

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

2 IN THE MATTER INVOLVING }

3 JOYCE PINCKARD, D.O. }

4 License No. 729 }

5 **RESPONDENT.** }

Case No.: MA1002021

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 Rota Rosaschi, M.P.A., Investigative Board Member ("Ms. Rosaschi" or
11 "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the
12 Board") through the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Joyce
13 Pinckard, D.O. ("Dr. Pinckard") (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. Pinckard. 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 "AK." Suit was filed and served on Respondent on or about April 2009;
22 yet notification of the same was not provided to the Board until October 2009, when the
23 physician submitted her renewal application. The IBM has alleged such a failure is a
24 violation of NRS chapter 633 as discussed hereinafter.
- 25 C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
26 Board: (a) any action for malpractice against the osteopathic physician not later than 45
27 days after the osteopathic physician receives service of a summons and complaint for
28 the action; (b) any claim for malpractice against the osteopathic physician that is
29 submitted to arbitration or mediation not later than 45 days after the claim is submitted
30 to arbitration or mediation; (c) any settlement, award, judgment or other disposition or
31 any action or claim described in paragraphs (a) or (b) not later than 45 days after the
32 settlement, award, judgment or other disposition; and (d) any sanctions imposed
33 against the osteopathic physician that are reportable to the National Practitioner Data
34 Bank not later than 45 days after the sanctions are imposed. NRS 633.527(2) states
35 that should the Board find "that an osteopathic physician has violated any provision of
36 this section, **the Board may impose a fine of not more than \$5,000** against the
37 osteopathic physician **for each violation, in addition to any other fines or penalties**

1 permitted by law." (Emphasis added.) This statute was added to the law in 2003. By
2 the use of the word "shall" by the Nevada State Legislature in this statute, the
3 Legislature intended to mandatorily require all osteopathic physicians to report any of
4 the four (4) events mentioned in the statute.

5 D. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
6 person reasonable attorney's fees and costs that are incurred by the regulatory body as
7 part of its investigative, administrative and disciplinary proceedings against the person
8 if the regulatory body" either enters a final order or enters into a settlement agreement.

9 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
10 Board to file a formal disciplinary complaint.

11 F. WHEREAS, the parties understand that this Agreement will be signed by the respective
12 parties and will then be offered to the Board for it's approval at the next Board meeting,
13 with the recommendation of the Investigating Board Member that this matter be settled.
14 The Agreement shall not become effective until it has been approved by a majority of
15 the Board and endorsed by a representative member of the Board.

16 G. WHEREAS, Dr. Pinckard understands that the Board is free to accept or reject this
17 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
18 and a hearing scheduled on the same. The Board members who review this matter for
19 approval of this Agreement may be the same members who ultimately hear the
20 disciplinary complaint if this Agreement is not approved by the Board. Dr. Pinckard
21 hereby agrees to waive any rights she might have to challenge the impartiality of the
22 Board to hear the disciplinary complaint, based on prior knowledge obtained by the
23 Board through consideration of this Agreement, if after review by the Board, this
24 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
25 shall be regarded as null and void.

26 H. WHEREAS, Dr. Pinckard acknowledges that the Board will retain jurisdiction over this
27 matter until all terms and conditions set forth in this Agreement and Order have been
28 met to the satisfaction of the Board.

I. WHEREAS, Dr. Pinckard 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. Pinckard has elected to enter into this
Agreement to resolve this matter, and this matter only.

K. WHEREAS, Dr. Pinckard 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. Pinckard 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. Pinckard, nor have any
promises been made other than those reflected in this Agreement. Dr. Pinckard freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. Pinckard has executed this Agreement only after a
careful reading of it and a full understanding of all its terms.

M. WHEREAS, Dr. Pinckard is fully aware of her rights to contest the charges pending
against her. These rights include: representation by an attorney at her own expense,
the right to a public hearing on any charges or allegations filed, the right to confront and
cross-examine witnesses called to testify against her, the right to present evidence on
her own behalf, the right to compulsory process to secure the attendance of such
witnesses, the right to testify on her own behalf, the right to receive written findings of

1 fact and conclusions of law supporting the decision on the merits of the complaint and
2 the right to obtain judicial review of the Board's decision. Should the Board accept this
3 Agreement, Dr. Pinckard voluntarily waives these rights.

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

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

11 III. TERMS OF THE AGREEMENT

12 A. Dr. Pinckard acknowledges that the failure to report allegations are true, and each
13 such act (failure to timely report) is a violation of NRS chapter 633 for which
14 discipline is permissible under Nevada law. In exchange for the Board not pursuing
15 an administrative action on the non-reporting allegations, and Dr.
16 Pinckard not pursuing subsequent reviews by the appropriate appellate Courts, the
17 parties have agreed to resolve the current matter, and only this matter. Dr.
18 Pinckard will henceforth insure that all lawsuits involving him will be timely and
19 accurately reported to the Board, and the failure to do so may result in the Board
20 bringing a disciplinary action against the osteopathic medical license issued by the
21 Board to Dr. Pinckard. If any lawsuit is not reported to the Board, such will be in
22 violation of this agreement as well as the applicable statutes. **ADDITIONALLY,
23 THE BOARD ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE,
24 THAT A DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY
25 THE BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
26 ADMINISTRATIVE FINE BEING ASSESSED SOLELY FOR THE NON-
27 REPORTING VIOLATION.**

28 B. Dr. Pinckard 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. 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 \$ _____ each with the first payment being due on the
_____ day of _____, 2010, and a like payment being due on the
_____ day of each month thereafter until said amount is paid in full.

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

F. This Agreement and Order shall be construed in accordance with the laws of the
State of Nevada.

PD in Full

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

JOYCE PINCKARD, D.O.

By: Joyce Pinckard, D.O.
 Osteopathic Physician

Dated: 3/18/2010

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

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

By _____
 Dianna Hegeduis, Executive Director -
 Board Counsel

Dated: _____

Dated: _____

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

JOYCE PINCKARD, D.O.

By: _____
Osteopathic Physician

Dated: _____

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

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

Dated: 3/22/10

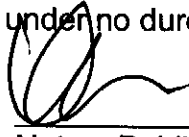
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: Dianna Hegeduis
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: 3-25-2010

1
2 **ACKNOWLEDGEMENT**

3 On this the 18th day of March, 2010, the said JOYCE
4 PINCKARD, D.O., personally appeared before me, a notary public, and signed the above
5 document, freely and voluntarily, under no duress.

6 

7 Notary Public



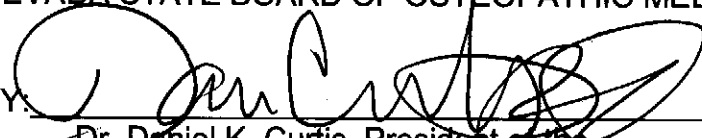
9 **ORDER OF THE BOARD**

10 **IT IS SO ORDERED.**

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

18
19 DATED this 6th day of April, 2010.

20 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

21 
22 BY: _____
23 Dr. Daniel K. Curtis, President of the
24 Board