BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

DONOVAN SCHMIDT, D.O., LIC. # 751

RESPONDENT.

Case No.: MA0912002

FILED

EXECUTOR: F
dct.

SETTLEMENT AGREEMENT AND ORDER

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 Counsel/Executive Director, Dianna Hegeduis, Esq., and Donovan Schmidt, D.O.
("Dr. Schmidt") (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, ascertained certain
   information regarding a prior lawsuit filed against Dr. Schmidt. 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") alleged that Dr. Schmidt failed to
timely report the filing/service of a lawsuit and the settlement/dismissal thereof
regarding patient F.B. and such failures are alleged violations of NRS 633.527.
Although the Respondent reported the settlement of the lawsuit on his renewal
application for 2008, submitted in 2007, the IBM alleges that the Respondent failed to
report the filing of the lawsuit on the renewal application for 2006.

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 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 $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. NRS 633.131(1) defines “unprofessional conduct” as including “willfully making a false statement in applying for a license to practice osteopathic medicine or in applying for renewal of a license to practice osteopathic medicine.” Pursuant to NRS 633.511(1), “unprofessional conduct” is a ground for initiating a formal disciplinary proceeding; and such discipline may include a fine, reprimands, the suspension of the license to practice osteopathic medicine in the State of Nevada, and even the revocation of the license to practice osteopathic medicine in the State of Nevada.

E. 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.

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

N. WHEREAS, Dr. Schmidt 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
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. Schmidt voluntarily waives these rights.

O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
of the State of Nevada.

P. 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. Schmidt acknowledges that the failure to report allegations are true, and each
such act (failure to timely report the filing of the lawsuit and the settlement thereof)
is a violation of NRS chapter 633 and discipline is permissible under Nevada law. In
exchange for the Board not pursuing an administrative action for the failure to
report and for unprofessional conduct (which allegation is being dismissed upon the
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 insur
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
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. Schmidt, 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 six (6) 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, Dr. Schmidt hereby releases 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. 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.

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
the agenda for the Board’s approval in the month of ________________
2010.

DONOVAN SCHMIDT, D.O.

[Signature]

Osteopathic Physician

Dated: ____________

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: ______________________
Rota Rosaschi, Investigating Board Member

Dated: __22/09

ACKNOWLEDGEMENT

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

[Signature]
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Schmidt fail to comply with any terms or
conditions of this Agreement, Dr. Schmidt 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. Schmidt.
the agenda for the Board's approval in the month of March.

DONOVAN SCHMIDT, D.O.
Osteopathic Physician
Dated: 2/16/10

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE
BY: Rota Rosaschi,
Investigating Board Member
Dated: ___________

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE
By Dianna Hegeduis, Executive Director - Board Counsel
Dated: 2-19-2010

ACKNOWLEDGEMENT
On this the 18th day of February, 2010, the said DONOVAN SCHMIDT, 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 Dr. Schmidt fail to comply with any terms or conditions of this Agreement, Dr. Schmidt 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. Schmidt.
Should this Agreement become null and void by Dr. Schmidt's failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Dr. Schmidt, but the Board may also seek the maximum fees, fines, and costs.

DATED this ___ day of ___ , 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY:

Dr. Daniel K. Curtis, Chairman/President of the Board