

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)

VIPUL KUBAL, D.O., LIC. #1311)

Respondent.)

CASE NO. MA 100401 NV STATE BOARD OF OSTEOPATHIC MEDICINE

JUN 16 2010

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" 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 Vipul Kubal, D.O. ("Dr. Kubal") (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 Dr. Kubal. 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) That privileges/contract was terminated. Physician's contract with Southwest Medical Services was terminated on or about July 24, 2008 and such termination was reported to the National Practitioner Data Bank. Physician, however, failed to timely notify the Board of the reportable event. The IBM has alleged such acts violate NRS chapter 633 as discussed hereinafter.
- C. WHEREAS, the Physician has alleged that he was unaware of the 45-day reporting requirement.
- D. 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**

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1 **finer 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 E. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
6 recover from a person reasonable attorney's fees and costs that are incurred by the
7 regulatory body as part of its investigative, administrative and disciplinary proceedings
8 against the person if the regulatory body" either enters a final order or enters into a
9 settlement agreement.
- 10 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
11 Board to file a formal disciplinary complaint.
- 12 G. WHEREAS, the parties understand that this Agreement will be signed by the
13 respective parties and will then be offered to the Board for the entire Board's approval
14 at the next Board meeting, with the recommendation of the Investigating Board
15 Member that this matter be settled. The Agreement shall not become effective until it
16 has been approved by a majority of the Board and endorsed by a representative
17 member of the Board.
- 18 H. WHEREAS, Dr. Kubal understands that the Board is free to accept or reject this
19 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
20 and a hearing scheduled on the same. The Board members who review this matter for
21 approval of this Agreement may be the same members who ultimately hear the
22 disciplinary complaint if this Agreement is not approved by the Board. Dr. Kubal hereby
23 agrees to waive any rights he might have to challenge the impartiality of the Board to
24 hear the disciplinary complaint, based on prior knowledge obtained by the Board
25 through consideration of this Agreement, if after review by the Board, this Agreement is
26 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
27 as null and void.
- 28 I. WHEREAS, Dr. Kubal 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. Kubal 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. Kubal has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Kubal 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. Kubal 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. Kubal, nor have any
promises been made other than those reflected in this Agreement. Dr. Kubal freely and
voluntarily entered into this agreement, motivated only by a desire to resolve the issues
addressed herein. Dr. Kubal has executed this Agreement only after a careful reading
of it and a full understanding of all its terms.
- N. WHEREAS, Dr. Kubal 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

1 on his own behalf, the right to compulsory process to secure the attendance of such
2 witnesses, the right to testify on his own behalf, the right to receive written findings of
3 fact and conclusions of law supporting the decision on the merits of the complaint and
4 the right to obtain judicial review of the Board's decision. Should the Board accept this
5 Agreement, Dr. Kubal voluntarily waives these rights.

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

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

13 **III. TERMS OF THE AGREEMENT**

14 A. Dr. Kubal acknowledges that the failure to report allegations are true, and each
15 such act (failure to timely report) are violations of NRS chapter 633 for which
16 discipline is permissible under Nevada law. In exchange for the Board not pursuing
17 an administrative action on the non-reporting allegations, and Dr. Kubal not
18 pursuing subsequent reviews by the appropriate appellate Courts, the parties have
19 agreed to resolve the current matter, and only this matter. Dr. Kubal will henceforth
20 insure that all lawsuits involving him/sanctions reported to the National Practitioner
21 Data Bank will be timely and accurately reported to the Board, and the failure to do
22 so may result in the Board bringing a disciplinary action against the osteopathic
23 medical license issued by the Board to Dr. Kubal. If the events described in NRS
24 633.527 are not reported to the Board, such will be in violation of this agreement as
25 well as the applicable statutes. **ADDITIONALLY, THE BOARD ACKNOWLEDGES,
26 AND THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION
27 WILL NOT AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE
28 PARTIES HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING
29 ASSESSED SOLELY TO RESOLVE THE NON-REPORTING ISSUE.**

30 B. Dr. Kubal agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
31 imposed for having violated NRS chapter 633. This sum includes all fees and
32 costs incurred by the Board up to and including the approval of this settlement
33 agreement by the Board at its next scheduled board meeting pursuant to NAC
34 633.470(2)(b)(6). Such amount shall be payable in monthly installments of \$250.00
35 each with the first payment being due on the _____ day of _____
36 2010, and a like payment being due on the _____ day of each month thereafter
37 until said amount is paid in full. *pd full ck 1081*

38 C. Should Dr. Kubal fail to satisfy and pay the indebtedness of \$500.00 in a timely
39 manner as discussed herein, Dr. Kubal understands and agrees that he will be
40 considered in default of this Agreement, and this agreement will be null and void,
41 with the Respondent receiving credit for payments made to date. The Board may
42 take whatever action it deems appropriate, including but not limited to reducing the
43 balance to judgment pursuant to NRS chapter 353C.

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

46 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
47 the parties hereto and their respective heirs, personal representatives, assigns and
48 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. Kubal hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the 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 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 herein arising out of, or by reason of, the investigation of the allegations raised in this matter, and other matters relating thereto.
- I. Dr. Kubal, 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, 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 June, 2010; and further waives the notice requirement for the fulfillment order scheduled for the Board's approval in the month of Aug, 2010.

VIPUL KUBAL, D.O.

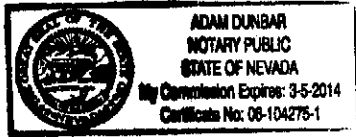
By: V. Kubal D.O.
Osteopathic Physician
Dated: 6/4/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE
BY: [Signature]
Daniel K. Curtis, D.O.
Investigating Board Member
Dated: 6/10/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE
BY: [Signature]
Dianna Hegeduis, Executive Director -
Board Counsel
Dated: 6-10-10

ACKNOWLEDGEMENT

On this the 5 day of June, 2010, the said VIPUL KUBAL, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.



[Signature]

Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 15 day of June, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: *[Signature]*

Dr. C. Dean Milne, Vice-President of the
Board
For

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) CASE NO. MA 1004043 NV STATE BOARD OF
) OSTEOPATHIC MEDICINE

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

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 16 day of June, 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 16 day of June, 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

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