

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT
AGAINST
THOMAS ROBEN, D.O., Lic. # 862
RESPONDENT.

OCT 05 2009
Case No.: MA0906065

FILED

Filed:

Dianna Hegeduis
Executive Director

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Lisa Miller-Roche, Esq., Investigative Board Member ("Ms. Miller-Roche" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Thomas Roben, D.O. ("Dr. Roben") (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 Miller-Roche, ascertained certain information regarding a lawsuit filed against Dr. Roben in 2004. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensee.
- B. WHEREAS, the Investigative Board Member alleged that Dr. Roben failed to timely report the filing of the lawsuit, the arbitration conducted in 2006, **and** the subsequent resolution of the lawsuit filed by patient identified herein as "C.C." in 2007. Additionally, the information about the filing of the lawsuit was not included in the renewal application for 2005; and the arbitration information was not included in the renewal application for 2007. The licensee's renewal application for 2008 indicated "yes" for a reporting event in 2007, but failed to fully, accurately, and completely describe the reporting event.
- C. The failure to timely report the filing of the lawsuit, the failure to timely report the agreement to mediate the matter, **and** the failure to timely report the settlement of the case is **EACH** a violation of NRS 633.527(1).
- D. 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 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

Nevada State Board of Osteopathic Medicine
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1 or mediation; (c) any settlement, award, judgment or other disposition or any action or
2 claim described in paragraphs (a) or (b) not later than 45 days after the settlement,
3 award, judgment or other disposition; and (d) any sanctions imposed against the
4 osteopathic physician that are reportable to the National Practitioner Data Bank not
5 later than 45 days after the sanctions are imposed. NRS 633.527(2) states that should
6 the Board find "that an osteopathic physician has violated any provision of this section,
7 the Board **may impose a fine of not more than \$5,000** against the osteopathic
8 physician **for each violation, in addition to any other fines or penalties permitted**
9 **by law.**" (Emphasis added.) This statute was added to the law originally in 2002 and
10 revised in 2003. By the use of the word "shall" by the Nevada State Legislature in this
11 statute, the Legislature intended to mandatorily require all osteopathic physicians to
12 report any of the four (4) events mentioned in the statute.

13 E. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
14 . . . statement . . . in applying for a license to practice osteopathic medicine or in
15 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
16 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
17 proceeding; and such discipline may include public reprimands, the suspension of the
18 license to practice osteopathic medicine in the State of Nevada, and even the
19 revocation of the license to practice osteopathic medicine in the State of Nevada.

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

25 G. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
26 Board to file a formal disciplinary complaint regarding the failure to report and the
27 inaccurate/incomplete applications for renewal.

28 H. 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.

I. WHEREAS, Dr. Roben 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. Roben
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.

J. WHEREAS, Dr. Roben 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.

K. WHEREAS, Dr. Roben 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 L. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
2 and to save further costs and expenses, Dr. Roben has elected to enter into this
3 Agreement to resolve this matter, and this matter only.
- 4 M. WHEREAS, Dr. Roben acknowledges that once accepted by the Board, this
5 Agreement and all associated documentation become a matter of public record (with
6 the exception of medical information related to the patient).
- 7 N. WHEREAS, Dr. Roben 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. Roben, nor have any
10 promises been made other than those reflected in this Agreement. Dr. Roben freely
11 and voluntarily entered into this agreement, motivated only by a desire to resolve the
12 issues addressed herein. Dr. Roben has executed this Agreement only after a careful
13 reading of it and a full understanding of all its terms.
- 14 O. WHEREAS, Dr. Roben 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
17 and cross-examine witnesses called to testify against him, the right to present evidence
18 on 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. Roben voluntarily waives these rights.
- 23 P. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
24 of the State of Nevada.
- 25 Q. 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. Roben acknowledges that the failure to report allegations pertaining to the
20 lawsuit and the inaccurate/incomplete information contained within the renewal
21 applications are true, and **each** such act is a violation of NRS chapter 633 and
22 discipline is permissible under Nevada law. The Board does acknowledge that Dr.
23 Roben has asserted the defense that it was his understanding that his employer,
24 Fremont Medical and/or his insurance company, would report the filing of the
25 lawsuit and the settlement thereof. However, in exchange for the Board not
26 pursuing an administrative action and Dr. Roben not pursuing subsequent reviews
27 by the appropriate appellate Courts, the parties have agreed to resolve the current
28 matter, and only this matter. Dr. Roben 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. Roben. 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. Roben agrees to pay the sum of Three Thousand Dollars (\$3,000.00) as the
fine imposed for having violated NRS 633.527(1) for the failure to timely report the
filing of the lawsuit, the failure to timely report the arbitration of the same, **and** the

1 failure to timely report the settlement of the case, **and** the filing of the inaccurate
2 license renewal applications. This sum **includes** all fees and costs incurred by the
3 Board up to and including the approval of this settlement agreement by the Board
4 at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such
5 amount shall be payable in the amount of \$ _____ per month beginning on the
6 _____ day of _____, 2009, and such amount shall continue to be due thereafter
7 on the _____ day of each month, until the full amount of Three Thousand Dollars is
8 paid.

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- 9 C. Should Dr. Roben fail to satisfy and pay the indebtedness of \$3,000.00 in a timely
10 manner as discussed herein, Dr. Roben understands and agrees that he will be
11 considered in default of this Agreement, and this agreement will be null and void,
12 with the Respondent receiving credit for payments made to date. The Board may
13 take whatever action it deems appropriate, including but not limited to reducing the
14 balance to judgment pursuant to NRS chapter 353C.
- 15 D. The Respondent, Dr. Roben, agrees to bear his own fees and costs, including the
16 fees and expenses of his own attorney(s) if applicable.
- 17 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
18 the parties hereto and their respective heirs, personal representatives, assigns and
19 successors in interest of each party.
- 20 F. This Agreement and Order shall be construed in accordance with the laws of the
21 State of Nevada.
- 22 G. This settlement agreement consists of six (6) pages and embodies the entire
23 agreement between the Board and the osteopathic physician. It may not be
24 altered, amended or modified without the express consent of the parties, and any
25 subsequent alteration, amendment, or modification shall be in writing and subject to
26 approval by the Board.
- 27 H. In consideration for the execution of this Agreement, Dr. Roben hereby releases
28 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. Roben, 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.

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 THOMAS S. ROBEN, D.O.

Thomas Roben
5 Osteopathic Physician
Dated: 8/26/09

6 NEVADA STATE BOARD OF
7 OSTEOPATHIC MEDICINE

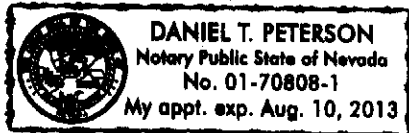
8 BY: _____
9 Lisa Miller-Roche, Esq.,
Investigating Board Member
Dated: _____

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By *Dianna Hegeduis*
Dianna Hegeduis, Executive Director -
Board Counsel
Dated: 8-28-09

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11 **ACKNOWLEDGEMENT**

12 On this the 26th day of August, 2009, the said THOMAS S. ROBEN, D.O.,
13 personally appeared before me, a notary public, and signed the above document, freely and
14 voluntarily, under no duress.



Daniel T. Peterson
Notary Public

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18 **ORDER OF THE BOARD**

19 **IT IS SO ORDERED.**

20 **IT IS FURTHER ORDERED** that should Dr. Roben fail to comply with any terms or
21 conditions of this Agreement, Dr. Roben will be in breach of this Agreement; and this
22 Agreement will be null and void. The Board may take whatever action it deems appropriate,
23 including but not limited to proceeding with the administrative action against Dr. Roben.
24 Should this Agreement become null and void by Dr. Roben's failure to comply with terms or

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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 THOMAS S. ROBEN, D.O.

5 _____
Osteopathic Physician

Dated: _____

6 NEVADA STATE BOARD OF
7 OSTEOPATHIC MEDICINE

8 BY: 

9 Lisa Miller-Roche, Esq.,
Investigating Board Member

Dated: ~~7-1-09~~ 7-1-09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By _____

Dianna Hegeduis, Executive Director -
Board Counsel

Dated: _____

11 **ACKNOWLEDGEMENT**

12 On this the _____ day of _____, 2009, the said THOMAS S. ROBEN, D.O.,
13 personally appeared before me, a notary public, and signed the above document, freely and
14 voluntarily, under no duress.

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16 Notary Public

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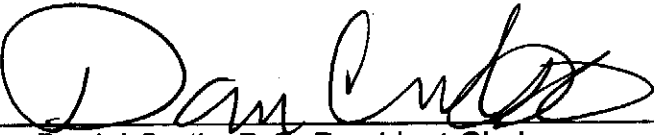
23 Should this Agreement become null and void by Dr. Roben's failure to comply with terms or
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1 conditions of this Agreement, the Board may not only pursue an administrative action
2 against Dr. Roben, but the Board may also seek the maximum fees, fines,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

3 DATED this 5 day of OCT, 2009.

4 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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6 BY: 
7 Daniel Curtis, D.O. President-Chairman
8 Of the Board
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