

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

RICHARD W. NAYLOR, D.O., LIC. #644

RESPONDENT.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Case No. MA9907067
NOV 02 2009

FILED

Executive Director

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Rota Rosaschi, M.P.A., Investigative Board Member ("Ms. Rosaschi" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board"), Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Richard W. Naylor, D.O. ("Dr. Naylor") (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 Rosaschi, ascertained certain information regarding prior lawsuits filed against Dr. Naylor. 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 alleged that Dr. Naylor failed to timely report the following: (1) A claim was filed by M.G. in October 2005 and settled at mediation in December 2007. Information pertaining to these occurrences were not provided to the Board, i.e., not within the 45 day requirement. The information regarding this claim was also not included in the Respondent's renewal application for 2006. (2) The claim filed by C.B. was closed on 10-14-08 after mediation, but neither were reported until 7-7-09, i.e., beyond the 45 day requirement. The information pertaining to the claim being filed in 2005 was not reported on the Respondent's renewal application for 2006 and the closure in 2008 was not reported on the Respondent's renewal application for 2009. (3) The claim involving C.W., filed in June 2006, was resolved in April 2007; neither events were reported to the Board. The closure of this claim in 2007 was also not mentioned in the Respondent's renewal application for 2008. **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 Iowa, and did not pertain to treatment rendered to any patient in Nevada.
- 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

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

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

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

18 III. TERMS OF THE AGREEMENT

- 19 A. Dr. Naylor acknowledges that the failure to report allegations and the inaccurate-
20 incomplete information contained within the renewal applications are true. Each
21 such act is a violation of NRS chapter 633 for which discipline is permissible under
22 Nevada law. In exchange for the Board not pursuing a formal disciplinary action,
23 and Dr. Naylor not pursuing subsequent reviews by the appropriate appellate
24 Courts, the parties have agreed to resolve the current matter, and only this matter.
25 **THE BOARD FURTHER ACKNOWLEDGE, AND THE PARTIES DO HEREBY
26 AGREE, THAT A DISCIPLINARY ACTION WILL NOT BE FILED BY THE
27 BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
28 ADMINISTRATIVE FINE BEING ASSESSED FOR THE NON-REPORTING
VIOLATIONS.** Dr. Naylor will henceforth insure that all lawsuits involving himself
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. Naylor. 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. Naylor agrees to pay the sum of Two Thousand Five Hundred Dollars
(\$2,500.00) 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 scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall be payable at the time of the execution of this Settlement Agreement by the Respondent Physician.

- C. Should Dr. Naylor fail to satisfy and pay the indebtedness of \$2,500.00 in a timely manner as discussed herein, Dr. Naylor 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. Naylor, 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. Naylor 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. Naylor, 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.

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1 J. This document may be prepared in multiple counterparts. Each counterpart,
2 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
3 shall be deemed an original hereof if executed by each of the Parties hereto.

4 RICHARD W. NAYLOR, D.O.

5 _____
6 Osteopathic Physician

7 Dated: _____

8 NEVADA STATE BOARD OF
9 OSTEOPATHIC MEDICINE

10 BY: *Rota Rosaschi*
11 Rota Rosaschi, M.P.A.,
12 Investigating Board Member
13 Dated: 10/8/09

14 NEVADA STATE BOARD OF
15 OSTEOPATHIC MEDICINE

16 By _____
17 Dianna Hegeduis, Executive Director -
18 Board Counsel
19 Dated: _____

20 **ACKNOWLEDGEMENT**

21 On this the _____ day of _____, 2009, the said RICHARD W. NAYLOR, D.O.,
22 personally appeared before me, a notary public, and signed the above document, freely and
23 voluntarily, under no duress.

24 _____
25 Notary Public

26 **ORDER OF THE BOARD**

27 **IT IS SO ORDERED.**

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

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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.

RICHARD W. NAYLOR, D.O.

Richard W. Naylor
Osteopathic Physician
Dated: 9/28/09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: _____
Rota Rosaschi, M.P.A.,
Investigating Board Member
Dated: _____

By *Dianna Hegeduis*
Dianna Hegeduis, Executive Director -
Board Counsel
Dated: 10-1-09

ACKNOWLEDGEMENT

On this the 28th day of September, 2009, the said RICHARD W. NAYLOR, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

Severin Ryan
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

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

Should this Agreement become null and void by Dr. Naylor's failure to comply with terms or


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

3 DATED this 2nd day of November, 2009.

4 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

5 BY: 
6 Dr. Daniel Curtis, Chairman/President of the
7 Board

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