

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

LEON ROSKY, D.O., LIC. #1129,

Respondent.

CASE NO. MA 1010004

NV STATE BOARD OF OSTEOPATHIC MEDICINE

JAN 12 2011

FILED

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between C. Dean Milne, D.O., Investigative Board Member ("Dr. Milne" 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 Leon Rosky, D.O. ("Dr. Rosky") (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 Dr. Rosky's revocation of privileges at Sierra Health Services – Southwest Medical Associates. 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 ("IBM") has alleged as follows:
 - (1) On or about September 2, 2010, Sierra Health Services notified the Board, pursuant to statute, that on April 13, 2010, its Credentialing Committee revoked the credentialing status of Dr. Rosky based upon point accumulate exceeding the established thresholds for quality of care related issues. This revocation was reported to the National Practitioner Data Bank. Dr. Rosky, however, did not report that revocation within forty-five (45) days as required by statute. The IBM has alleged this is a violation of NRS chapter 633 as discussed hereinafter.
- C. WHEREAS, NRS 633.527(1) states that a licensed "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 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**

Nevada State Board of Osteopathic Medicine
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\$5,000 against the osteopathic physician **for each violation, in addition to any other fines or penalties permitted by law.** (Emphasis added.) This statute was added to the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this statute, the Legislature intended to mandatorily require all osteopathic physicians to report any of the four (4) events mentioned in the statute.

- D. 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.
- E. 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.
- F. 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.
- G. WHEREAS, Dr. Rosky 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. Dr. Rosky 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.
- H. WHEREAS, Dr. Rosky 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.
- I. WHEREAS, Dr. Rosky 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. Rosky has elected to enter into this Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Rosky 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).
- L. WHEREAS, Dr. Rosky has had the opportunity to obtain the advice from competent counsel of his choice concerning the terms and conditions of this Agreement and the execution thereof. No coercion has been exerted upon Dr. Rosky, nor have any promises been made other than those reflected in this Agreement. Dr. Rosky freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Rosky has executed this Agreement only after a careful reading of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Rosky is fully aware of his rights to contest the charges pending against him. These rights include: representation by an attorney at his 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 him, the right to present evidence

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on his own behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on his 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, Dr. Rosky voluntarily waives these rights.

N. 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.

III. TERMS OF THE AGREEMENT

- A. Dr. Rosky acknowledges that if the failures to report allegations are true, then each such act is 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 allegation, and Dr. Rosky not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matter, and only this matter. Dr. Rosky will henceforth insure that all lawsuits involving him 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. Rosky. 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 COST ASSESSMENT BEING ASSESSED SOLELY TO RESOLVE THE NON-REPORTING ISSUE.**
- B. Dr. Rosky agrees to pay the sum of Five Hundred Dollars (\$500.00) as the administrative cost assessment 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 shall be payable upon execution of this agreement.
- C. Should Dr. Rosky fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Dr. Rosky 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. Rosky, 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 five (5) 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

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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. Rosky 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 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 herein, and other matters relating thereto.
- I. Dr. Rosky, for himself, his 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. It is understood and agreed that this settlement agreement is the compromise of a disputed claim, and that the payment made is not to be construed as an admission of liability or fault of any kind on the part of Dr. Rosky, who intends merely to avoid further process and/or litigation and merely buy his peace.
- K. 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.
- L. 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 January, 2011 and that upon payment of the administrative cost assessment mentioned above, an order of fulfillment will be scheduled for approval by the Board in the month of February, 2011.

LEON ROSKY, D.O.

By: [Signature]
Osteopathic Physician
Dated: Dec 20, 2010

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: [Signature]
C. Dean Milne, D.O.
Investigating Board Member

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

Dated: _____

Dated: 1-11-2011

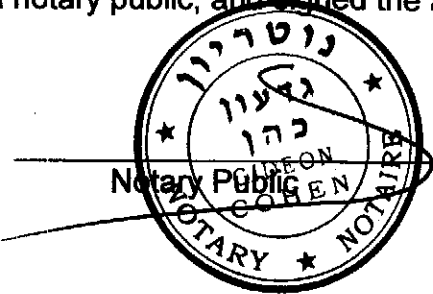


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ACKNOWLEDGEMENT

On this the 19 day of DECEMBER, 2010, the said LEON ROSKY, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.



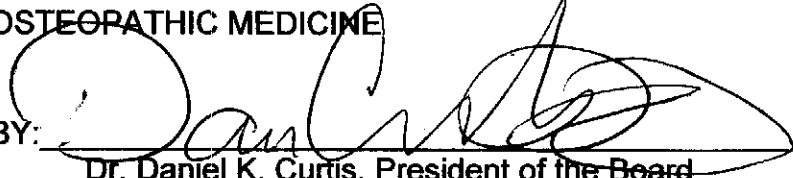
ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this _____ day of _____, 2011.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: 
Dr. Daniel K. Curtis, President of the Board



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AUTHENTICATION OF SIGNATURE

I the undersigned, Gideon Cohen, Adv.

Notary at Ramat Gan, hereby certify that on 19th of December, 2010

there appeared before me at my office:

Mr. (Mrs. Miss) Leon Rosky

who is known to me personally (whose identity was proved to me by Israel I.D. no 017027392 issued at Ministry of Interior, Tel Aviv north on 15th of January 1992)

and signed of his (her, their) own free will the above document (**the attached document lettered (numbered)A**

(the document overleaf)

In witness whereof I authenticate the signature (s) of:

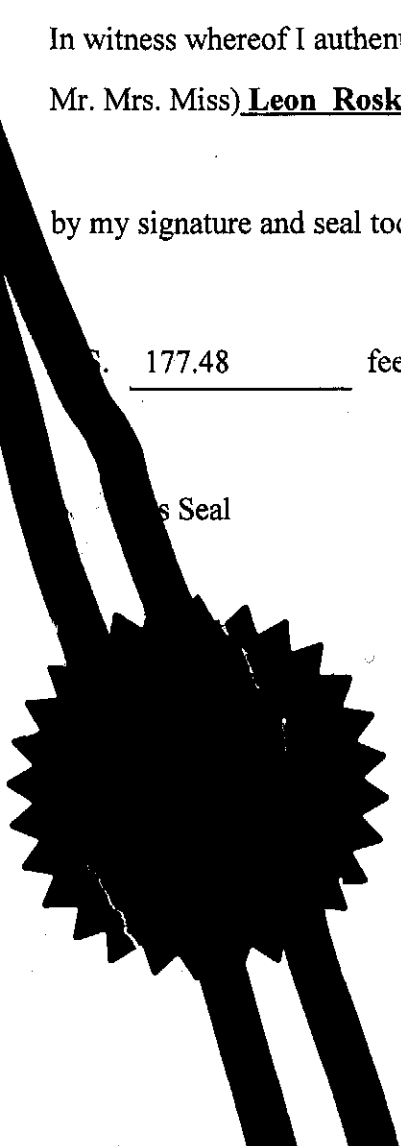
Mr. Mrs. Miss) Leon Rosky

by my signature and seal today 19th December, 2010

₪. 177.48 fees paid including v.a.t.

Seal

Signature



BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

LEON ROSKY, D.O., LIC. #1129,

Respondent.

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) NV STATE BOARD OF
) OSTEOPATHIC MEDICINE
) CASE NO. MA 1010004

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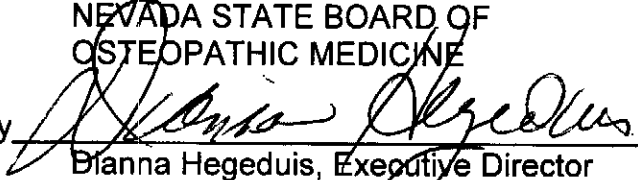
WRITTEN NOTICE OF THE APPROVAL OF THE SETTLEMENT
AGREEMENT & ENTRY OF ORDER

PLEASE TAKE NOTICE that the Board approved the settlement agreement entered into by the Respondent and the Board; and issued its order accordingly. A file-stamped copy of the same is attached hereto.

DATED THIS 12 day of January, 2011.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By


Bianna Hegeduis, Executive Director
901 American Pacific Dr., # 180
Henderson, NV 89014

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of January, 2011, I served a copy of the above document and order upon the Respondent, addressed to him/her at the last known address registered with the Board, postage thereon prepaid.


An employee of the NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE