

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

2 IN A MATTER INVOLVING)

3 HARRY WATTERS, D.O., LIC. 672,)

4 Respondent.)

) CASE NO. MA 1003009

) **NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE**

JUN 16 2010

5 **SETTLEMENT AGREEMENT AND ORDER FILED**

6 **I. PARTIES**

7
8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9 between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative
10 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
11 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Harry Watters, D.O.
12 ("Dr. Watters") (collectively referred to as "the Parties").

13 **II. RECITALS**

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

- 15
16 A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain
17 information regarding litigation filed against Dr. Watters. The information was
18 ascertained as a result of the Board's staff due diligence in investigating its
19 applicants/licenses.
- 20 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
21 (1) Re: patient "L.R." Suit was filed in Arizona in November 2008 and served on the
22 physician in February 2009. It is alleged that the case is still pending. Physician
23 failed to notify this Board within 45 days after service of the existence of the medical
24 malpractice suit. Additionally, physician responded "no" to the question on the 2010
25 renewal application, submitted in October 2009, regarding the existence of medical
26 malpractice cases, and the IBM alleges that the correct response should have been
27 "yes." The IBM has alleged such acts violate NRS chapter 633 as discussed
28 hereinafter.
- C. WHEREAS, the Physician alleges he was unaware of the 45-day reporting
requirement and further alleges that when he responded "no" on the renewal
application, he believed he had already reported the lawsuit.
- D. WHEREAS, 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

1 than 45 days after the settlement, award, judgment or other disposition; and (d) any
2 sanctions imposed against the osteopathic physician that are reportable to the
3 National Practitioner Data Bank not later than 45 days after the sanctions are imposed.
4 NRS 633.527(2) states that should the Board find "that an osteopathic physician has
5 violated any provision of this section, **the Board may impose a fine of not more than**
6 **\$5,000 against the osteopathic physician for each violation, in addition to any other**
7 **finances or penalties permitted by law."** (Emphasis added.) This statute was added to
8 the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this
9 statute, the Legislature intended to mandatorily require all osteopathic physicians to
10 report any of the four (4) events mentioned in the statute.

- 11 E. WHEREAS, NRS 633.131(1) defines "unprofessional conduct" as including "willfully
12 making a false . . . statement . . . in applying for a license to practice osteopathic
13 medicine or in applying for renewal of a license to practice osteopathic medicine."
14 F. WHEREAS, and pursuant to NRS 633.511(1), "unprofessional conduct" is a ground for
15 initiating a formal disciplinary proceeding; and such discipline may include public
16 reprimands, the suspension or revocation of the license to practice osteopathic
17 medicine in the State of Nevada, and a fine not to exceed \$5,000 per violation.
18 G. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
19 recover from a person reasonable attorney's fees and costs that are incurred by the
20 regulatory body as part of its investigative, administrative and disciplinary proceedings
21 against the person if the regulatory body" either enters a final order or enters into a
22 settlement agreement.
23 H. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
24 Board to file a formal disciplinary complaint.
25 I. WHEREAS, the parties understand that this Agreement will be signed by the
26 respective parties and will then be offered to the Board for the entire Board's approval
27 at the next Board meeting, with the recommendation of the Investigating Board
28 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.
J. WHEREAS, Dr. Watters 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. Watters
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.
K. WHEREAS, Dr. Watters 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.
L. WHEREAS, Dr. Watters 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.
M. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary
proceeding and to save further costs and expenses, Dr. Watters has elected to enter
into this Agreement to resolve this matter, and this matter only.

10 of such witnesses, the right to testify on his own behalf, the right to receive written
11 findings of fact and conclusions of law supporting the decision on the merits of the
12 complaint and the right to obtain judicial review of the Board's decision. Should the
13 Board accept this Agreement, Dr. Watters voluntarily waives these rights.

- 14 Q. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
15 of the State of Nevada.
16 R. WHEREAS, this Agreement and Order contains a complete description of the
17 agreement between the parties and it supersedes any previous agreements between
18 the parties. All material representations, understandings and promises of the parties
19 are contained in this Agreement. Any modifications must be set forth in writing, signed
20 by all the parties, and approved by the Board.

21 **III. TERMS OF THE AGREEMENT**

- 22 A. Dr. Watters acknowledges that the failure to report allegations are true, and each
23 such act (failure to timely report) are violations of NRS chapter 633 for which
24 discipline is permissible under Nevada law. In exchange for the Board not pursuing
25 an administrative action on either the non-reporting allegations or the inaccurate
26 renewal application, and Dr. Watters not pursuing subsequent reviews by the
27 appropriate appellate Courts, the parties have agreed to resolve the current matter,
28 and only this matter. Dr. Watters will henceforth insure 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. Watters. 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 TO
RESOLVE THE NON-REPORTING ISSUE.** The Board waives any claims or
allegations with respect to the alleged inaccurate/incorrect renewal application.
B. Dr. Watters agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
imposed for having violated NRS chapter 633. This sum **includes** all fees and
costs incurred by the Board up to and including the approval of this settlement

1 agreement by the Board at its next scheduled board meeting pursuant to NAC
2 633.470(2)(b)(6). Such amount shall be payable in monthly installments of \$250.00
3 each with the first payment being due on the _____ day of _____
4 2010, and a like payment being due on the _____ day of each month thereafter
5 until said amount is paid in full. *PT full ck 3076*

- 6 C. Should Dr. Watters fail to satisfy and pay the indebtedness of \$500.00 in a timely
7 manner as discussed herein, Dr. Watters understands and agrees that he will be
8 considered in default of this Agreement, and this agreement will be null and void,
9 with the Respondent receiving credit for payments made to date. The Board may
10 take whatever action it deems appropriate, including but not limited to reducing the
11 balance to judgment pursuant to NRS chapter 353C.
- 12 D. The Respondent, Dr. Watters, agrees to bear his own fees and costs, including the
13 fees and expenses of his own attorney(s) if applicable.
- 14 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
15 the parties hereto and their respective heirs, personal representatives,
16 assigns and successors in interest of each party.
- 17 F. This Agreement and Order shall be construed in accordance with the laws of the
18 State of Nevada.
- 19 G. This settlement agreement consists of six (6) pages and embodies the entire
20 agreement between the Board and the osteopathic physician. It may not be
21 altered, amended or modified without the express consent of the parties, and any
22 subsequent alteration, amendment, or modification shall be in writing and subject to
23 approval by the Board.
- 24 H. In consideration for the execution of this Agreement, Dr. Watters hereby releases
25 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
26 and the State Attorney General's Office (as counsel for the Board), and each of
27 their representatives, investigators, and employees, in their individual and
28 representative capacity (collectively the State 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 herein arising out of, or by reason of, the investigation of the
allegations raised in this matter, and other matters relating thereto.
- I. Dr. Watters, 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, 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 June, 2010.

HARRY WATTERS, D.O.

By: [Signature]
Osteopathic Physician

Dated: 5/24/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: [Signature]
Daniel K. Curtis, D.O.
Investigating Board Member

Dated: 6/1/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

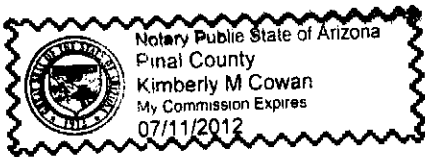
By: [Signature]
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: 6-10-10

ACKNOWLEDGEMENT

On this the 24th day of May, 2010, the said HARRY WATTERS, 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

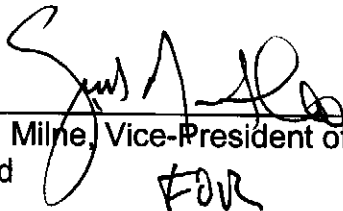
IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Watters fail to comply with any terms or conditions of this Agreement, Dr. Watters will be in breach of this Agreement; and this Agreement will be null and void. The Board may take whatever action it deems appropriate,

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

5 DATED this 15 day of June, 2010.

6 NEVADA STATE BOARD OF
7 OSTEOPATHIC MEDICINE

8 BY: 
9 _____
10 Dr. C. Dean Milne, Vice-President of the
11 Board
12 FOR

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

HARRY WATTERS, D.O., LIC. 672,

Respondent.

)
) CASE NO. MA 1003009 NV STATE BOARD OF
) OSTEOPATHIC MEDICINE

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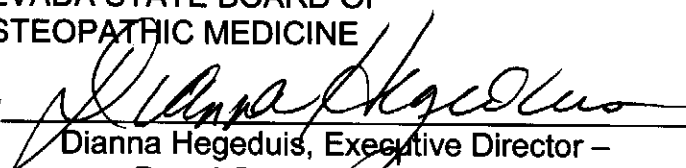
WRITTEN NOTICE OF ENTRY OF SETTLEMENT AGREEMENT
& ORDER RE: SAME

FILED

PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has approved the settlement agreement in the above-referenced matter; and a copy of the agreement with order is attached.

DATED THIS 16 day of June, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By 
Dianna Hegeduis, Executive Director -
Board Counsel
901 American Pacific Dr., # 180
Henderson, NV 89014

CERTIFICATE OF MAILING

I hereby certify that on the 16 day of June, 2010, I served a copy of the foregoing notice, with attached Settlement Agreement/Order, upon the respective parties to this matter by depositing a true copy thereof in the U.S. mail, addressed to them at their last known address on file with the Board, postage thereon prepaid.


An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE

Nevada State Board of Osteopathic Medicine
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