

OCT 05 2009
Case No.: MA0907067

FILED

Filed:
Dianna Hegeduis
Executive Director

IN THE MATTER OF THE COMPLAINT
AGAINST
CHARLES LINDSAY, D.O., LIC. #294
RESPONDENT.

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Daniel Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board"), Board's Counsel-Executive Director, Dianna Hegeduis, Esq., and Charles Lindsay, D.O. ("Dr. Lindsay") (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 Investigative Board Member Curtis, ascertained certain information regarding prior lawsuits filed against Dr. Lindsay. 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 alleged that Dr. Lindsay failed to timely report the following: (1) that the lawsuit by patient T.J. was resolved in November 2007; (2) that the claim filed by P.J.Z. was filed in December 2007; and (3) that the Arizona State Board of Osteopathic Examiners entered a formal "Findings of Fact, Conclusions Of Law & Order," censuring Respondent on or about May 18, 2007, for allowing his physician assistant to exceed the scope of licensure. Such events were not timely reported, nor noted on the appropriate renewal application. It is alleged that **each** failure to report is a violation of NRS 633.527. The Board does note that the physician responded that the suits were filed and/or the claims arose in Arizona, and did not pertain to treatment rendered to any patient in Nevada. The Board further notes that the physician paid nothing with respect to the suit filed by patient T.J.
- 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

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

- 12 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
13 . . . statement . . . in applying for a license to practice osteopathic medicine or in
14 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
15 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
16 proceeding; and discipline pursuant to NRS 633.651 may include public reprimands,
17 the suspension of the license to practice osteopathic medicine in the Nevada, and even
18 the revocation of the license to practice osteopathic medicine in the State of Nevada.
- 19 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
20 person reasonable attorney's fees and costs that are incurred by the regulatory body as
21 part of its investigative, administrative and disciplinary proceedings against the person
22 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 23 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
24 Board to file a formal disciplinary complaint.
- 25 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
26 parties and will then be offered to the Board for the entire Board's approval at the next
27 Board meeting, with the recommendation of the Investigating Board Member that this
28 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. Lindsay 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. Lindsay
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. Lindsay 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. Lindsay 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. Lindsay has elected to enter into this
Agreement to resolve this matter, and this matter only.

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

16 III. TERMS OF THE AGREEMENT

- 17 A. Dr. Lindsay acknowledges that if the failure to report allegations and the inaccurate-
18 incomplete information contained within the renewal applications were true, then
19 such would be violations of NRS chapter 633 for which discipline is permissible
20 under Nevada law. In exchange for the Board not pursuing a formal disciplinary
21 action, and Dr. Lindsay not pursuing subsequent reviews by the appropriate
22 appellate Courts, the parties have agreed to resolve the current matters described
23 herein, and only such matters. **THE BOARD FURTHER ACKNOWLEDGES, AND
24 THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL
25 NOT AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE PARTIES
26 HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED
27 FOR THE NON-REPORTING VIOLATIONS, I.E., NOT PERTAINING TO THE
28 PHYSICIAN'S COMPETENCY.** Dr. Lindsay 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. Lindsay. If any lawsuit is not reported to
the Board, such will be in violation of this agreement as well as the applicable
statutes.
- B. Dr. Lindsay agrees to pay the sum of Two Thousand Hundred Dollars (\$2,000.00)
as the fine imposed for having violated NRS 633.527(1) for the violations mentioned
in this agreement. 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

PAID
IN FULL
D.H.

~~scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall be payable in the amount of \$ _____ per month beginning on the ____ day of _____, 2009, and such amount shall continue to be due thereafter on the ____ day of each month, until the full amount of Two Thousand Dollars is paid in full.~~

- C. Should Dr. Lindsay fail to satisfy and pay the indebtedness of \$2,000.00 in a timely manner as discussed herein, Dr. Lindsay 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. Lindsay, 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. Lindsay 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, including those noted in the administrative complaint on file herein, and other matters relating thereto.
- I. Dr. Lindsay, 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

CHARLES LINDSAY, D.O.

Osteopathic Physician

Dated: 9/11/2009

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

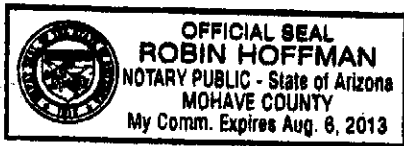
BY Daniel Curtis
Daniel Curtis, D.O., Chairman,
Investigating Board Member
Dated: 9/2/09

By Dianna Hegeduis
Dianna Hegeduis, Executive Director -
Board Counsel
Dated: 9-15-09

ACKNOWLEDGEMENT

On this the 11 day of September, 2009, the said CHARLES LINDSAY, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

Robin Hoffman
Notary Public



ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Lindsay fail to comply with any terms or conditions of this Agreement, Dr. Lindsay 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. Lindsay. Should this Agreement become null and void by Dr. Lindsay's failure to comply with terms or

....
....

1 conditions of this Agreement, the Board may not only pursue an administrative action against
2 Dr. Lindsay, but the Board may also seek the maximum fees, fines, and costs.

3 DATED this 5 day of October, 2009.

4 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

5
6 BY: *C. Dean Milne, MD*
7 Dr. C. Dean Milne, Vice President of the
8 Board
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28