

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

2 IN THE MATTER OF THE COMPLAINT }

3 AGAINST MARK WEISBERG, D.O. }

4 License No. 428 }

5 RESPONDENT. }

Case No.: MA1001001

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

Filed:

APR 07 2010

6 **SETTLEMENT AGREEMENT AND ORDER**

FILED

7 **I. PARTIES**

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 Mark Weisberg, D.O.
12 ("Dr. Weisberg") (collectively referred to as "the Parties").

13 **II. RECITALS**

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

- 15 A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain
16 information regarding litigation filed against Dr. Weisberg. The information was
17 ascertained as a result of the Board's staff due diligence in investigating its
18 applicants/licenseses.
- 19 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
20 (1) Re: patient "RJ." Suit was filed and served on Respondent on or about August 5,
21 2009; yet the Board was not timely notified of the same. The matter appears to be still
22 pending as of the time of this settlement. This lawsuit was not disclosed in
23 Respondent's renewal application for 2010 submitted in 2009. The IBM has alleged all
24 such failures are violations of NRS chapter 633 as 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

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 entire Board's approval at the next
21 Board meeting, with the recommendation of the Investigating Board Member that this
22 matter be settled. The Agreement shall not become effective until it has been
23 approved by a majority of the Board and endorsed by a representative member of the
24 Board.
- 25 H. WHEREAS, Dr. Weisberg understands that the Board is free to accept or reject this
26 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
27 and a hearing scheduled on the same. The Board members who review this matter for
28 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. Weisberg
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. Weisberg 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. Weisberg 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. Weisberg has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Weisberg 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. Weisberg 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. Weisberg, nor have any
promises been made other than those reflected in this Agreement. Dr. Weisberg freely

1 and voluntarily entered into this agreement, motivated only by a desire to resolve the
2 issues addressed herein. Dr. Weisberg has executed this Agreement only after a
careful reading of it and a full understanding of all its terms.

3 N. WHEREAS, Dr. Weisberg 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
witnesses, the right to testify on his own behalf, the right to receive written findings of
8 fact and conclusions of law supporting the decision on the merits of the complaint and
9 the right to obtain judicial review of the Board's decision. Should the Board accept this
10 Agreement, Dr. Weisberg voluntarily waives these rights.

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

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

18 III. TERMS OF THE AGREEMENT

19 A. Dr. Weisberg acknowledges that the failure to report allegations are true, and each
20 such act (failure to timely report and/or inaccurate information in renewal
21 applications) is a violation of NRS chapter 633 for which discipline is permissible
22 under Nevada law. In exchange for the Board not pursuing an administrative action
23 on either the non-reporting allegations or the inaccurate information allegations, and
24 Dr. Weisberg not pursuing subsequent reviews by the appropriate appellate Courts,
25 the parties have agreed to resolve the current matter, and only this matter. Dr.
26 Weisberg will henceforth insure that all lawsuits involving him will be timely and
27 accurately reported to the Board, and the failure to do so may result in the Board
28 bringing a disciplinary action against the osteopathic medical license issued by the
Board to Dr. Weisberg. 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.**

B. Dr. Weisberg agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
imposed for having violated NRS 633.527(1) for the failure to timely report the
settlement of the lawsuit. This sum **includes** all fees and costs incurred by the
Board up to and including the approval of this settlement agreement by the Board at
its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount
shall be payable in monthly installments of \$250.00 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.

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- C. Should Dr. Weisberg fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Dr. Weisberg 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. Weisberg, 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 the laws of the State of Nevada.
- G. This settlement agreement consists of six (6) 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, amendment, or modification shall be in writing and subject to approval by the Board.
- H. In consideration for the execution of this Agreement, Dr. Weisberg hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada State Attorney General's Office (as counsel for the Board), and each of their representatives, investigators, and employees, in their individual and representative capacity (collectively the State of Nevada 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 in this paragraph arising out of, or by reason of, the investigation of the allegations raised in this matter, and other matters relating thereto.
- I. Dr. Weisberg, 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 MARK WEISBERG, D.O.

7 By: [Signature]
8 Osteopathic Physician

9 Dated: 3/6/2010

10 NEVADA STATE BOARD OF
11 OSTEOPATHIC MEDICINE

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

15 NEVADA STATE BOARD OF
16 OSTEOPATHIC MEDICINE

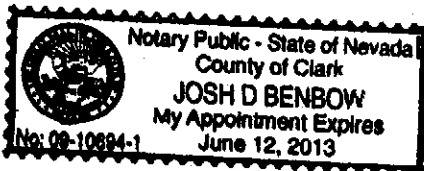
17 BY: [Signature]
18 Dianna Hegeduis, Executive Director -
19 Board Counsel

20 Dated: 3/10/10

21 Dated: 3-8-2010

22 **ACKNOWLEDGEMENT**

23 On this the 6 day of March, 2010, the said MARK
24 WEISBERG, D.O., personally appeared before me, a notary public, and signed the above
25 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. Weisberg fail to comply with any terms or conditions of this Agreement, Dr. Weisberg 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. Weisberg.

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

4 DATED this 6th day of April, 2010.

5 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

6
7 BY: 

8 Dr. C. Dean Milne, Vice-President of the
9 Board