

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

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IN A MATTER INVOLVING )  
KIMBERLEY RADAI, P.A., LIC. #PA0209 )  
Respondent. )

CASE NO. NR1112005

**NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

FEB 15 2012

**SETTLEMENT AGREEMENT AND ORDER**

**FILED**

**I. PARTIES**

This Settlement Agreement and Order ("Agreement and Order") is made by and between ROTA ROSASCHI, Investigative Board Member ("Ms. Rosaschi" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Interim Executive Director, Barbara Longo, and KIMBERLEY RADAI, P.A. ("Ms. Radai") (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 a criminal action against Ms. Radai. The information was ascertained as a result of the Board's staff's due diligence in investigating its applicants/licenseses.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:  
(1) In September 2011, Ms. Radai was charged with driving under the influence of alcohol. Ms. Radai failed to report this to the Board within 30 days in violation of NRS 633.511.
- C. WHEREAS, NRS 633.511(16) states in relevant part that "[t]he grounds for initiating disciplinary action pursuant to this chapter are: . . . 16. Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against the licensee or applicant, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country."
- D. WHEREAS, NRS 633.651 states in relevant part that "[i]f the Board finds a person guilty in a disciplinary proceeding, it shall by order take one or more of the following actions: . . . (f) Impose a fine not to exceed \$5,000 for each violation.
- E. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a person reasonable attorney's fees and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings against the person if the regulatory body" either enters a final order or enters into a settlement agreement.
- F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint and/or prove their allegations.

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- 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, Ms. Radai understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a disciplinary complaint may be filed and a hearing scheduled. 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. Ms. Radai 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, Ms. Radai 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, Ms. Radai 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, Ms. Radai has elected to enter into this Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Ms. Radai 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 any patient).
- M. WHEREAS, Ms. Radai 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 Ms. Radai, nor have any promises been made other than those reflected in this Agreement. Ms. Radai freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Ms. Radai has executed this Agreement only after a careful reading of it and a full understanding of all its terms.
- N. WHEREAS, Ms. Radai 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 fact and conclusions of law supporting the decision on the merits of the complaint and the right to obtain judicial review of the Board's decision. Should the Board accept this Agreement, Ms. Radai voluntarily waives these rights.
- O. WHEREAS, this Agreement and Order contains a complete description of the agreement between the parties and it supersedes any previous agreements between the parties. All material representations, understandings and promises of the parties are contained in this Agreement. Any modifications must be set forth in writing, signed by all the parties, and approved by the Board.

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**III. TERMS OF THE AGREEMENT**

- A. Ms. Radai acknowledges that the failure to report allegations are true, and each such acts are a violation of NRS Chapter 633 for which discipline is permissible under Nevada law. In exchange for the Board not pursuing an administrative action on the non-reporting allegations or the inaccurate renewal applications/unprofessional conduct allegations, and Ms. Radai not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matter, and only this matter. Ms. Radai will henceforth insure that all criminal actions and lawsuits involving her 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 license issued by the Board to Ms. Radai. If any criminal action or 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 waives all other claims and/or allegations regarding any alleged inaccurate renewal applications.
- B. Ms. Radai agrees to pay the sum of Five Hundred Dollars and no cents (\$500.00) 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 may be payable in two installments of \$250.00 each, the first being due within 30 days of acceptance by the Board of this settlement agreement. The second payment of \$250.00 shall be due 30 days after the first payment is due.
- C. Should Ms. Radai fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Ms. Radai 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, Ms. Radai, 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.
- G. This settlement agreement consists of four (4) 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, Ms. Radai hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada 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 Agencies) from any and all manner of actions, causes

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1 of actions, suits, debts, judgments, executions, claims, and demands whatsoever  
2 known or unknown, in law and in equity, that she may have had, now has, may have  
3 had, or claim to have against any and all of the persons and entities named in this  
4 paragraph arising out of, or by reason of, the investigation of the allegations raised  
5 herein, and other matters relating thereto.

6 I. Ms. Radai, for herself, her heirs, executors, administrators, successors and assigns,  
7 hereby indemnifies and holds harmless the State of Nevada, the State Board of  
8 Osteopathic Medicine, the Attorney General's office and each of their members, agent  
9 and employees in their individual and representative capacities against any and all  
10 claims, suits, demands, actions, debts, damages, costs, charges, and expenses,  
11 including court costs and attorney's fees against any persons or entities as well as all  
12 liability, losses, and damages of any nature whatsoever that the persons and entities  
13 named in this paragraph shall have or may at any time sustain or suffer by reason of  
14 this investigation, this settlement or its administration.

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

18 K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and  
19 intentionally waive the 21-working days notice requirement pursuant to Nevada's Open  
20 Meeting Laws and acknowledges that this Agreement shall be on the agenda for the  
21 Board's approval in the month of February 2012, and that upon payment of the fine  
22 mentioned above, an order of fulfillment will be scheduled for approval by the Board at  
23 the next scheduled board meeting of 2012.

24 Kimberley Radai, P.A.

25 By: [Signature]  
26 Physician Assistant

27 Dated: 1/31/12

28 NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

By: [Signature]  
Rota Rosaschi,  
Investigating Board Member

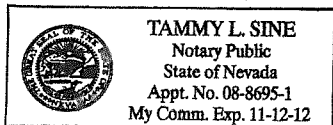
By: [Signature]  
Barbara Longo, Interim Executive Director

Dated:

Dated:

**ACKNOWLEDGEMENT**

On this the 31<sup>st</sup> day of February, 2012, the said MS. RADAI, P.A. [Signature],  
personally appeared before me, a notary public, and signed the above document, freely and  
voluntarily, under no duress.



[Signature]  
Notary Public

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of actions, suits, debts, judgments, executions, claims, and demands whatsoever known or unknown, in law and in equity, that she 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 herein, and other matters relating thereto.

- I. Ms. Radai, for herself, her heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the State Board of Osteopathic Medicine, the 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.
- 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 February 2012, and that upon payment of the fine mentioned above, an order of fulfillment will be scheduled for approval by the Board at the next scheduled board meeting of 2012.

Kimberley Radai, P.A.

By: \_\_\_\_\_  
Physician Assistant

Dated: \_\_\_\_\_

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

By: Rota Rosaschi  
Rota Rosaschi,  
Investigating Board Member

By: Barbara Longo  
Barbara Longo, Interim Executive Director

Dated: 2.9.12

Dated: 2.14.12

**ACKNOWLEDGEMENT**

P.A. Ⓟ

On this the \_\_\_ day of \_\_\_\_\_, 2012, the said MS. RADAI, ~~D.O.~~, personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

\_\_\_\_\_  
Notary Public

**ORDER OF THE BOARD**

**IT IS SO ORDERED.**

**IT IS FURTHER ORDERED** that should Ms. Radai fail to comply with any terms or conditions of this Agreement, Ms. Radai 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 Ms. Radai. Should this Agreement become null and void by Ms. Radai's failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Ms. Radai, but the Board may also seek the maximum fees, fines, and costs.

DATED this 14 day of February, 2012.

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

BY:   
Dr. Paul Kalekas, President of the Board

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

IN THE MATTER OF THE COMPLAINT  
AGAINST  
Kimberley Radai, P.A., LIC. #PA0209  
RESPONDENT.

) Case No.: NR1112005

**NV STATE BOARD OF  
OSTEOPATHIC MEDICINE**

FEB 15 2012

**FILED**

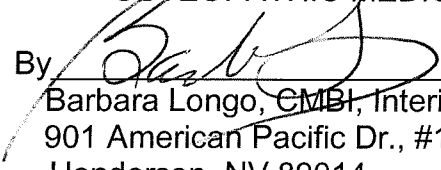
**WRITTEN NOTICE OF ENTRY OF ORDER  
APPROVING SETTLEMENT AGREEMENT**

**PLEASE TAKE NOTICE** that on the 15<sup>th</sup> day of February, 2012 the Nevada State Board of Osteopathic Medicine entered an order approving the Settlement Agreement between the Respondent, Kimberley Radai, P.A., and Enforcement Department of the Board. A file-stamped copy of the settlement agreement with order is attached.

DATED THIS 15th day of February, 2012.

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

By

  
Barbara Longo, CMBI, Interim Executive Director  
901 American Pacific Dr., #180  
Henderson, NV 89014

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of February, 2012, I served a copy of the ABOVE Notice with attachment upon the parties to this matter, via U.S. Postal Service, postage thereon prepaid, addressed as follows:

  
An employee of the Nevada State Board of  
Osteopathic Medicine