

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

2 IN THE MATTER INVOLVING

3 NINA NIEMEYER, D.O.
4 License No. 814,

5 RESPONDENT.

Case No.: MA1002020

Filed:

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

MAY 05 2010

6 **SETTLEMENT AGREEMENT AND ORDER**

7 **FILED**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
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 Nina Niemeyer, D.O.
13 ("Dr. Niemeyer") (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 ("IBM"), ascertained
17 certain information regarding litigation filed against Dr. Niemeyer. 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 IBM has alleged as follows: (1) Re: patient "JT." Litigation was
21 commenced and the matter settled and/or was dismissed in July 2007. This event was
22 not timely reported to the Board pursuant to statute. Furthermore, Respondent
23 answered incorrectly and/or inaccurately the question pertaining to the status of
24 litigation in her renewal application for 2008, submitted in 2007. The IBM has alleged
25 all such failures are violations of NRS chapter 633 as discussed hereinafter.
- 26 C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
27 Board: (a) any action for malpractice against the osteopathic physician not later than 45
28 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
this section, **the Board may impose a fine of not more than \$5,000** against the

- 1 osteopathic physician **for each violation, in addition to any other fines or penalties**
2 **permitted by law.** (Emphasis added.) This statute was added to the law in 2003. By
3 the use of the word "shall" by the Nevada State Legislature in this statute, the
4 Legislature intended to mandatorily require all osteopathic physicians to report any of
5 the four (4) events mentioned in the statute.
- 6 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
7 . . . statement . . . in applying for a license to practice osteopathic medicine or in
8 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
9 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
10 proceeding; and such discipline may include public reprimands, the suspension or
11 revocation of the license to practice osteopathic medicine in the State of Nevada, and
12 an assessment of a fine not to exceed \$5,000 per violation.
- 13 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
14 person reasonable attorney's fees and costs that are incurred by the regulatory body as
15 part of its investigative, administrative and disciplinary proceedings against the person
16 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 17 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
18 Board to file a formal disciplinary complaint.
- 19 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
20 parties and will then be offered to the Board for the entire Board's approval at the next
21 Board meeting, with the recommendation of the IBM that this matter be settled. The
22 Agreement shall not become effective until it has been approved by a majority of the
23 Board and endorsed by a representative member of the Board.
- 24 H. WHEREAS, Dr. Niemeyer understands that the Board is free to accept or reject this
25 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
26 and a hearing scheduled on the same. The Board members who review this matter for
27 approval of this Agreement may be the same members who ultimately hear the
28 disciplinary complaint if this Agreement is not approved by the Board. Dr. Niemeyer
hereby agrees to waive any rights she 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. Niemeyer 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. Niemeyer 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. Niemeyer has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Niemeyer 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).
- M. WHEREAS, Dr. Niemeyer 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. Niemeyer, nor have any
promises been made other than those reflected in this Agreement. Dr. Niemeyer freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the

- 1 issues addressed herein. Dr. Niemeyer has executed this Agreement only after a
2 careful reading of it and a full understanding of all its terms.
- 3 N. WHEREAS, Dr. Niemeyer is fully aware of her rights to contest the charges pending
4 against her. These rights include: representation by an attorney at her own expense,
5 the right to a public hearing on any charges or allegations filed, the right to confront and
6 cross-examine witnesses called to testify against her, the right to present evidence on
7 her own behalf, the right to compulsory process to secure the attendance of such
8 witnesses, the right to testify on her own behalf, the right to receive written findings of
9 fact and conclusions of law supporting the decision on the merits of the complaint and
10 the right to obtain judicial review of the Board's decision. Should the Board accept this
11 Agreement, Dr. Niemeyer voluntarily waives these rights.
- 12 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
13 of the State of Nevada.
- 14 P. WHEREAS, this Agreement and Order contains a complete description of the
15 agreement between the parties and it supersedes any previous agreements between
16 the parties. All material representations, understandings and promises of the parties
17 are contained in this Agreement. Any modifications must be set forth in writing, signed
18 by all the parties, and approved by the Board.

19 **III. TERMS OF THE AGREEMENT**

- 20 A. Dr. Niemeyer acknowledges that the failure to report allegations are true, and each
21 such act (failure to timely report and/or inaccurate information in a renewal
22 application) is a violation of NRS chapter 633 for which discipline is permissible
23 under Nevada law. In exchange for the Board not pursuing an administrative action
24 on either the non-reporting allegations or the inaccurate information allegations, and
25 Dr. Niemeyer not pursuing subsequent reviews by the appropriate appellate Courts,
26 the parties have agreed to resolve the current matter, and only this matter. Dr.
27 Niemeyer will henceforth insure that all lawsuits involving her will be timely and
28 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. Niemeyer. 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 FOR THE NON-
REPORTING VIOLATION.**
- B. Dr. Niemeyer 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 in monthly installments of \$ 250.00 each with the first payment
being due on the 5th day of April, 2010, and a like payment
being due on the 5th day of each month thereafter until paid in full. \$500.00
- C. Should Dr. Niemeyer fail to satisfy and pay the indebtedness of \$1,750.00 in a
timely manner as discussed herein, Dr. Niemeyer 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

1 may take whatever action it deems appropriate, including but not limited to reducing
2 the balance to judgment pursuant to NRS chapter 353C.

- 3 D. The Respondent, Dr. Niemeyer, agrees to bear her own fees and costs, including
4 the fees and expenses of her own attorney(s) if applicable.
- 5 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
6 the parties hereto and their respective heirs, personal representatives, assigns and
7 successors in interest of each party.
- 8 F. This Agreement and Order shall be construed in accordance with the laws of the
9 State of Nevada.
- 10 G. This settlement agreement consists of five (5) pages and embodies the entire
11 agreement between the Board and the osteopathic physician. It may not be altered,
12 amended or modified without the express consent of the parties, and any
13 subsequent alteration, amendment, or modification shall be in writing and subject to
14 approval by the Board.
- 15 H. In consideration for the execution of this Agreement, Dr. Niemeyer hereby releases
16 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
17 and the Attorney General's Office (as counsel for the Board), and each of their
18 representatives, investigators, and employees, in their individual and representative
19 capacity (collectively the State of Nevada Agencies) from any and all manner of
20 actions, causes of actions, suits, debts, judgments, executions, claims, and
21 demands whatsoever known or unknown, in law and in equity, that he may have
22 had, now has, may have had, or claim to have against any and all of the persons
23 and entities named in this paragraph arising out of, or by reason of, the investigation
24 of the allegations raised in this matter, and other matters relating thereto.
- 25 I. Dr. Niemeyer, for herself, her heirs, executors, administrators, successors and
26 assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
27 State Board of Osteopathic Medicine, the Nevada State Attorney General's office
28 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.
- K. LASTLY, by executing this agreement, Physician 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 agenda
for the Board's approval in the month of May, 2010.

NINA NIEMEYER, D.O.

By: *Nina Niemeyer*
Osteopathic Physician

Dated: 3/27/10

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: [Signature]
4 Daniel K. Curtis, D.O.
Investigating Board Member

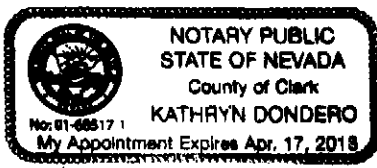
By [Signature]
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: 4/23/10

Dated: 4-19-2010

8 **ACKNOWLEDGEMENT**

9 On this the 27th day of March, 2010, the said NINA NIEMEYER,
10 D.O., personally appeared before me, a notary public, and signed the above document, freely
11 and voluntarily, under no duress.



[Signature]
Notary Public

15 **ORDER OF THE BOARD**

16 **IT IS SO ORDERED.**

17 **IT IS FURTHER ORDERED** that should Dr. Niemeyer fail to comply with any terms or
18 conditions of this Agreement, Dr. Niemeyer will be in breach of this Agreement; and this
19 Agreement will be null and void. The Board may take whatever action it deems appropriate,
20 including but not limited to proceeding with the administrative action against Dr. Niemeyer.
21 Should this Agreement become null and void by Dr. Niemeyer's failure to comply with terms or
22 conditions of this Agreement, the Board may not only pursue an administrative action against
23 Dr. Niemeyer, but the Board may also seek the maximum fees, fines, and costs.

24 DATED this 4th day of May, 2010.

26 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

27 BY: [Signature]
28 Dr. C. Dean Milne, Vice-President of the
Board