

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

2 IN THE MATTER INVOLVING

3 MORRIS SCHANER, D.O.

4 License No. 1079,

5 **RESPONDENT.**

Case No.: MA1002025

Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

6 **SETTLEMENT AGREEMENT AND ORDER**

MAY 05 2010

FILED

7 **I. PARTIES**

8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9 between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative
10 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
11 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Morris Schaner, D.O.
12 ("Dr. Schaner") (collectively referred to as "the Parties").

13 **II. RECITALS**

14 As a preamble to this Agreement, the Parties agree to the following:

- 15
- 16 A. WHEREAS, the Board, through the Investigative Board Member ("IBM"), ascertained
17 certain information regarding litigation filed against Dr. Schaner. 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 "RW." Suit was filed and
21 served on Respondent in September 2004; and the matter settled and/or was
22 dismissed in January 2008. Although these two events were noted in the appropriate
23 renewal applications, they were not timely reported to the Board pursuant to the
24 reporting statute. (2) Re: patient BN by RN. Suit was served in July 2006 and the
25 matter was settled and/or dismissed in December 2006. Although this suit was noted
26 in the 2007 renewal application, submitted in December 2006, the two events were not
27 timely reported to the Board pursuant to the reporting statute and the Respondent
28 failed to note this dismissal in response to questions within the 2008 renewal
application submitted in December 2007. (3) Re: patient BN by DN. Suit was filed in
July 2006 and was settled and/or dismissed in December 2006. Although this suit was
noted in the renewal application for 2007, submitted in December 2006, the two events
were not timely reported to the Board pursuant to the reporting statute and the
Respondent failed to note this dismissal in response to questions within the 2008
renewal application submitted in December 2007. The IBM has alleged all such
failures are violations of NRS chapter 633 as discussed hereinafter.
- C. 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

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

- 16 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
17 . . . statement . . . in applying for a license to practice osteopathic medicine or in
18 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
19 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
20 proceeding; and such discipline may include public reprimands, the suspension or
21 revocation of the license to practice osteopathic medicine in the State of Nevada, and
22 an assessment of a fine not to exceed \$5,000 per violation.
- 23 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
24 person reasonable attorney's fees and costs that are incurred by the regulatory body as
25 part of its investigative, administrative and disciplinary proceedings against the person
26 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 27 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
28 Board to file a formal disciplinary complaint.
- 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 IBM 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, Dr. Schaner understands that the Board is free to accept or reject this
Agreement and, if rejected by the Board, a formal disciplinary complaint may 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. Schaner
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.
- I. WHEREAS, Dr. Schaner 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. Schaner 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 K. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
2 and to save further costs and expenses, Dr. Schaner has elected to enter into this
3 Agreement to resolve this matter, and this matter only.
- 4 L. WHEREAS, Dr. Schaner 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 M. WHEREAS, Dr. Schaner 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. Schaner, nor have any
10 promises been made other than those reflected in this Agreement. Dr. Schaner freely
11 and voluntarily entered into this agreement, motivated only by a desire to resolve the
12 issues addressed herein. Dr. Schaner has executed this Agreement only after a
13 careful reading of it and a full understanding of all its terms.
- 14 N. WHEREAS, Dr. Schaner 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 and
17 cross-examine witnesses called to testify against him, the right to present evidence on
18 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. Schaner voluntarily waives these rights.
- 23 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
24 of the State of Nevada.
- 25 P. 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. Schaner acknowledges that the failure to report allegations are true, and each
20 such act (failure to timely report and/or inaccurate information in renewal
21 applications) is a violation of NRS chapter 633 for which discipline is permissible
22 under Nevada law. In exchange for the Board not pursuing an administrative action
23 on either the non-reporting allegations or the inaccurate information allegations, and
24 Dr. Schaner not pursuing subsequent reviews by the appropriate appellate Courts,
25 the parties have agreed to resolve the current matter, and only this matter. Dr.
26 Schaner will henceforth insure that all lawsuits involving him will be timely and
27 accurately reported to the Board, and the failure to do so may result in the Board
28 bringing a disciplinary action against the osteopathic medical license issued by the
Board to Dr. Schaner. 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.**

- 1 B. Dr. Schaner agrees to pay the sum of One Thousand, Seven Hundred Fifty Dollars
2 (\$1,750.00) as the fine imposed for having violated NRS 633.527(1) for the failure to
3 timely report the settlement of the lawsuit. This sum **includes** all fees and costs
4 incurred by the Board up to and including the approval of this settlement agreement
5 by the Board at its next scheduled board meeting pursuant to NAC
6 633.470(2)(b)(6). ~~Such amount shall be payable in monthly installments of \$250.00~~
7 ~~each with the first payment being due on the _____ day of _____,~~
8 ~~2010, and a like payment being due on the _____ day of each month thereafter until~~
9 ~~said amount is paid in full.~~ *pd full ck # 79031*
- 10 C. Should Dr. Schaner fail to satisfy and pay the indebtedness of \$1,750.00 in a timely
11 manner as discussed herein, Dr. Schaner understands and agrees that he will be
12 considered in default of this Agreement, and this agreement will be null and void,
13 with the Respondent receiving credit for payments made to date. The Board may
14 take whatever action it deems appropriate, including but not limited to reducing the
15 balance to judgment pursuant to NRS chapter 353C.
- 16 D. The Respondent, Dr. Schaner, agrees to bear his own fees and costs, including the
17 fees and expenses of his own attorney(s) if applicable.
- 18 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
19 the parties hereto and their respective heirs, personal representatives, assigns and
20 successors in interest of each party.
- 21 F. This Agreement and Order shall be construed in accordance with the laws of the
22 State of Nevada.
- 23 G. This settlement agreement consists of six (6) pages and embodies the entire
24 agreement between the Board and the osteopathic physician. It may not be altered,
25 amended or modified without the express consent of the parties, and any
26 subsequent alteration, amendment, or modification shall be in writing and subject to
27 approval by the Board.
- 28 H. In consideration for the execution of this Agreement, Dr. Schaner hereby releases
and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
and the 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, and other matters relating thereto.
- I. Dr. Schaner, 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 State 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.

1 K. LASTLY, by executing this agreement, Respondent Physician hereby expressly,
2 knowingly, and intentionally waive the 21-working days notice requirement pursuant
3 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
4 the agenda for the Board's approval in the month of May,
5 2010.

6 MORRIS SCHANER, D.O.

7 By: [Signature]
8 Osteopathic Physician

9 Dated: 3/31/10

10 NEVADA STATE BOARD OF
11 OSTEOPATHIC MEDICINE

12 BY: [Signature]
13 Daniel K. Curtis, D.O.
14 Investigating Board Member

15 Dated: 4/23/10

16 NEVADA STATE BOARD OF
17 OSTEOPATHIC MEDICINE

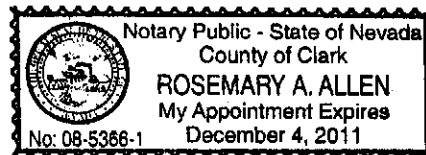
18 By: [Signature]
19 Dianna Hegeduis, Executive Director -
20 Board Counsel

21 Dated: 4-19-2010

22 **ACKNOWLEDGEMENT**

23 On this the 31 day of March, 2010, the said MORRIS
24 SCHANER, D.O., personally appeared before me, a notary public, and signed the above
25 document, freely and voluntarily, under no duress.

26 [Signature]
27 Notary Public



28 **ORDER OF THE BOARD**

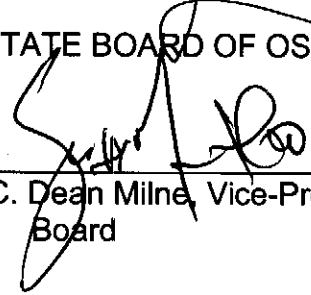
IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Schaner fail to comply with any terms or
conditions of this Agreement, Dr. Schaner 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. Schaner.

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

4 DATED this 4th day of May, 2010.

5 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

6
7 BY: 
8 *FCR* Dr. C. Dean Milne, Vice-President of the
9 Board

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