

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

2 IN A MATTER INVOLVING)

3 ALESIA WAGNER, D.O.,)
4 License No. 533)

5 RESPONDENT.)

Case No.: MA1002007

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

MAY 05 2010

6 **SETTLEMENT AGREEMENT AND ORDER**

FILED

7 **I. PARTIES**

8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9
10 between S. 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 Alesia Wagner, D.O.
13 ("Dr. Wagner") (collectively referred to as "the Parties").

14 **II. RECITALS**

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

- 16 A. WHEREAS, the Board, through the Investigative Board Member ("IBM"), ascertained
17 certain information regarding litigation filed against Dr. Wagner. The information was
18 ascertained as a result of the Board's staff due diligence in investigating its
19 applicants/licenseses.
20 B. WHEREAS, the IBM has alleged as follows: (1) Re: patient "TJ." The IBM has alleged
21 that the physician did not timely report the dismissal/disposition of this lawsuit pursuant
22 to Nevada's reporting laws. Allegedly, the physician inaccurately responded to the
23 question about medical malpractice cases in her 2007 renewal application, submitted in
24 2006. The IBM has alleged all such failures are violations of NRS chapter 633 as
25 discussed hereinafter.
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 45
28 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

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

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

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

3 N. WHEREAS, Dr. Wagner is fully aware of her rights to contest the charges pending
4 against her. These rights include: representation by an attorney at her 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 her, the right to present evidence on
7 her own behalf, the right to compulsory process to secure the attendance of such
8 witnesses, the right to testify on her 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. Wagner 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. Wagner acknowledges that the failure to report allegations are true, and
21 each such act (failure to timely report and/or inaccurate information in
22 renewal applications) is a violation of NRS chapter 633 for which discipline is
23 permissible under Nevada law. In exchange for the Board not pursuing an
24 administrative action and Dr. Wagner not pursuing subsequent reviews by
25 the Courts, the parties have agreed to resolve the current matter, and only
26 this matter. Dr. Wagner will insure that all lawsuits involving her will be timely
27 and accurately reported to the Board, and the failure to do so may result in
28 the Board bringing a disciplinary action against Dr. Wagner. 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.** Furthermore, the IBM herein finds no intent by
Dr. Wagner to deceive or mislead the Board on her application, and
recognizes that this was a good faith mistake.

23 B. Dr. Wagner 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 meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall
28 be payable in monthly installments of \$250.00 each with the first payment being due
on the _____ day of _____ pd in full 4/2/10 2010, and a like payment being due
on the _____ day of each month thereafter until said amount is paid in full.

C. Should Dr. Wagner fail to satisfy and pay the indebtedness of \$500.00 in a timely
manner as discussed herein, Dr. Wagner understands and agrees that she will be
considered in default of this Agreement, and this agreement will be null and void,

1 with the Respondent receiving credit for payments made to date. The Board may
2 take whatever action it deems appropriate, including but not limited to reducing the
3 balance to judgment pursuant to NRS chapter 353C.

- 4 D. The Respondent, Dr. Wagner, agrees to bear her own fees and costs, including the
5 fees and expenses of her own attorney(s) if applicable.
- 6 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
7 the parties hereto and their respective heirs, personal representatives, assigns and
8 successors in interest of each party.
- 9 F. This Agreement and Order shall be construed in accordance with the laws of the
10 State of Nevada.
- 11 G. This settlement agreement consists of six (6) pages and embodies the entire
12 agreement between the Board and the osteopathic physician. It may not be altered,
13 amended or modified without the express consent of the parties, and any
14 subsequent alteration, amendment, or modification shall be in writing and subject to
15 approval by the Board.
- 16 H. In consideration for the execution of this Agreement, Dr. Wagner hereby releases
17 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
18 and the Nevada State Attorney General's Office (as counsel for the Board), and
19 each of their representatives, investigators, and employees, in their individual and
20 representative capacity (collectively the State of Nevada Agencies) from any and all
21 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
22 and demands whatsoever known or unknown, in law and in equity, that she may
23 have had, now has, may have had, or claim to have against any and all of the
24 persons and entities named in this paragraph arising out of, or by reason of, the
25 investigation of the allegations raised in this matter, and other matters relating
26 thereto.
- 27 I. Dr. Wagner, for herself, her heirs, executors, administrators, successors and
28 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 hereby expressly, knowingly,
2 and intentionally waive the 21-working days notice requirement pursuant to the
3 Open Meeting Laws and acknowledges that this Agreement shall be on the agenda
4 for the Board's approval in the month of May, 2010.

5 ALESIA WAGNER, D.O.

6 _____
7 Osteopathic Physician

8 Dated: _____

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 BY: S. Paul Edwards
12 S. Paul Edwards, Esq.
13 Investigating Board Member

14 Dated: April 1 2010

15 NEVADA STATE BOARD OF
16 OSTEOPATHIC MEDICINE

17 By: Dianna Hegeduis
18 Dianna Hegeduis, Executive Director -
19 Board Counsel

20 Dated: 4-19-2010

21 **ACKNOWLEDGEMENT**

22 On this the _____ day of _____, 2010, the said ALESIA WAGNER,
23 D.O., personally appeared before me, a notary public, and signed the above document, freely
24 and voluntarily, under no duress.

25 _____
26 Notary Public

27 **ORDER OF THE BOARD**

28 **IT IS SO ORDERED.**

IT IS FURTHER ORDERED that should Dr. Wagner fail to comply with any terms or
conditions of this Agreement, Dr. Wagner 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. Wagner.

1 K. LASTLY, by executing this agreement, Respondent hereby expressly, knowingly,
2 and intentionally waive the 21-working days notice requirement pursuant to the
3 Open Meeting Laws and acknowledges that this Agreement shall be on the agenda
4 for the Board's approval in the month of MARCH/APRIL, 2010.
5 MAY

6 ALESIA WAGNER, D.O.

7 
8 Osteopathic Physician

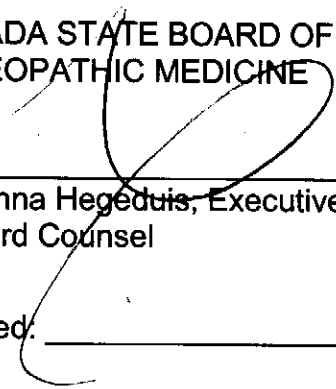
9 Dated: 3/28/10

10 NEVADA STATE BOARD OF
11 OSTEOPATHIC MEDICINE

12 BY: 
13 S. Paul Edwards, Esq.
14 Investigating Board Member

15 Dated: _____

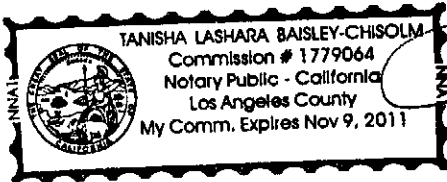
16 NEVADA STATE BOARD OF
17 OSTEOPATHIC MEDICINE

18 By: 
19 Dianna Hegedus, Executive Director -
20 Board Counsel

21 Dated: _____

22 **ACKNOWLEDGEMENT**

23 On this the 28 day of March, 2010, the said ALESIA WAGNER,
24 D.O., personally appeared before me, a notary public, and signed the above document, freely
25 and voluntarily, under no duress.



27 
28 Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

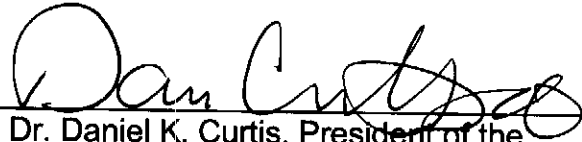
IT IS FURTHER ORDERED that should Dr. Wagner fail to comply with any terms or
conditions of this Agreement, Dr. Wagner will be in breach of this Agreement; and this
Agreement will be null and void. The Board may take whatever action it deems appropriate,
including but not limited to proceeding with the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

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

4 DATED this 7th day of May, 2010.

5 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

6
7 BY:


8 Dr. Daniel K. Curtis, President of the
9 Board