

1                    **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**  
2 IN THE MATTER OF THE COMPLAINT                    )  
3 AGAINST                    )  
4 PATRICIA SIMMS, D.O., LIC. #334,                    )  
5                    RESPONDENT.                    )

**NV STATE BOARD OF OSTEOPATHIC MEDICINE**  
Case No.: MA0910003  
JAN 06 2010  
Filed: **FILED**  
Executive Director

6  
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, M.P.A., Investigative Board Member ("Ms. Rosaschi" or  
11 "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the  
12 Board") through the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Patricia  
13 Simms, D.O. ("Dr. Simms") (collectively referred to as "the Parties").

14                    **II. RECITALS**

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

- 16
- 17                    A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain  
18 information regarding a prior lawsuit filed against Dr. Simms. The information was  
19 ascertained as a result of the Board's staff due diligence in investigating its  
20 applicants/licenseses as well as from information received directly from Dr. Simms.
- 21                    B. WHEREAS, the Investigative Board Member alleged that Dr. Simms failed to timely  
22 report the filing of a lawsuit against her and the dismissal thereof by both the District  
23 Court and the Supreme Court, regarding a patient with the initials of "MLM," and such  
24 failures are violations of NRS 633.527. The matter involving patient "AV" was  
25 apparently timely reported via a renewal application.
- 26                    C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the  
27 Board: (a) any action for malpractice against the osteopathic physician **not later than**  
28 **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**

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

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

10 E. WHEREAS, the parties have agreed to informally settle this matter, rather than  
11 requiring the Board to file a formal disciplinary complaint.

12 F. WHEREAS, the parties understand that this Agreement will be signed by the respective  
13 parties and will then be offered to the Board for the entire Board's approval at the next  
14 Board meeting, with the recommendation of the Investigating Board Member that this  
15 matter be settled. The Agreement shall not become effective until it has been  
16 approved by a majority of the Board and endorsed by a representative member of the  
17 Board.

18 G. WHEREAS, Dr. Simms understands that the Board is free to accept or reject this  
19 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed  
20 and a hearing scheduled on the same. The Board members who review this matter for  
21 approval of this Agreement may be the same members who ultimately hear the  
22 disciplinary complaint if this Agreement is not approved by the Board. Dr. Simms  
23 hereby agrees to waive any rights she might have to challenge the impartiality of the  
24 Board to hear the disciplinary complaint, based on prior knowledge obtained by the  
25 Board through consideration of this Agreement, if after review by the Board, this  
26 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it  
27 shall be regarded as null and void.

28 H. WHEREAS, Dr. Simms 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. Simms 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. Simms has elected to enter into this  
Agreement to resolve this matter, and only the matters identified herein.

K. WHEREAS, Dr. Simms 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).

L. WHEREAS, Dr. Simms has had the opportunity to obtain the advice from competent  
counsel of her choice concerning the terms and conditions of this Agreement and the  
execution thereof. No coercion has been exerted upon Dr. Simms, nor have any  
promises been made other than those reflected in this Agreement. Dr. Simms freely  
and voluntarily entered into this agreement, motivated only by a desire to resolve the  
issues addressed herein. Dr. Simms has executed this Agreement only after a careful  
reading of it and a full understanding of all its terms.

M. WHEREAS, Dr. Simms is fully aware of her rights to contest the charges pending  
against her. These rights include: representation by an attorney at her 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 her, the right to present evidence on

1 her own behalf, the right to compulsory process to secure the attendance of such  
2 witnesses, the right to testify on her own behalf, the right to receive written findings of  
3 fact and conclusions of law supporting the decision on the merits of the complaint and  
4 the right to obtain judicial review of the Board's decision. Should the Board accept this  
5 Agreement, Dr. Simms voluntarily waives these rights.

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

8 O. WHEREAS, this Agreement and Order contains a complete description of the  
9 agreement between the parties and it supersedes any previous agreements between  
10 the parties. All material representations, understandings and promises of the parties  
11 are contained in this Agreement. Any modifications must be set forth in writing, signed  
12 by all the parties, and approved by the Board.

### 13 **III. TERMS OF THE AGREEMENT**

14 A. Dr. Simms acknowledges that if the failures to timely report allegations are true and  
15 such failures to timely report would be violations of NRS chapter 633 and discipline  
16 would be permissible under Nevada law. In exchange for the Board not pursuing an  
17 administrative action against Dr. Simms for the untimely reporting, and Dr. Simms  
18 not pursuing subsequent reviews by the appropriate appellate Courts, the parties  
19 have agreed to resolve the current matter, and only this matter. Dr. Simms will  
20 henceforth insure that all lawsuits involving her will be timely and accurately  
21 reported to the Board, and the failure to do so may result in the Board bringing a  
22 disciplinary action against the osteopathic medical license issued by the Board to  
23 Dr. Simms. If any lawsuit is not reported to the Board, such will be in violation of  
24 this agreement as well as the applicable statutes. **ADDITIONALLY, THE BOARD  
25 ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A  
26 DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE  
27 BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN  
28 ADMINISTRATIVE FINE BEING ASSESSED FOR THE NON-REPORTING  
29 VIOLATION, I.E., NOT FOR ANY ALLEGATIONS REGARDING  
30 UNPROFESSIONAL CONDUCT AND/OR REGARDING THE PHYSICIAN'S  
31 COMPETENCY.**

32 B. Dr. Simms agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the fine  
33 imposed for having violated NRS 633.527(1) for the failures to timely report  
34 allegations. This sum **includes** all fees and costs incurred by the Board up to and  
35 including the approval of this settlement agreement by the Board at its next  
36 scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall be  
37 payable in full upon execution of this agreement.

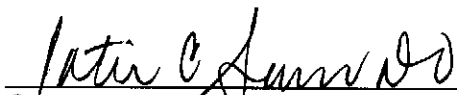
38 C. Should Dr. Simms fail to satisfy and pay the indebtedness of \$1,000.00 in a timely  
39 manner as discussed herein, Dr. Simms understands and agrees that she will be  
40 considered in default of this Agreement, and this agreement will be null and void,  
41 with the Respondent receiving credit for payments made to date. The Board may  
42 take whatever action it deems appropriate, including but not limited to reducing the  
43 balance to judgment pursuant to NRS chapter 353C.

44 D. The Respondent, Dr. Simms, agrees to bear her own fees and costs, including the  
45 fees and expenses of her own attorney(s) if applicable.

46 E. This Agreement and Order shall inure to the benefit of and be binding upon each of  
47 the parties hereto and their respective heirs, personal representatives, assigns and  
48 successors in interest of each party.

- 1 F. This Agreement and Order shall be construed in accordance with the laws of the  
2 State of Nevada.  
3 G. This settlement agreement consists of five (5) pages and embodies the entire  
4 agreement between the Board and the osteopathic physician. It may not be altered,  
5 amended or modified without the express consent of the parties, and any  
6 subsequent alteration, amendment, or modification shall be in writing and subject to  
7 approval by the Board.  
8 H. In consideration for the execution of this Agreement, Dr. Simms hereby releases  
9 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,  
10 and the Nevada State Attorney General's Office (as counsel for the Board), and  
11 each of their representatives, investigators, and employees, in their individual and  
12 representative capacity (collectively the State of Nevada Agencies) from any and all  
13 manner of actions, causes of actions, suits, debts, judgments, executions, claims,  
14 and demands whatsoever known or unknown, in law and in equity, that she may  
15 have had, now has, may have had, or claim to have against any and all of the  
16 persons and entities named in this paragraph arising out of, or by reason of, the  
17 investigation of the allegations raised in this matter, and other matters relating  
18 thereto.  
19 I. Dr. Simms, for herself, her heirs, executors, administrators, successors and  
20 assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada  
21 State Board of Osteopathic Medicine, the Nevada Attorney General's office and  
22 each of their members, agents and employees in their individual and representative  
23 capacities against any and all claims, suits, demands, actions, debts, damages,  
24 costs, charges, and expenses, including court costs and attorney's fees against any  
25 persons or entities as well as all liability, losses, and damages of any nature  
26 whatsoever that the persons and entities named in this paragraph shall have or may  
27 at any time sustain or suffer by reason of this investigation, this settlement, or its  
28 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 JANUARY, 2010.

PATRICIA SIMMS, D.O.

  
Osteopathic Physician

Dated: Nov 14, 2009

1 NEVADA STATE BOARD OF  
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

3 BY: \_\_\_\_\_  
4 Rota Rosaschi, M.P.A.  
Investigating Board Member

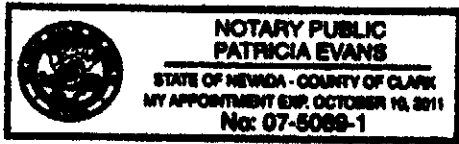
By *Dianna Hegeudis*  
5 Dianna Hegeudis, Executive Director -  
6 Board Counsel

7 Dated: \_\_\_\_\_

Dated: 1-5-2010

8 **ACKNOWLEDGEMENT**

9 On this the 14th day of December, 2009, the said PATRICIA SIMMS,  
10 D.O., personally appeared before me, a notary public, and signed the above document, freely  
11 and voluntarily, and under no duress.



12 *Patricia Evans*  
Notary Public

13 **ORDER OF THE BOARD**

14 **IT IS SO ORDERED.**

15 **IT IS FURTHER ORDERED** that should Dr. Simms fail to comply with any terms or  
16 conditions of this Agreement, Dr. Simms will be in breach of this Agreement; and this  
17 Agreement will be null and void. The Board may take whatever action it deems appropriate,  
18 including but not limited to proceeding with the administrative action against Dr. Simms.  
19 Should this Agreement become null and void by Dr. Simms's failure to comply with terms or  
20 conditions of this Agreement, the Board may not only pursue an administrative action against  
21 Dr. Simms, but the Board may also seek the maximum fees, fines, and costs.

22 DATED this 5<sup>th</sup> day of January, 2010.

23 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

24 BY: *Daniel K. Curtis*  
25 Dr. Daniel K. Curtis, Chairman/President of the  
26 Board  
27  
28

1 NEVADA STATE BOARD OF  
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

3 BY: Rota Rosaschi  
4 Rota Rosaschi, M.P.A.  
Investigating Board Member

By Dianna Hegeduis  
Dianna Hegeduis, Executive Director -  
Board Counsel

5 Dated: 12/29/09

Dated: \_\_\_\_\_

6  
7 **ACKNOWLEDGEMENT**

8 On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the said PATRICIA SIMMS,  
9 D.O., personally appeared before me, a notary public, and signed the above document, freely  
10 and voluntarily, and under no duress.

11 \_\_\_\_\_  
Notary Public

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25 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

26 BY: Daniel K. Curtis  
27 Dr. Daniel K. Curtis, Chairman/President of the  
28 Board