

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

3 IN A MATTER INVOLVING
4 NEIL SUPERFON, D.O.,
5 License No. 237,
6 RESPONDENT.

) Case No.: MA1101001
)
)
)

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

7 **SETTLEMENT AGREEMENT AND ORDER**

APR 13 2011

FILED

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Paul Edwards, Esq., Investigative Board Member ("Mr. Edwards" or "Investigative
11 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
12 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Neil Superfon, D.O. ("Dr.
13 Superfon") (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 litigation filed against Dr. Superfon. The information was
19 ascertained as a result of the Board's staff due diligence in investigating its
20 applicants/licenseses.
- 21 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
22 (1) Re: patients "DM" and "EM." The Respondent failed to timely notify this Board of
23 the commencement of the litigation concerning the patients. The renewal application
24 did contain information regarding the status of these cases. The IBM has alleged the
25 failures to report, however, are violations of NRS chapter 633 as discussed hereinafter.
- 26 C. WHEREAS, NRS 633.527(1) states that a licensed "osteopathic physician **shall report**
27 to the Board: (a) any action for malpractice against the osteopathic physician not later
28 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**

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. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
7 recover from a person reasonable attorney's fees and costs that are incurred by the
8 regulatory body as part of its investigative, administrative and disciplinary proceedings
9 against the person if the regulatory body" either enters a final order or enters into a
10 settlement agreement.
- 11 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
12 Board to file a formal disciplinary complaint.
- 13 F. WHEREAS, the parties understand that this Agreement will be signed by the respective
14 parties and will be offered to the Board for the Board's approval at the next Board
15 meeting, with the recommendation of the Investigating Board Member that this matter
16 be settled. The Agreement shall not become effective until it has been approved by a
17 majority of the Board and endorsed by a representative member of the Board.
- 18 G. WHEREAS, Dr. Superfon understands that the Board is free to accept or reject this
19 Agreement and, if rejected by the Board, a formal disciplinary complaint may 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. Superfon
23 hereby agrees to waive any rights he 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. Superfon 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. Superfon 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. Superfon has elected to enter into this
Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Superfon 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. Superfon 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. Superfon, nor have any
promises been made other than those reflected in this Agreement. Dr. Superfon freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. Superfon has executed this Agreement only after a
careful reading of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Superfon 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

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

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

11 III. TERMS OF THE AGREEMENT

12 A. Dr. Superfon acknowledges that if the failures to report allegations are true, then
13 each such act would be a violation of NRS chapter 633 for which discipline is
14 permissible under Nevada law. Dr. Superfon further acknowledges that if non-
15 reporting occurred such was not an intentional act on his part but was merely an
16 administration error. In exchange for the Board not pursuing an administrative
17 action, and Dr. Superfon not pursuing subsequent reviews by the appropriate
18 appellate Courts, the parties have agreed to resolve the current matter, and all
19 issues related thereto. **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND
20 THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL
21 NOT AND HAS NOT BEEN FILED BY THE BOARD; NOR IS THIS SETTLEMENT
22 AGREEMENT TO BE CONSIDERED A DISCIPLINARY ACTION. THE PARTIES
23 HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED
24 FOR THE NON-REPORTING OCCURRENCES.**

25 B. Dr. Superfon agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
26 imposed for having violated NRS 633.527(1). This sum includes all fees and costs
27 incurred by the Board up to and including the approval of this agreement by the
28 Board at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such
amount shall be payable as follows: The first payment of \$250.00 being due on the
15th day of _____, 2011, and the final payment of \$250.00 being due on
the 15th day of the following month, i.e., _____ 15, 2011.

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Should Dr. Superfon fail to satisfy and pay the indebtedness of \$500.00 in a timely
manner as discussed herein, Dr. Superfon 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. Superfon, 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 Nevada's laws.

G. This 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 subsequent
alteration or modification shall be in writing and subject to approval by the Board.

- 1 H. In consideration for the execution of this Agreement, Dr. Superfon hereby releases
 2 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
 3 and the Nevada Attorney General's Office (as Board counsel), and each of their
 4 representatives, investigators, and employees, in their individual and representative
 5 capacity (collectively the State of Nevada Agencies) from any and all manner of
 6 actions, causes of actions, suits, debts, judgments, executions, claims, and
 7 demands whatsoever known or unknown, in law and in equity, that he may have
 8 had, now has, may have had, or claim to have against any and all of the persons
 9 and entities named in this paragraph arising out of, or by reason of, the investigation
 10 of the allegations raised in this matter, and other matters relating thereto.
- 11 I. Dr. Superfon, for himself, his heirs, executors, administrators, successors and
 12 assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
 13 State Board of Osteopathic Medicine, the Nevada Attorney General's office and
 14 each of their members, agents and employees in their individual and representative
 15 capacities against any and all claims, suits, demands, actions, debts, damages,
 16 costs, charges, and expenses, including court costs and attorney's fees against any
 17 persons or entities as well as all liability, losses, and damages of any nature
 18 whatsoever that the persons and entities named in this paragraph shall have or may
 19 at any time sustain or suffer by reason of this investigation or this settlement.
- 20 J. This document may be prepared in multiple counterparts. Each counterpart,
 21 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
 22 shall be deemed an original hereof if executed by each of the Parties hereto.
- 23 K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and
 24 intentionally waive the 21-working days notice requirement pursuant to Nevada laws
 25 and acknowledges that this Agreement shall be on the agenda for the Board's
 26 approval in the month of _____, 2011 and the order of fulfillment on the
 27 Board's agenda for approval in the month of _____, 2011.

16 NEIL SUPERFON, D.O.

17 By: _____
 18 Osteopathic Physician
 19 Dated: _____

20 NEVADA STATE BOARD OF
 21 OSTEOPATHIC MEDICINE

22 BY: Paul Edwards
 23 Paul Edwards, Esq.
 24 Investigating Board Member
 25 Dated: 3/17/11

20 NEVADA STATE BOARD OF
 21 OSTEOPATHIC MEDICINE

22 By: _____
 23 Dianna Hegequis, Executive Director -
 24 Board Counsel
 25 Dated: _____

25 **ACKNOWLEDGEMENT**

26 On this the _____ day of _____, 2011, the said NEIL SUPERFON,
 27 D.O., personally appeared before me, a notary public, and signed the above document, freely
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- 1 H. In consideration for the execution of this Agreement, Dr. Superfon hereby releases
 2 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
 3 and the Nevada Attorney General's Office (as Board counsel), and each of their
 4 representatives, investigators, and employees, in their individual and representative
 5 capacity (collectively the State of Nevada Agencies) from any and all manner of
 6 actions, causes of actions, suits, debts, judgments, executions, claims, and
 7 demands whatsoever known or unknown, in law and in equity, that he may have
 8 had, now has, may have had, or claim to have against any and all of the persons
 9 and entities named in this paragraph arising out of, or by reason of, the investigation
 10 of the allegations raised in this matter, and other matters relating thereto.
- 11 I. Dr. Superfon, for himself, his heirs, executors, administrators, successors and
 12 assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
 13 State Board of Osteopathic Medicine, the Nevada Attorney General's office and
 14 each of their members, agents and employees in their individual and representative
 15 capacities against any and all claims, suits, demands, actions, debts, damages,
 16 costs, charges, and expenses, including court costs and attorney's fees against any
 17 persons or entities as well as all liability, losses, and damages of any nature
 18 whatsoever that the persons and entities named in this paragraph shall have or may
 19 at any time sustain or suffer by reason of this investigation or this settlement.
- 20 J. This document may be prepared in multiple counterparts. Each counterpart,
 21 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
 22 shall be deemed an original hereof if executed by each of the Parties hereto.
- 23 K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and
 24 intentionally waive the 21-working days notice requirement pursuant to Nevada laws
 25 and acknowledges that this Agreement shall be on the agenda for the Board's
 26 approval in the month of APRIL, 2011 and the order of fulfillment on the
 27 Board's agenda for approval in the month of May, 2011.

16 NEIL SUPERFON, D.O.

17 By: [Signature]
 18 Osteopathic Physician
 19 Dated: 3/15/11

20 NEVADA STATE BOARD OF
 21 OSTEOPATHIC MEDICINE

22 BY: [Signature]
 23 Paul Edwards, Esq.
 24 Investigating Board Member
 25 Dated: _____

20 NEVADA STATE BOARD OF
 21 OSTEOPATHIC MEDICINE

22 By: [Signature]
 23 Dianna Hegeduis, Executive Director -
 24 Board Counsel
 25 Dated: 4-12-11

26 **ACKNOWLEDGEMENT**

26 On this the 15th day of March, 2011, the said NEIL SUPERFON,
 27 D.O., personally appeared before me, a notary public, and signed the above document, freely
 28

1 and voluntarily, under no duress.



2 Fricia Noelle Carpenter
3 Notary Public

4 **ORDER OF THE BOARD**

5 **IT IS SO ORDERED.**

6 **IT IS FURTHER ORDERED** that should Dr. Superfon fail to comply with any terms or
7 conditions of this Agreement, Dr. Superfon will be in breach of this Agreement; and this
8 Agreement will be null and void. The Board may take whatever action it deems appropriate,
9 including but not limited to proceeding with the administrative action against Dr. Superfon.
10 Should this Agreement become null and void by Dr. Superfon's failure to comply with terms or
11 conditions of this Agreement, the Board may not only pursue an administrative action against
12 Dr. Superfon, but the Board may also seek the maximum fees, fines, and costs.

13 DATED this 15th day of April, 2011.

14 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

15 BY: Daniel K. Curtis
16 Dr. Daniel K. Curtis, President of the
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1 **BEFORE THE NEVADA STATE BOARD OF**
2 **OSTEOPATHIC MEDICINE**

3 IN A MATTER INVOLVING)

4 NEIL SUPERFON, D.O.,)
5 License No. 237,)

6 RESPONDENT.)

Case No.: MA110101)
NEVADA STATE BOARD OF)
OSTEOPATHIC MEDICINE)

APR 13 2011

FILED

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8 **WRITTEN NOTICE OF ENTRY OF SETTLEMENT**
9 **AGREEMENT & ORDER**

10 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has
11 approved the settlement agreement entered into by Respondent, Neil Superfon, D.O., and the
12 Board; and a file-stamped copy of the same is attached hereto.

13 DATED THIS 13 day of April, 2011.

14 NEVADA STATE BOARD OF
15 OSTEOPATHIC MEDICINE

16 By 

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

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19 **CERTIFICATE OF MAILING**

20 I hereby certify that on the 13 day of April, 2011, I served a copy of the above notice
21 with attached agreement/order upon the Respondent, addressed to him/her at the last known
22 address registered with the Board, postage thereon prepaid.

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24 An employee of the NEVADA STATE BOARD OF
25 OSTEOPATHIC MEDICINE
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