

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

2 IN THE MATTER INVOLVING)

3 KAY MCMILLAN, D.O.,)
4 License No. 792)

5 **RESPONDENT.**)

Case No.: MA1002011

Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

MAY 05 2010

6 **SETTLEMENT AGREEMENT AND ORDER FILED**

7 **I. PARTIES**

8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9
10 between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative
11 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
12 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Kay McMillan, D.O. ("Dr.
13 McMillan") (collectively referred to as "the Parties").

14 **II. RECITALS**

15 As a preamble to this Agreement, the Parties agree to the following:

- 16 A. WHEREAS, the Board, through Investigative Board Member, ascertained certain
17 information regarding litigation filed against Dr. McMillan. The information was
18 ascertained as a result of the Board's staff due diligence in investigating its
19 applicants/licensees.
20 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
21 (1) Re: patient "MP." Respondent failed to timely report the April 2006 verdict
22 rendered in this lawsuit; although, the matter was noted on the appropriate renewal
23 application. (2) Re: patient "TJ." Summary judgment was rendered in favor of the
24 physician in February 2006, dismissing the lawsuit against her; however, such was not
25 timely reported to the Board. It is noted that the physician properly reported this matter
26 on her 2007 renewal application. The IBM has alleged all such failures are violations of
27 NRS chapter 633 as discussed hereinafter.
28 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

1 that should the Board find "that an osteopathic physician has violated any provision of
2 this section, **the Board may impose a fine of not more than \$5,000** against the
3 osteopathic physician **for each violation, in addition to any other fines or penalties**
4 **permitted by law.**" (Emphasis added.) This statute was added to the law in 2003. By
5 the use of the word "shall" by the Nevada State Legislature in this statute, the
6 Legislature intended to mandatorily require all osteopathic physicians to report any of
7 the four (4) events mentioned in the statute.

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

1 the right to a public hearing on any charges or allegations filed, the right to confront and
2 cross-examine witnesses called to testify against her, the right to present evidence on
3 her own behalf, the right to compulsory process to secure the attendance of such
4 witnesses, the right to testify on her own behalf, the right to receive written findings of
5 fact and conclusions of law supporting the decision on the merits of the complaint and
6 the right to obtain judicial review of the Board's decision. Should the Board accept this
7 Agreement, Dr. McMillan voluntarily waives these rights.

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

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

15 III. TERMS OF THE AGREEMENT

16 A. Dr. McMillan acknowledges that the failure to report allegations are true, and each
17 such act (failure to timely report and/or inaccurate information in renewal
18 applications) is a violation of NRS chapter 633 for which discipline is permissible
19 under Nevada law. In exchange for the Board not pursuing an administrative action
20 on the non-reporting allegations, and Dr. McMillan not pursuing subsequent reviews
21 by the appropriate appellate courts, the parties have agreed to resolve the current
22 matter, and only this matter. Dr. McMillan will henceforth insure that all lawsuits
23 involving her will be timely and accurately reported to the Board, and the failure to
24 do so may result in the Board bringing a disciplinary action against the osteopathic
25 medical license issued by the Board to Dr. McMillan. If any lawsuit is not reported
26 to the Board, such will be in violation of this agreement as well as the applicable
27 statutes. **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND THE PARTIES
28 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 SOLELY FOR THE
NON-REPORTING VIOLATIONS.**

B. Dr. McMillan 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
settlement of the lawsuit. 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 at the time of the execution of this agreement.

C. Should Dr. McMillan fail to satisfy and pay the indebtedness of \$500.00 in a timely
manner as discussed herein, Dr. McMillan understands and agrees that she 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. McMillan, agrees to bear her own fees and costs, including
the fees and expenses of her 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.

- 1 F. This Agreement and Order shall be construed in accordance with the laws of the
2 State of Nevada.
- 3 G. This settlement agreement consists of five (5) pages and embodies the entire
4 agreement between the Board and the osteopathic physician. It may not be altered,
5 amended or modified without the express consent of the parties, and any
6 subsequent alteration, amendment, or modification shall be in writing and subject to
7 approval by the Board.
- 8 H. In consideration for the execution of this Agreement, Dr. McMillan hereby releases
9 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
10 and the Nevada Attorney General's Office (as Board counsel), and each of their
11 representatives, investigators, and employees, in their individual and representative
12 capacity (collectively the State of Nevada Agencies) from any and all manner of
13 actions, causes of actions, suits, debts, judgments, executions, claims, and
14 demands whatsoever known or unknown, in law and in equity, that she may have
15 had, now has, may have had, or claim to have against any and all of the persons
16 and entities named in this paragraph arising out of, or by reason of, the investigation
17 of the allegations raised in this matter, and other matters relating thereto.
- 18 I. Dr. McMillan, for herself, her heirs, executors, administrators, successors and
19 assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
20 State Board of Osteopathic Medicine, the Nevada Attorney General's office and
21 each of their members, agents and employees in their individual and representative
22 capacities against any and all claims, suits, demands, actions, debts, damages,
23 costs, charges, and expenses, including court costs and attorney's fees against any
24 persons or entities as well as all liability, losses, and damages of any nature
25 whatsoever that the persons and entities named in this paragraph shall have or may
26 at any time sustain or suffer by reason of this investigation, this settlement or its
27 administration.
- 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.
- K. LASTLY, by executing this agreement, Respondent 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 Board's agenda for approval in the month of May, 2010.

KAY MCMILLAN, D.O.


Osteopathic Physician

Dated: 4-19-2010

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY:

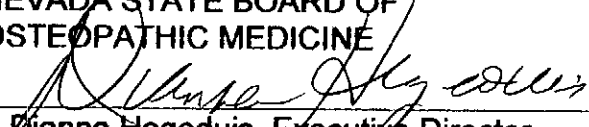

Daniel K. Curtis, D.O.

Investigating Board Member

Dated: 4/23/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By

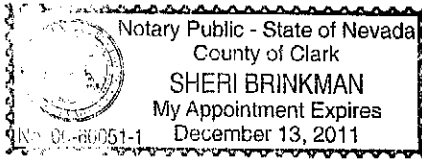

Dianna Hegeduis, Executive Director -

Board Counsel

Dated: 4-19-2010

ACKNOWLEDGEMENT

1 On this the 19 day of April, 2010, the said KAY MCMILLAN,
2 D.O., personally appeared before me, a notary public, and signed the above document, freely
3 and voluntarily, under no duress.



Sheri Brinkman
Notary Public

ORDER OF THE BOARD

8
9 **IT IS SO ORDERED.**

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

17
18 DATED this 4th day of May, 2010.

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20 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

21 BY: [Signature]
22 Dr. C. Dean Milne, Vice-President of the
23 Board

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