

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
 2 IN THE MATTER OF THE COMPLAINT)
 3 AGAINST)
 4 DONOVAN SCHMIDT, D.O., LIC. # 751)
 5 RESPONDENT.)

Case No : MA0912002
 NV STATE BOARD OF
 OSTEOPATHIC MEDICINE
 Filed:
 MAR 03 2010
 Executive Director
FILED

7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
 10 between Rota Rosaschi, Investigative Board Member ("Ms. Rosaschi" or "Investigative Board
 11 Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the
 12 Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Donovan Schmidt, D.O.
 13 ("Dr. Schmidt") (collectively referred to as "the Parties").

14 **II. RECITALS**

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

- 17 A. WHEREAS, the Board, through Investigative Board Member, ascertained certain
 18 information regarding a prior lawsuit filed against Dr. Schmidt. The information was
 19 ascertained as a result of the Board's staff due diligence in investigating its
 20 applicants/licensees.
- 21 B. WHEREAS, the Investigative Board Member ("IBM") alleged that Dr. Schmidt failed to
 22 timely report the filing/service of a lawsuit and the settlement/dismissal thereof
 23 regarding patient F.B. and such failures are alleged violations of NRS 633.527.
 24 Although the Respondent reported the settlement of the lawsuit on his renewal
 25 application for 2008, submitted in 2007, the IBM alleges that the Respondent failed to
 26 report the filing of the lawsuit on the renewal application for 2006.
- 27 C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
 28 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

Nevada State Board of Osteopathic Medicine
 901 American Pacific Drive Unit 180 • Henderson, NV 89014
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1 violated any provision of this section, **the Board may impose a fine of not more than**
2 **\$5,000** against the osteopathic physician **for each violation, in addition to any other**
3 **finest or penalties permitted by law.** (Emphasis added.) This statute was added to
4 the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this
5 statute, the Legislature intended to mandatorily require all osteopathic physicians to
6 report any of the four (4) events mentioned in the statute.

- 7
- 8 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
9 . . . statement . . . in applying for a license to practice osteopathic medicine or in
10 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
11 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
12 proceeding; and such discipline may include a fine, reprimands, the suspension of the
13 license to practice osteopathic medicine in the State of Nevada, and even the
14 revocation of the license to practice osteopathic medicine in the State of Nevada.
- 15 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
16 person reasonable attorney's fees and costs that are incurred by the regulatory body
17 as part of its investigative, administrative and disciplinary proceedings against the
18 person if the regulatory body" either enters a final order or enters into a settlement
19 agreement.
- 20 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
21 Board to file a formal disciplinary complaint.
- 22 G. WHEREAS, the parties understand that this Agreement will be signed by the
23 respective parties and will then be offered to the Board for the entire Board's approval
24 at the next Board meeting, with the recommendation of the Investigating Board
25 Member that this matter be settled. The Agreement shall not become effective until it
26 has been approved by a majority of the Board and endorsed by a representative
27 member of the Board.
- 28 H. WHEREAS, Dr. Schmidt 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. Schmidt
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. Schmidt 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. Schmidt 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, Dr. Schmidt has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Schmidt 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).
- M. WHEREAS, Dr. Schmidt has had the opportunity to obtain the advice from competent
counsel of his choice concerning the terms and conditions of this Agreement and the

1 execution thereof. No coercion has been exerted upon Dr. Schmidt, nor have any
2 promises been made other than those reflected in this Agreement. Dr. Schmidt freely
3 and voluntarily entered into this agreement, motivated only by a desire to resolve the
4 issues addressed herein. Dr. Schmidt has executed this Agreement only after a
5 careful reading of it and a full understanding of all its terms.

- 6 N. WHEREAS, Dr. Schmidt is fully aware of his rights to contest the charges pending
7 against him. These rights include: representation by an attorney at his own expense,
8 the right to a public hearing on any charges or allegations filed, the right to confront
9 and cross-examine witnesses called to testify against him, the right to present evidence
10 on his own behalf, the right to compulsory process to secure the attendance of such
11 witnesses, the right to testify on his own behalf, the right to receive written findings of
12 fact and conclusions of law supporting the decision on the merits of the complaint and
13 the right to obtain judicial review of the Board's decision. Should the Board accept this
14 Agreement, Dr. Schmidt voluntarily waives these rights.
- 15 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
16 of the State of Nevada.
- 17 P. WHEREAS, this Agreement and Order contains a complete description of the
18 agreement between the parties and it supersedes any previous agreements between
19 the parties. All material representations, understandings and promises of the parties
20 are contained in this Agreement. Any modifications must be set forth in writing, signed
21 by all the parties, and approved by the Board.

22 III. TERMS OF THE AGREEMENT

- 23 A. Dr. Schmidt acknowledges that the failure to report allegations are true, and each
24 such act (failure to timely report the filing of the lawsuit and the settlement thereof)
25 is a violation of NRS chapter 633 and discipline is permissible under Nevada law. In
26 exchange for the Board not pursuing an administrative action for the failure to
27 report and for unprofessional conduct (which allegation is being dismissed upon the
28 execution of this agreement); and Dr. Schmidt not pursuing subsequent reviews by
the appropriate appellate Courts, the parties have agreed to resolve the current
matter, and only this matter as described herein. Dr. Schmidt 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. Schmidt. 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, I.E., NOT FOR ANY
ALLEGATIONS REGARDING UNPROFESSIONAL CONDUCT.**
- B. Dr. Schmidt agrees to pay the sum of One Thousand Hundred Dollars (\$1,000.00)
as the fine imposed for having violated NRS 633.527(1) for the failure to timely
report the events described herein. This sum includes all fees and costs incurred
by the Board up to and including the approval of this 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. Schmidt fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
manner as discussed herein, Dr. Schmidt understands and agrees that he will be

1 considered in default of this Agreement, and this agreement will be null and void,
2 with the Respondent receiving credit for payments made to date. The Board may
3 take whatever action it deems appropriate, including but not limited to reducing the
4 balance to judgment pursuant to NRS chapter 353C.

- 5 D. The Respondent, Dr. Schmidt, agrees to bear his own fees and costs, including the
6 fees and expenses of his own attorney(s) if applicable.
- 7 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
8 the parties hereto and their respective heirs, personal representatives, assigns and
9 successors in interest of each party.
- 10 F. This Agreement and Order shall be construed in accordance with the laws of the
11 State of Nevada.
- 12 G. This settlement agreement consists of six (6) pages and embodies the entire
13 agreement between the Board and the osteopathic physician. It may not be
14 altered, amended or modified without the express consent of the parties, and any
15 subsequent alteration, amendment, or modification shall be in writing and subject to
16 approval by the Board.
- 17 H. In consideration for the execution of this Agreement, Dr. Schmidt hereby releases
18 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
19 and the Nevada State Attorney General's Office (as counsel for the Board), and
20 each of their representatives, investigators, and employees, in their individual and
21 representative capacity (collectively the State of Nevada Agencies) from any and all
22 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
23 and demands whatsoever known or unknown, in law and in equity, that he may
24 have had, now has, may have had, or claim to have against any and all of the
25 persons and entities named in this paragraph arising out of, or by reason of, the
26 investigation of the allegations raised in this matter, including those noted in the
27 administrative complaint on file herein, and other matters relating thereto.
- 28 I. Dr. Schmidt, 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 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.

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28 K. LASTLY, by executing this agreement, Respondent 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

1 the agenda for the Board's approval in the month of _____
2 2010.

3 DONOVAN SCHMIDT, D.O.

4 [Signature]
5 Osteopathic Physician

6 Dated: 2/1/10

7 NEVADA STATE BOARD OF
8 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

9 BY: Rota Rosaschi

10 Rota Rosaschi,
Investigating Board Member

By Dianna Hegeduis

11 Dianna Hegeduis, Executive Director -
12 Board Counsel

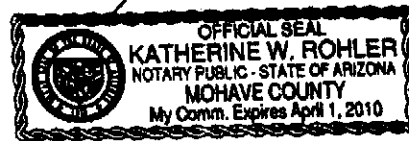
13 Dated: 2/22/09

Dated: _____

14 **ACKNOWLEDGEMENT**

15 On this the 18th day of February, 2010, the said DONOVAN
16 SCHMIDT, D.O., personally appeared before me, a notary public, and signed the above
17 document, freely and voluntarily, under no duress.

18 [Signature]
19 Notary Public



20 **ORDER OF THE BOARD**

21 IT IS SO ORDERED.

22
23 IT IS FURTHER ORDERED that should Dr. Schmidt fail to comply with any terms or
24 conditions of this Agreement, Dr. Schmidt will be in breach of this Agreement; and this
25 Agreement will be null and void. The Board may take whatever action it deems appropriate,
26 including but not limited to proceeding with the administrative action against Dr. Schmidt.
27
28

1 the agenda for the Board's approval in the month of MARCH
2010.

2 DONOVAN SCHMIDT, D.O.

3
4 [Signature]
Osteopathic Physician

5 Dated: 2-18-10
6

7 NEVADA STATE BOARD OF
8 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

9 BY: _____
10 Rota Rosaschi,
11 Investigating Board Member

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

14 Dated: _____

Dated: 2-19-2010

15 **ACKNOWLEDGEMENT**

16 On this the 18th day of February, 2010, the said DONOVAN
17 SCHMIDT, D.O., personally appeared before me, a notary public, and signed the above
document, freely and voluntarily, under no duress.

18 [Signature]
19 Notary Public



20 **ORDER OF THE BOARD**

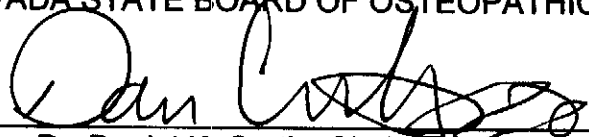
21
22 **IT IS SO ORDERED.**

23
24 **IT IS FURTHER ORDERED** that should Dr. Schmidt fail to comply with any terms or
25 conditions of this Agreement, Dr. Schmidt will be in breach of this Agreement; and this
26 Agreement will be null and void. The Board may take whatever action it deems appropriate,
27 including but not limited to proceeding with the administrative action against Dr. Schmidt.
28

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

4 DATED this 20 day of March, 2010.

5 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

6
7 BY: 
8 Dr. Daniel K. Curtis, Chairman/President of the
9 Board