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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

MICHELLE M. LEWIS, D.O.,
License No. 720

RESPONDENT.

Case No.: MA1002018

Filed: **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 S. Paul Edwards, Esq., Investigative Board Member ("Mr. Edwards" 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 Michelle M. Lewis, D.O. ("Dr. Lewis") (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 litigation filed against Dr. Lewis. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensees.
- B. WHEREAS, the IBM has alleged as follows: (1) Re: patient "NB." The IBM has alleged that the physician did not timely report the commencement of this lawsuit and the dismissal thereof pursuant to Nevada's reporting laws. Although the physician did mention this lawsuit in the renewal application for 2006, submitted in 2005, she improperly responded to the question about medical malpractice cases in her 2009 renewal application, submitted in December 2008. The IBM has alleged all such failures are violations of NRS chapter 633 as discussed hereinafter.
- 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

- 1 this section, **the Board may impose a fine of not more than \$5,000** against the
2 osteopathic physician **for each violation, in addition to any other fines or penalties**
3 **permitted by law.** (Emphasis added.) This statute was added to the law in 2003. By
4 the use of the word "shall" by the Nevada State Legislature in this statute, the
5 Legislature intended to mandatorily require all osteopathic physicians to report any of
6 the four (4) events mentioned in the statute.
- 7 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
8 . . . statement . . . in applying for a license to practice osteopathic medicine or in
9 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
10 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
11 proceeding; and such discipline may include public reprimands, the suspension or
12 revocation of the license to practice osteopathic medicine in the State of Nevada, and
13 an assessment of a fine not to exceed \$5,000 per violation.
- 14 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
15 person reasonable attorney's fees and costs that are incurred by the regulatory body as
16 part of its investigative, administrative and disciplinary proceedings against the person
17 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 18 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
19 Board to file a formal disciplinary complaint.
- 20 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
21 parties and will then be offered to the Board for the Board's approval at the next Board
22 meeting, with the recommendation of the Investigating Board Member that this matter
23 be settled. The Agreement shall not become effective until it has been approved by a
24 majority of the Board and endorsed by a representative member of the Board.
- 25 H. WHEREAS, Dr. Lewis 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. Lewis hereby
agrees to waive any rights she 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. Lewis 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. Lewis 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. Lewis has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Lewis 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. Lewis has had the opportunity to obtain the advice from competent
counsel of her choice concerning the terms and conditions of this Agreement and the
execution thereof. No coercion has been exerted upon Dr. Lewis, nor have any
promises been made other than those reflected in this Agreement. Dr. Lewis freely and

- 1 voluntarily entered into this agreement, motivated only by a desire to resolve the issues
 2 addressed herein. Dr. Lewis has executed this Agreement only after a careful reading
 3 of it and a full understanding of all its terms.
- 4 N. WHEREAS, Dr. Lewis is fully aware of her rights to contest the charges pending
 5 against her. These rights include: representation by an attorney at her own expense,
 6 the right to a public hearing on any charges or allegations filed, the right to confront and
 7 cross-examine witnesses called to testify against her, the right to present evidence on
 8 her own behalf, the right to compulsory process to secure the attendance of such
 9 witnesses, the right to testify on her 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. Lewis voluntarily waives these rights.
- 13 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
 14 of the State of Nevada.
- 15 P. WHEREAS, this Agreement and Order contains a complete description of the
 16 agreement between the parties and it supersedes any previous agreements between
 17 the parties. All material representations, understandings and promises of the parties
 18 are contained in this Agreement. Any modifications must be set forth in writing, signed
 19 by all the parties, and approved by the Board.

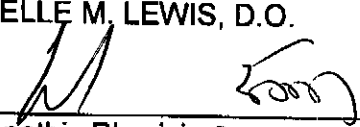
12 III. TERMS OF THE AGREEMENT

- 13 A. Dr. Lewis acknowledges that the failure to report allegations are true, and each
 14 such act (failure to timely report and/or inaccurate information in renewal
 15 applications) is a violation of NRS chapter 633 for which discipline is permissible
 16 under Nevada law. In exchange for the Board not pursuing an administrative action
 17 on either the non-reporting allegations or the inaccurate information allegations, and
 18 Dr. Lewis not pursuing subsequent reviews by the appropriate appellate Courts, the
 19 parties have agreed to resolve the current matter, and only this matter. Dr. Lewis
 20 will henceforth insure that all lawsuits involving her will be timely and accurately
 21 reported to the Board, and the failure to do so may result in the Board bringing a
 22 disciplinary action against the osteopathic medical license issued by the Board to
 23 Dr. Lewis. If any lawsuit is not reported to the Board, such will be in violation of this
 24 agreement as well as the applicable statutes. **ADDITIONALLY, THE BOARD
 25 ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A
 26 DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE
 27 BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
 28 ADMINISTRATIVE FINE BEING ASSESSED SOLELY FOR THE NON-
 REPORTING VIOLATION.**
- 23 B. Dr. Lewis agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the fine
 24 imposed for having violated NRS 633.527(1) for the failure to timely report the
 25 settlement of the lawsuit. This sum includes all fees and costs incurred by the
 26 Board up to and including the approval of this settlement agreement by the Board at
 27 its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount
 28 shall be payable in full upon execution of this agreement.
- 29 C. Should Dr. Lewis fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
 30 manner as discussed herein, Dr. Lewis understands and agrees that she will be
 31 considered in default of this Agreement, and this agreement will be null and void,
 32 with the Respondent receiving credit for payments made to date. The Board may

pdh

- 1 take whatever action it deems appropriate, including but not limited to reducing the
2 balance to judgment pursuant to NRS chapter 353C.
- 3 D. The Respondent, Dr. Lewis, agrees to bear her own fees and costs, including the
4 fees and expenses of her own attorney(s) if applicable.
- 5 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
6 the parties hereto and their respective heirs, personal representatives, assigns and
7 successors in interest of each party.
- 8 F. This Agreement and Order shall be construed in accordance with the laws of the
9 State of Nevada.
- 10 G. This settlement agreement consists of six (6) pages and embodies the entire
11 agreement between the Board and the osteopathic physician. It may not be altered,
12 amended or modified without the express consent of the parties, and any
13 subsequent alteration, amendment, or modification shall be in writing and subject to
14 approval by the Board.
- 15 H. In consideration for the execution of this Agreement, Dr. Lewis hereby releases and
16 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
17 Nevada State Attorney General's Office (as counsel for the Board), and each of
18 their representatives, investigators, and employees, in their individual and
19 representative capacity (collectively the State of Nevada Agencies) from any and all
20 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
21 and demands whatsoever known or unknown, in law and in equity, that she may
22 have had, now has, may have had, or claim to have against any and all of the
23 persons and entities named in this paragraph arising out of, or by reason of, the
24 investigation of the allegations raised in this matter, and other matters relating
25 thereto.
- 26 I. Dr. Lewis, for herself, her heirs, executors, administrators, successors and assigns,
27 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
28 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 hereby expressly, knowingly,
and intentionally waive the 21-working days notice requirement pursuant to the
Open Meeting Laws and acknowledges that this Agreement shall be on the agenda
for the Board's approval in the month of June, 2010.

MICHELLE M. LEWIS, D.O.



Osteopathic Physician)

Dated: 5/13/10

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: _____
4 S. Paul Edwards, Esq.
Investigating Board Member

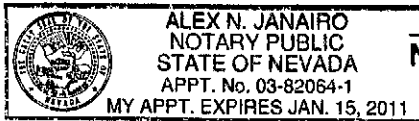
By _____
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: _____
6

Dated: _____

7
8 **ACKNOWLEDGEMENT**

9 On this the 13 day of May, 2010, the said MICHELLE M.
10 LEWIS, D.O., personally appeared before me, a notary public, and signed the above
document, freely and voluntarily, under no duress.



11 _____
12 Notary Public

13
14 **ORDER OF THE BOARD**

15 **IT IS SO ORDERED.**

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

23 DATED this _____ day of _____, 2010.

24
25
26 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: *S. Paul Edwards*
4 S. Paul Edwards, Esq.
Investigating Board Member

By *Dianna Hegeduis*
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: 5/22/10

6 Dated: 6-10-10

7
8 **ACKNOWLEDGEMENT**

9 On this the ____ day of _____, 2010, the said MICHELLE M.
10 LEWIS, D.O., personally appeared before me, a notary public, and signed the above
11 document, freely and voluntarily, under no duress.

12 _____
Notary Public

13
14 **ORDER OF THE BOARD**

15 **IT IS SO ORDERED.**

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

23
24 DATED this 15 day of June, 2010.

25 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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

FOR

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

2 IN A MATTER INVOLVING

3 MICHELLE M. LEWIS, D.O.,
4 License No. 720

5 **RESPONDENT.**

} Case No.: MA1002018
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

} Filed: JUN 16 2010

FILED

6 **WRITTEN NOTICE OF ENTRY OF SETTLEMENT AGREEMENT**
7 **& ORDER RE: SAME**

8 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has
9 approved the settlement agreement in the above-referenced matter; and a copy of the
10 agreement with order is attached.
11

12 DATED THIS 16 day of June, 2010.

13 NEVADA STATE BOARD OF
14 OSTEOPATHIC MEDICINE

15 By Dianna Hegeduis

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

18
19 **CERTIFICATE OF MAILING**

20 I hereby certify that on the 16 day of June, 2010, I served a copy of the foregoing
21 notice, with attached Settlement Agreement/Order, upon the respective parties to this matter
22 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.

23
24 Michelle Kome
25 An employee of the NEVADA STATE BOARD
26 OF OSTEOPATHIC MEDICINE
27
28