

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

SHOIB MYINT, D.O., LIC. 1307,

Respondent.

)
) CASE NO. MA 1003044 NV STATE BOARD OF
) OSTEOPATHIC MEDICINE

AUG 04 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 Shoib Myint, D.O. ("Dr. Myint") (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. Myint. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensees.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
 - (1) Re: patient "J.W." Suit was filed in Michigan in approximately November 2005 and settled on or about September 7, 2006. The physician did not timely report the dismissal of the lawsuit.
 - (2) Re: patient "M.K." Suit was filed in Michigan in February 2007, and the matter settled in August 2009. The physician did not timely report the filing of the lawsuit or the resolution of the matter. Additionally, the physician did not note the commencement or the settlement of the lawsuit on the renewal applications for 2008 and 2010, respectively, but responded "no" to the question about malpractice actions. The IBM has alleged such acts violate NRS chapter 633 as discussed hereinafter.
- C. 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

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

- 7
- 8 D. WHEREAS, NRS 633.131(1) defines "unprofessional conduct" as including "willfully
9 making a false . . . statement . . . in applying for a license to practice osteopathic
10 medicine or in applying for renewal of a license to practice osteopathic medicine."
11 E. WHEREAS, and pursuant to NRS 633.511(1), "unprofessional conduct" is a ground for
12 initiating a formal disciplinary proceeding; and such discipline may include public
13 reprimands, the suspension or revocation of the license to practice osteopathic
14 medicine in the State of Nevada, and an assessment of a fine not to exceed \$5,000 per
15 violation.
16 F. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
17 recover from a person reasonable attorney's fees and costs that are incurred by the
18 regulatory body as part of its investigative, administrative and disciplinary proceedings
19 against the person if the regulatory body" either enters a final order or enters into a
20 settlement agreement.
21 G. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
22 Board to file a formal disciplinary complaint.
23 H. WHEREAS, the parties understand that this Agreement will be signed by the respective
24 parties and will then be offered to the Board for the entire Board's approval at the next
25 Board meeting, with the recommendation of the Investigating Board Member that this
26 matter be settled. The Agreement shall not become effective until it has been
27 approved by a majority of the Board and endorsed by a representative member of the
28 Board.
I. WHEREAS, Dr. Myint understands that the Board is free to accept or reject this
Agreement and, if rejected by the Board, a formal disciplinary complaint may 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. Myint 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.
J. WHEREAS, Dr. Myint 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.
K. WHEREAS, Dr. Myint 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.
L. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
and to save further costs and expenses, Dr. Myint has elected to enter into this
Agreement to resolve this matter, and this matter only.
M. WHEREAS, Dr. Myint 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).

- 1 N. WHEREAS, Dr. Myint has had the opportunity to obtain the advice from competent
2 counsel of his choice concerning the terms and conditions of this Agreement and the
3 execution thereof. No coercion has been exerted upon Dr. Myint, nor have any
4 promises been made other than those reflected in this Agreement. Dr. Myint freely and
5 voluntarily entered into this agreement, motivated only by a desire to resolve the issues
6 addressed herein. Dr. Myint has executed this Agreement only after a careful reading
7 of it and a full understanding of all its terms.
- 8 O. WHEREAS, Dr. Myint is fully aware of his rights to contest the charges pending against
9 him. These rights include: representation by an attorney at his own expense, the right
10 to a public hearing on any charges or allegations filed, the right to confront and cross-
11 examine witnesses called to testify against him, the right to present evidence on his
12 own behalf, the right to compulsory process to secure the attendance of such
13 witnesses, the right to testify on his own behalf, the right to receive written findings of
14 fact and conclusions of law supporting the decision on the merits of the complaint and
15 the right to obtain judicial review of the Board's decision. Should the Board accept this
16 Agreement, Dr. Myint voluntarily waives these rights.
- 17 P. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
18 of the State of Nevada.
- 19 Q. WHEREAS, this Agreement and Order contains a complete description of the
20 agreement between the parties and it supersedes any previous agreements between
21 the parties. All material representations, understandings and promises of the parties
22 are contained in this Agreement. Any modifications must be set forth in writing, signed
23 by all the parties, and approved by the Board.

24 III. TERMS OF THE AGREEMENT

- 25 A. Dr. Myint acknowledges that if the failure to report allegations is true, then each
26 such act (failure to timely report along with the allegations that incorrect/inaccurate
27 information was provided in various renewal applications) would be violations of
28 NRS chapter 633 for which discipline is permissible under Nevada law. In exchange
for the Board not pursuing an administrative action on either the non-reporting
allegations or the inaccurate renewal applications, and Dr. Myint not pursuing
subsequent reviews by the appropriate appellate Courts, the parties have agreed to
resolve the current matter, and only this matter. Dr. Myint 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. Myint. If any lawsuit is not
reported to the Board, such will be in violation of this agreement as well as the
applicable statutes. **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND
THE PARTIES 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 TO RESOLVE THE NON-REPORTING ISSUE.** The Board hereby
waives any claims or allegations with respect to inaccurate/incorrect renewal
applications.
- B. Dr. Myint agrees to pay the sum of Seven Hundred Fifty Dollars (\$750.00) as the
fine imposed for having violated NRS chapter 633. 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 in monthly installments of \$250.00

1 K. LASTLY, by executing this agreement, Respondent Physician hereby expressly,
2 knowingly, and intentionally waive the 21-working days notice requirement pursuant
3 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
4 the agenda for the Board's approval in the month of Aug,
5 2010 and that the order of fulfillment shall be on the Board's agenda for approval in
6 the month of ~~Feb~~ Oct, 2010.

7 SHOIB MYINT, D.O.

8 By: [Signature]
9 Osteopathic Physician

10 Dated: 6.3.10

11 NEVADA STATE BOARD OF
12 OSTEOPATHIC MEDICINE

13 NEVADA STATE BOARD OF
14 OSTEOPATHIC MEDICINE

15 BY: [Signature]
16 Daniel K. Curtis, D.O.
17 Investigating Board Member

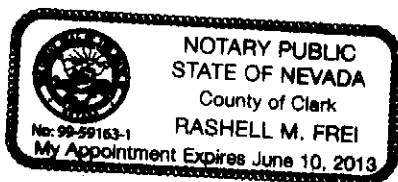
18 BY: [Signature]
19 Dianna Hegeduis, Executive Director -
20 Board Counsel

21 Dated: 6/21/10.

22 Dated: 7-21-10

23 **ACKNOWLEDGEMENT**

24 On this the 3 day of June, 2010, the said SHOIB MYINT,
25 D.O., personally appeared before me, a notary public, and signed the above document, freely
26 and voluntarily, under no duress.



27 [Signature]
28 Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Myint fail to comply with any terms or
conditions of this Agreement, Dr. Myint 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. Myint. Should

1 this Agreement become null and void by Dr. Myint's failure to comply with terms or conditions
2 of this Agreement, the Board may not only pursue an administrative action against Dr. Myint,
3 but the Board may also seek the maximum fees, fines, and costs.

4 DATED this 3rd day of August, 2010.

5 NEVADA STATE BOARD OF
6 OSTEOPATHIC MEDICINE

7 BY: *[Signature]*
8 Dr. C. Dean Milne, Vice-President of the
9 Board
10 *[Signature]*

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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)

) CASE NO. MA 1003041

SHOIB MYINT, D.O., LIC. 1307,)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

Respondent.)

AUG 04 2010

WRITTEN NOTICE OF ENTRY OF ORDER

FILED

PLEASE TAKE NOTICE that an order, approving the settlement agreement in this matter was entered by the Board; and a file-stamped copy of the same is attached hereto.

DATED THIS 4th day of August, 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 4th day of August, 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