

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

2 IN THE MATTER INVOLVING

3 DONALD MORANDO, D.O.
4 License No. 1470

5 **RESPONDENT.**

Case No.: MA1002023

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

APR 07 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 Donald Morando, D.O.
13 ("Dr. Morando") (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 the Investigative Board Member, ascertained certain
17 information regarding litigation filed against Dr. Morando. 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 Re: patient "JC." Suit was filed in Kentucky on or about June 2007; and the lawsuit
22 was settled on or about November 9, 2009. The settlement was not timely reported to
23 the Board. Lastly, in his 2010 renewal application submitted on December 6, 2009,
24 Respondent inaccurately responded to the question concerning lawsuits by answering
25 "no" when the answer should have been "yes." The IBM has alleged all such failures
26 are violations of NRS chapter 633 as discussed hereinafter.
27 C. NRS 633.527(1) states that a licensed "osteopathic physician shall report to the
28 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 622.400(1) states that a "regulatory body [such as this Board] may recover from a
8 person reasonable attorney's fees and costs that are incurred by the regulatory body as
9 part of its investigative, administrative and disciplinary proceedings against the person
10 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 11 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
12 Board to file a formal disciplinary complaint.
- 13 F. WHEREAS, the parties understand that this Agreement will be signed by the respective
14 parties and will then be offered to the Board for the entire Board's approval at the next
15 Board meeting, with the recommendation of the Investigating Board Member that this
16 matter be settled. The Agreement shall not become effective until it has been
17 approved by a majority of the Board and endorsed by a representative member of the
18 Board.
- 19 G. WHEREAS, Dr. Morando understands that the Board is free to accept or reject this
20 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
21 and a hearing scheduled on the same. The Board members who review this matter for
22 approval of this Agreement may be the same members who ultimately hear the
23 disciplinary complaint if this Agreement is not approved by the Board. Dr. Morando
24 hereby agrees to waive any rights he might have to challenge the impartiality of the
25 Board to hear the disciplinary complaint, based on prior knowledge obtained by the
26 Board through consideration of this Agreement, if after review by the Board, this
27 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
28 shall be regarded as null and void.
- H. WHEREAS, Dr. Morando 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. Morando 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. Morando has elected to enter into this
Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Morando 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. Morando 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. Morando, nor have any
promises been made other than those reflected in this Agreement. Dr. Morando freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. Morando has executed this Agreement only after a
careful reading of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Morando 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

- 1 cross-examine witnesses called to testify against him, the right to present evidence on
2 his own behalf, the right to compulsory process to secure the attendance of such
3 witnesses, the right to testify on his own behalf, the right to receive written findings of
4 fact and conclusions of law supporting the decision on the merits of the complaint and
5 the right to obtain judicial review of the Board's decision. Should the Board accept this
6 Agreement, Dr. Morando voluntarily waives these rights.
7 N. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
8 of the State of Nevada.
9 O. WHEREAS, this Agreement and Order contains a complete description of the
10 agreement between the parties and it supersedes any previous agreements between
11 the parties. All material representations, understandings and promises of the parties
12 are contained in this Agreement. Any modifications must be set forth in writing, signed
13 by all the parties, and approved by the Board.

14 **III. TERMS OF THE AGREEMENT**

- 15 A. Dr. Morando acknowledges that the failure to report allegations are true, and each
16 such act (failure to timely report) is a violation of NRS chapter 633 for which
17 discipline is permissible under Nevada law. In exchange for the Board not pursuing
18 an administrative action on the non-reporting allegations, and Dr. Morando not
19 pursuing subsequent reviews by the appropriate appellate Courts, the parties have
20 agreed to resolve the current matter, and only this matter. Dr. Morando will
21 henceforth insure that all lawsuits involving him will be timely and accurately
22 reported to the Board, and the failure to do so may result in the Board bringing a
23 disciplinary action against the osteopathic medical license issued by the Board to
24 Dr. Morando. If any lawsuit is not reported to the Board, such will be in violation of
25 this agreement as well as the applicable statutes. **ADDITIONALLY, THE BOARD
26 ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A
27 DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE
28 BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
ADMINISTRATIVE FINE BEING ASSESSED SOLELY FOR THE NON-
REPORTING VIOLATIONS.**
- B. Dr. Morando agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
imposed for having violated NRS 633.527(1) for the failures to timely report
described above. 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 \$ 100 each with the first payment being due
on the 1st day of April, 2010, and a like payment being due
on the 1st day of each month thereafter until said amount is paid in full.
- C. Should Dr. Morando fail to satisfy and pay the indebtedness of \$500.00 in a timely
manner as discussed herein, Dr. Morando 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. Morando, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s) if applicable.

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- 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. Morando 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, and other matters relating thereto.
- I. Dr. Morando, 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.

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 April,
5 2010.

6 DONALD MORANDO, D.O.

7 By: *Donald Morando*
8 Osteopathic Physician

9 Dated: 3/17/10

10 NEVADA STATE BOARD OF
11 OSTEOPATHIC MEDICINE

12 BY: *Daniel K. Curtis*
13 Daniel K. Curtis, D.O.
14 Investigating Board Member

15 NEVADA STATE BOARD OF
16 OSTEOPATHIC MEDICINE

17 BY: *Dianna Hegeduis*
18 Dianna Hegeduis, Executive Director -
19 Board Counsel

20 Dated: 3-25-2010

21 Dated: 3-25-2010

22 **ACKNOWLEDGEMENT**

23 On this the 17 day of MARCH, 2010, the said DONALD
24 MORANDO, D.O., personally appeared before me, a notary public, and signed the above
25 document, freely and voluntarily, under no duress.

26 *Mary J. Holden*
27 Notary Public

28 **ORDER OF THE BOARD**

IT IS SO ORDERED.

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

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

4 DATED this 6th day of April, 2010.

5 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

6
7 BY:  _____

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

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2 **IN THE MATTER INVOLVING**
3 **DONALD MORANDO, D.O.**
4 **License No. 1470**
5 **RESPONDENT.**

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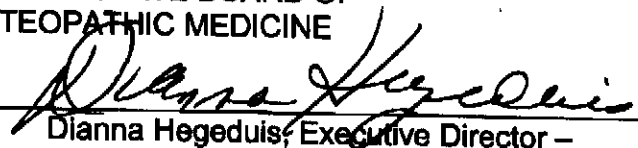
6 **WRITTEN NOTICE OF ENTRY OF**
7 **ORDER APPROVING AGREEMENT**

8 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine
9 approved the Settlement Agreement entered into by the parties to this matter; and a file-
10 stamped copy of the same is attached hereto.

11 DATED THIS 7th day of April, 2010.

12 NEVADA STATE BOARD OF
13 OSTEOPATHIC MEDICINE

14 By


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

18 **CERTIFICATE OF MAILING**

19 I hereby certify that on the 7th day of April, 2010, I served a copy of the foregoing
20 notice, with attached Settlement Agreement/Order, upon the respective parties to this matter
21 by depositing a true copy thereof in the U.S. mail, addressed to them at their last known
22 address, postage thereon prepaid, addressed as follows:

22 Donald Morando, D.O.
23 101 No. Walnut Street
24 Fairmont, NC 28340

24 **PERSONAL & CONFIDENTIAL**

25 
26 An employee of the NEVADA STATE BOARD
27 OF OSTEOPATHIC MEDICINE