.
- G. This settlement agreement consists of five (5) 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. Kent 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 (collectively the State 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 herein, and other matters relating thereto.
- I. Dr. Kent, for himself, his heirs, executors, administrators, successors and assigns,
hereby indemnifies and holds harmless the State of Nevada, the State Board of
Osteopathic Medicine, the 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, 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 OCTOBER, 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 NOVEMBER, 2010.

DAVID KENT, D.O.

SNELL & WILMER, L.L.P.

By: [Signature]
Osteopathic Physician

By: [Signature]
Richard C. Gordon, Esq., Bar #9036

Dated: 9-21-10

Dated: 9-22-10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: [Signature]
Rota Rosaschi, MPA
Investigating Board Member

By: [Signature]
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: [Signature]

Dated: 10-5-2010

ACKNOWLEDGEMENT

On this the 21st day of September, 2010, the said DAVID KENT, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

[Signature]
Notary Public, In and For the County of
Oakland, State of Michigan

LINDA ANN HORWATH
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jan 12, 2018
ACTING IN COUNTY OF Oakland

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DAVID KENT, D.O.

SNELL & WILMER, L.L.P.

By: [Signature]
Osteopathic Physician

By: [Signature]
Richard C. Gordon, Esq., Bar #9036

Dated: 9-21-10

Dated: 9-22-10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: [Signature]
Rota Rosaschi, MPA
Investigating Board Member

By: _____
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: 9-23-10

Dated: _____

ACKNOWLEDGEMENT

On this the 21st day of September, 2010, the said DAVID KENT, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

[Signature]
Notary Public, In and For the County of
Oakland, State of Michigan

LINDA ANN HORVATH
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jun 12, 2018
ACTING IN COUNTY OF Oakland

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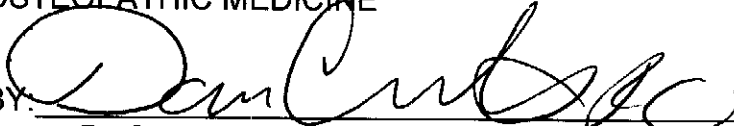
ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Kent fail to comply with any terms or conditions of this Agreement, Dr. Kent 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. Kent. Should this Agreement become null and void by Dr. Kent's failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Dr. Kent, but the Board may also seek the maximum fees, fines, and costs.

DATED this 5th day of October, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: 

Dr. Daniel K. Curtis, President of the Board

11922580

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

DAVID KENT, D.O., LIC. #1305,

Respondent.

)
) CASE NO. MA 1004017

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

OCT 06 2010

WRITTEN NOTICE OF ENTRY OF SETTLEMENT AGREEMENT
& ORDER RE: SAME

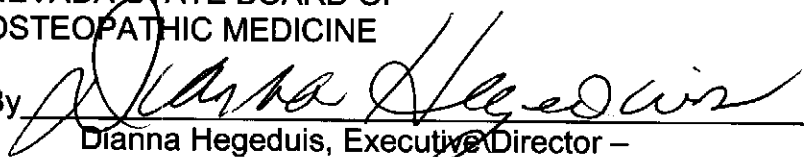
FILED

PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has approved the settlement agreement in the above-referenced matter; and a copy of the agreement with order is attached.

DATED THIS 6th day of October, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By



Dianna Hegeduis, Executive Director -
Board Counsel

901 American Pacific Dr., # 180
Henderson, NV 89014

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of October, 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.



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) 792-2147