

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

2 IN THE MATTER OF THE COMPLAINT

3 AGAINST

4 JASON TARNO, D.O.,  
License No. 920

5                   RESPONDENT.

Case No.: MA1001004

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

APR 07 2010

**FILED**

6 \_\_\_\_\_  
7                   **SETTLEMENT AGREEMENT AND ORDER**

8           **I. PARTIES**

9           This Settlement Agreement and Order ("Agreement and Order") is made by and  
10 between S. Dean Milne, D.O., Investigative Board Member ("Dr. Milne" 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 Jason Tarno, D.O. ("Dr.  
13 Tarno") (collectively referred to as "the Parties").

14           **II. RECITALS**

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

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- 17           A. WHEREAS, the Board, through Investigative Board Member, ascertained certain  
18 information regarding litigation involving Dr. Tarno. The information was ascertained as  
19 a result of the Board's staff due diligence in investigating its applicants/licensees.
- 20           B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:  
21 Respondent failed to timely report the settlement of the lawsuit involving Patient "M.T."  
22 and failed to properly note the same in his renewal application for 2007, submitted in  
23 2006. The IBM has alleged all such failures are violations of NRS chapter 633 as  
24 discussed hereinafter.
- 25           C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the  
26 Board: (a) any action for malpractice against the osteopathic physician not later than 45  
27 days after the osteopathic physician receives service of a summons and complaint for  
28 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**

1 **permitted by law.”** (Emphasis added.) This statute was added to the law in 2003. By  
2 the use of the word “shall” by the Nevada State Legislature in this statute, the  
3 Legislature intended to mandatorily require all osteopathic physicians to report any of  
4 the four (4) events mentioned in the statute.

- 5 D. NRS 633.131(1) defines “unprofessional conduct” as including “willfully making a false  
6 . . . statement . . . in applying for a license to practice osteopathic medicine or in  
7 applying for renewal of a license to practice osteopathic medicine.” Pursuant to NRS  
8 633.511(1), “unprofessional conduct” is a ground for initiating a formal disciplinary  
9 proceeding; and such discipline may include public reprimands, the suspension or  
10 revocation of the license to practice osteopathic medicine in the State of Nevada, and  
11 an assessment of a fine not to exceed \$5,000 per violation.
- 12 E. NRS 622.400(1) states that a “regulatory body [such as this Board] may recover from a  
13 person reasonable attorney’s fees and costs that are incurred by the regulatory body as  
14 part of its investigative, administrative and disciplinary proceedings against the person  
15 if the regulatory body” either enters a final order or enters into a settlement agreement.
- 16 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the  
17 Board to file a formal disciplinary complaint.
- 18 G. WHEREAS, the parties understand that this Agreement will be signed by the respective  
19 parties and will then be offered to the Board for the entire Board’s approval at the next  
20 Board meeting, with the recommendation of the Investigating Board Member that this  
21 matter be settled. The Agreement shall not become effective until it has been  
22 approved by a majority of the Board and endorsed by a representative member of the  
23 Board.
- 24 H. WHEREAS, Dr. Tarno understands that the Board is free to accept or reject this  
25 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed  
26 and a hearing scheduled on the same. The Board members who review this matter for  
27 approval of this Agreement may be the same members who ultimately hear the  
28 disciplinary complaint if this Agreement is not approved by the Board. Dr. Tarno 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. Tarno 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. Tarno acknowledges that the Board had a reasonable basis to believe  
that the statutes and/or regulations pertaining to 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. Tarno has elected to enter into this  
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Tarno 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. Tarno 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. Tarno, nor have any  
promises been made other than those reflected in this Agreement. Dr. Tarno freely and  
voluntarily entered into this agreement, motivated only by a desire to resolve the issues

1 addressed herein. Dr. Tarno has executed this Agreement only after a careful reading  
2 of it and a full understanding of all its terms.

3 N. WHEREAS, Dr. Tarno is fully aware of his rights to contest the charges pending  
4 against him. These rights include: representation by an attorney at his own expense,  
5 the right to a public hearing on any charges or allegations filed, the right to confront and  
6 cross-examine witnesses called to testify against him, the right to present evidence on  
7 his own behalf, the right to compulsory process to secure the attendance of such  
8 witnesses, the right to testify on his own behalf, the right to receive written findings of  
9 fact and conclusions of law supporting the decision on the merits of the complaint and  
10 the right to obtain judicial review of the Board's decision. Should the Board accept this  
11 Agreement, Dr. Tarno voluntarily waives these rights.

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

14 P. WHEREAS, this Agreement and Order contains a complete description of the  
15 agreement between the parties and it supersedes any previous agreements between  
16 the parties. All material representations, understandings and promises of the parties  
17 are contained in this Agreement. Any modifications must be set forth in writing, signed  
18 by all the parties, and approved by the Board.

### 19 III. TERMS OF THE AGREEMENT

20 A. Dr. Tarno acknowledges that the failure to report allegations are true, and each  
21 such act (failure to timely report the settlement/dismissal) is a violation of NRS  
22 chapter 633 and discipline is permissible under Nevada law. In exchange for the  
23 Board not pursuing an administrative action, and waiving the claim of  
24 unprofessional conduct, and Dr. Tarno not pursuing subsequent reviews by the  
25 appropriate appellate Courts, the parties have agreed to resolve the current matter,  
26 and only this matter. Dr. Tarno will henceforth insure that all lawsuits involving him  
27 will be timely and accurately reported to the Board, and the failure to do so may  
28 result in the Board bringing a disciplinary action against the osteopathic medical  
license issued by the Board to Dr. Tarno. 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 AND/OR REGARDING THE  
PHYSICIAN'S COMPETENCY.**

23 B. Dr. Tarno agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine  
24 imposed for having violated NRS 633.527(1) for the failure to timely report the  
25 settlement of the lawsuit. This sum **includes** all fees and costs incurred by the  
26 Board up to and including the approval of this settlement agreement by the Board at  
27 its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount  
28 shall be payable in monthly installments of \$ \_\_\_\_\_ each with the first payment  
being due on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, and a like payment  
being due on the \_\_\_\_\_ day of each month thereafter until said amount is paid in  
full.

C. Should Dr. Tarno fail to satisfy and pay the indebtedness of \$500.00 in a timely  
manner as discussed herein, Dr. Tarno 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. Tarno, 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 altered,  
14 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. Tarno hereby releases and  
18 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the  
19 Nevada State Attorney General's Office (as counsel for the Board), and each of  
20 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. Tarno, 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.

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 April,  
5 2010.

6 JASON TARNO, D.O.

7   
8 Osteopathic Physician

9 Dated: 3/8/2010

10 NEVADA STATE BOARD OF  
11 OSTEOPATHIC MEDICINE

12 BY:   
13 Dr. Milne

14 C. Dean Milne, D.O.  
15 Investigating Board Member

16 Dated: 4/6/10.

17 NEVADA STATE BOARD OF  
18 OSTEOPATHIC MEDICINE

19 By:   
20 Djanna Hegeduis

21 Djanna Hegeduis, Executive Director -  
22 Board Counsel

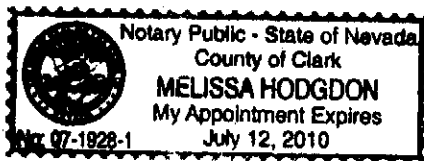
23 Dated: 3-25-2010

24 **ACKNOWLEDGEMENT**

25 On this the 8<sup>th</sup> day of March, 2010, the said JASON TARNO,  
26 D.O., personally appeared before me, a notary public, and signed the above document, freely  
27 and voluntarily, under no duress.

28 

Notary Public



29 **ORDER OF THE BOARD**

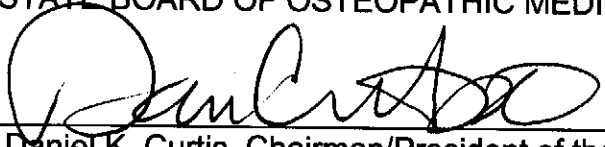
30 IT IS SO ORDERED.

31 IT IS FURTHER ORDERED that should Dr. Tarno fail to comply with any terms or  
32 conditions of this Agreement, Dr. Tarno will be in breach of this Agreement; and this  
33 Agreement will be null and void. The Board may take whatever action it deems appropriate,  
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1 including but not limited to proceeding with the administrative action against Dr. Tarno.  
2 Should this Agreement become null and void by Dr. Tarno's failure to comply with terms or  
3 conditions of this Agreement, the Board may not only pursue an administrative action against  
4 Dr. Tarno, but the Board may also seek the maximum fees, fines, and costs.

5 DATED this 6 day of Apr, 2010.

6 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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

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