

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 IN THE MATTER OF THE COMPLAINT
3 AGAINST
4 ABRAHAM WIKLER, D.O., LIC. #639,
5 RESPONDENT.

NV STATE BOARD OF OSTEOPATHIC MEDICINE
Case # 09-00000000
NOV 02 2009
Filed:
[Signature]
FILED
Executive Director

7 **WRITTEN NOTICE OF ENTRY OF ADMINISTRATIVE SETTLEMENT**
8 **AGREEMENT AND ORDER**

9 PLEASE TAKE NOTICE that an order was entered by the Nevada State Board of
10 Osteopathic Medicine approving the parties' settlement agreement. A copy of the fully
11 executed agreement and order is attached hereto.

12 DATED THIS 3rd day of November, 2009.

13 NEVADA STATE BOARD OF
14 OSTEOPATHIC MEDICINE

15 By *[Signature]*
16 Dianna Hegeduis, Executive Director-
17 Board Counsel
18 2860 E. Flamingo Rd., Suite D
19 Las Vegas, NV 89121

18 **CERTIFICATE OF MAILING**

19 I hereby certify that on the ____ day of November, 2009, I served a copy of this notice
20 with attached Agreement & Order upon the following individuals, postage thereon prepaid,
21 addressed to them at their last known address, addressed as follows:

22 Abraham Wikler, D.O.
23 8985 S. Pecos Rd., #4A
24 Henderson, NV 89074

25 *[Signature]*
26 An employee of the NEVADA STATE BOARD OF
27 OSTEOPATHIC MEDICINE
28

1 **BEFORE THE NEVADA STATE BOARD OF INVESTIGATIVE BOARD OF**
2 **IN THE MATTER OF THE COMPLAINT**) **OSTEOPATHIC MEDICINE**
3 **AGAINST**) **Case No. 200908083**
4 **ABRAHAM WIKLER, D.O., LIC. #639,**) **FILED**
5 **RESPONDENT.**) **Filed**
6) **Dianna Hegeduis**
7) **Executive Director**

7 **ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Scott E. Manthei, D.O., Investigative Board Member ("Dr. Manthei" or "Investigative
11 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board"), Board's
12 Counsel-Executive Director, Dianna Hegeduis, Esq., and Abraham Wikler, D.O. ("Dr. Wikler")
13 (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 Investigative Board Member Manthei, ascertained
17 certain information regarding a prior lawsuit filed against Dr. Wikler. The information
18 was ascertained as a result of the Board's staff due diligence in investigating its
19 applicants/licensees.
20 B. WHEREAS, the Investigative Board Member alleged that Dr. Wikler failed to timely
21 report the following: (1) The lawsuit by H.R. on behalf of patient A.R. was filed with the
22 Court in August 2004; (2) The lawsuit was settled in March 2006; and (3) The payment
23 made with notice of the same being reported to the National Practitioner Data Bank. It
24 is alleged that the failures to report are violations of NRS chapter 633.
25 C. NRS 633.527(1) states that an "osteopathic physician **shall** report to the Board: (a) any
26 action for malpractice against the osteopathic physician not later than 45 days after the
27 osteopathic physician receives service of a summons and complaint for the action;
28 (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 of 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

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

- 5 D. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
6 person reasonable attorney's fees and costs that are incurred by the regulatory body as
7 part of its investigative, administrative and disciplinary proceedings against the person
8 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 9 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
10 Board to file a formal disciplinary complaint.
- 11 F. WHEREAS, the parties understand that this Agreement will be signed by the respective
12 parties and will then be offered to the Board for the entire Board's approval at the next
13 Board meeting, with the recommendation of the Investigating Board Member that this
14 matter be settled. The Agreement shall not become effective until it has been
15 approved by a majority of the Board and endorsed by a member of the Board.
- 16 G. WHEREAS, Dr. Wikler understands that the Board is free to accept or reject this
17 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
18 and a hearing scheduled on the same. The Board members who review this matter for
19 approval of this Agreement may be the same members who ultimately hear the
20 disciplinary complaint if this Agreement is not approved by the Board. Dr. Wikler hereby
21 agrees to waive any rights he might have to challenge the impartiality of the Board to
22 hear the disciplinary complaint, based on prior knowledge obtained by the Board
23 through consideration of this Agreement, if after review by the Board, this Agreement is
24 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
25 as null and void.
- 26 H. WHEREAS, Dr. Wikler acknowledges that the Board will retain jurisdiction over this
27 matter until all terms and conditions set forth in this Agreement and Order have been
28 met to the satisfaction of the Board.
- I. WHEREAS, Dr. Wikler acknowledges that the Board had a reasonable basis to believe
that the statutes and/or regulations concerning 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. Wikler has elected to enter into this
Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Wikler 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. Wikler 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. Wikler, nor have any
promises been made other than those reflected in this Agreement. Dr. Wikler freely and
voluntarily entered into this agreement, motivated only by a desire to resolve the issues
addressed herein. Dr. Wikler has executed this Agreement only after a careful reading
of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Wikler 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
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

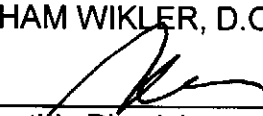
- 1 fact and conclusions of law supporting the decision on the merits of the complaint and
2 the right to obtain judicial review of the Board's decision. Should the Board accept this
3 Agreement, Dr. Wikler voluntarily waives these rights.
4 N. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
5 of the State of Nevada.
6 O. 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.

7 III. TERMS OF THE AGREEMENT

- 8 A. Dr. Wikler acknowledges that if the failure to report allegations were true, then such
9 would be violations of NRS chapter 633 for which discipline is permissible under
10 Nevada law. In exchange for the Board not pursuing a formal disciplinary action to
11 prove the allegations, and Dr. Wikler not pursuing subsequent reviews by the
12 appropriate appellate Courts, the parties have agreed to resolve the current matters
13 described herein, and only such matters. **THE BOARD ACKNOWLEDGES, AND
14 THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL
15 NOT AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE PARTIES
16 HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED
17 FOR THE NON-REPORTING VIOLATIONS, I.E., NOT FOR ANY ALLEGATIONS
18 REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE
19 PHYSICIAN'S COMPETENCY.** Dr. Wikler will henceforth insure that all lawsuits
20 involving him will be timely and accurately reported to the Board, and the failure to
21 do so may result in the Board bringing a disciplinary action against the osteopathic
22 medical license issued by the Board to Dr. Wikler. If any lawsuit is not reported to
23 the Board, such will be in violation of this agreement as well as the applicable
24 statutes.
- 25 B. Dr. Wikler agrees to pay the sum of Two Thousand, Five Hundred Dollars
26 (\$2,500.00) as the fine imposed for having violated NRS 633.527(1) for the
27 violations mentioned in this agreement. This sum **includes** all fees and costs
28 incurred by the Board up to and including the approval of this agreement by the
Board at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such
amount shall be payable in the amount of \$250.00 per month beginning on the 15th
day of October, 2009, and such amount shall continue to be due thereafter on the
15th day of each month, until the full amount of Two Thousand, Five Hundred
Dollars is paid in full.
- C. Should Dr. Wikler fail to satisfy and pay the indebtedness of \$2,500.00 in a timely
manner as discussed herein, Dr. Wikler 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. Wikler, 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 document shall be construed in accordance with the laws of Nevada.
- G. This settlement 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, amendment, or modification shall be in writing and subject to approval by the Board.
- H. In consideration for the execution of this Agreement, Dr. Wikler hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada 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 she 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, including those noted in the administrative complaint on file herein, and other matters relating thereto.
- I. Dr. Wikler, 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 disciplinary action, 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, Respondent 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 NOVEMBER, 2009.

ABRAHAM WIKLER, D.O.



 Osteopathic Physician

Dated: 9/21/09

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

BY: 

Scott E. Manthei, D.O.
 Investigating Board Member

Dated: 10-5-09

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

By: 

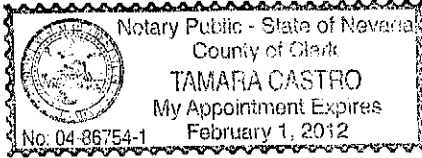
Dianna Hegeduis, Executive Director -
 Board Counsel

Dated: 9-25-09

ACKNOWLEDGEMENT

1 On this the 18th day of September, 2009, the said ABRAHAM WIKLER, D.O.,
2 personally appeared before me, a notary public, and signed the above document, freely and
3 voluntarily, under no duress.

Tamara Castro



Notary Public

ORDER OF THE BOARD

9 **IT IS SO ORDERED.**

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

17 DATED this 20th day of November, 2009.

18 NEVADA STATE BOARD OF
19 OSTEOPATHIC MEDICINE

20 BY: *Daniel Curtis, M.D.*

21 Daniel Curtis, D.O., President of the
22 Board
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