

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

2 IN THE MATTER OF THE COMPLAINT)

3 AGAINST)

4 DAVID WIKLER, D.O., LIC. #640,)

5 RESPONDENT.)

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**
Case No.: MA090002

NOV 02 2009

Filed

FILED
Dianna Hegeduis
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 *Dianna Hegeduis*

16 Dianna Hegeduis, Executive Director-
17 Board Counsel
18 2860 E. Flamingo Rd., Suite D
19 Las Vegas, NV 89121

20 **CERTIFICATE OF MAILING**

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

24 David Wikler, D.O.
25 8985 S. Pecos Rd., #4A
26 Henderson, NV 89074

27 *Mr. Bell*
28 An employee of the NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE
IN THE MATTER OF THE COMPLAINT
AGAINST
DAVID WIKLER, D.O., LIC. #640,
RESPONDENT.

THE NEVADA BOARD OF
OSTEOPATHIC MEDICINE
Case No.: ~~MA09008~~ ^{NOV 008} 2009
Filed: **FILED**
[Signature]
Executive Director

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Scott E. Manthei, D.O., Investigative Board Member ("Dr. Manthei" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board"), Board's Counsel-Executive Director, Dianna Hegeduis, Esq., and David Wikler, D.O. ("Dr. Wikler") (collectively referred to as "the Parties").

II. RECITALS

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

- A. WHEREAS, the Board, through Investigative Board Member Manthei, ascertained certain information regarding a prior lawsuit filed against Dr. Wikler. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensees.
- B. WHEREAS, the Investigative Board Member alleged that Dr. Wikler failed to timely report the following: (1) The lawsuit filed by M.A. on behalf of patient A.A. was resolved via a verdict in October 2006, then via a judgment on the verdict after additur in May 2007, and confirmed on appeal to the Nevada Supreme Court in July 2009; and (2) The payment made with respect to the lawsuit being reported to the National Practitioner Data Bank. It is alleged that the failures to report are violations of NRS chapter 633. It is noted that the physician did report the original 2006 verdict in his renewal application for 2007, submitted to the Board in 2006.
- C. NRS 633.527(1) states that an "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 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

- 1 later than 45 days after the sanctions are imposed. NRS 633.527(2) states that should
2 the Board find "that an osteopathic physician has violated any provision of this section,
3 the **Board may impose a fine of not more than \$5,000** against the osteopathic
4 physician **for each violation, in addition to any other fines or penalties permitted**
5 **by law."** (Emphasis added.) This statute was added to the law in 2003. By the use of
6 the word "shall" by the Nevada State Legislature in this statute, the Legislature
7 intended to mandatorily require all osteopathic physicians to report the 4 events.
- 8 D. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
9 person reasonable attorney's fees and costs that are incurred by the regulatory body
10 as part of its investigative, administrative and disciplinary proceedings against the
11 person if the regulatory body" either enters a final order or enters into a settlement
12 agreement.
- 13 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
14 Board to file a formal disciplinary complaint.
- 15 F. WHEREAS, the parties understand that this Agreement will be signed by the
16 respective parties and will then be offered to the Board for its approval at the next
17 Board meeting, with the recommendation of the Investigating Board Member that this
18 matter be settled. The Agreement shall not become effective until it has been
19 approved by a majority of the Board and endorsed by a member of the Board.
- 20 G. WHEREAS, Dr. Wikler understands that the Board is free to accept or reject this
21 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
22 and a hearing scheduled on the same. The Board members who review this matter for
23 approval of this Agreement may be the same members who ultimately hear the
24 disciplinary complaint if this Agreement is not approved by the Board. Dr. Wikler
25 hereby agrees to waive any rights he might have to challenge the impartiality of the
26 Board to hear the disciplinary complaint, based on prior knowledge obtained by the
27 Board through consideration of this Agreement, if after review by the Board, this
28 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
shall be regarded as null and void.
- H. WHEREAS, Dr. Wikler 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.
- 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,

1 the right to a public hearing on any charges or allegations filed, the right to confront
2 and cross-examine witnesses called to testify against him, the right to present evidence
3 on his own behalf, the right to compulsory process to secure the attendance of such
4 witnesses, the right to testify on his own behalf, the right to receive written findings of
5 fact and conclusions of law supporting the decision on the merits of the complaint and
6 the right to obtain judicial review of the Board's decision. Should the Board accept this
7 Agreement, Dr. Wikler voluntarily waives these rights.

8 N. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
9 of the State of Nevada.

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

15 III. TERMS OF THE AGREEMENT

16 A. Dr. Wikler acknowledges that if the failure to report allegations were true, then such
17 would be violations of NRS chapter 633 for which discipline is permissible under
18 Nevada law. In exchange for the Board not pursuing a formal disciplinary action to
19 prove the allegations, and Dr. Wikler not pursuing subsequent reviews by the
20 appropriate appellate Courts, the parties have agreed to resolve the current matters
21 described herein, and only such matters. **THE BOARD ACKNOWLEDGES, AND
22 THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL
23 NOT AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE PARTIES
24 HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED
25 FOR THE NON-REPORTING VIOLATIONS, I.E., NOT FOR ANY ALLEGATIONS
26 REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE
27 PHYSICIAN'S COMPETENCY.** Dr. Wikler will henceforth insure that all lawsuits
28 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
Respondent's osteopathic medical license. If any lawsuit is not reported to the
Board, such will be in violation of this agreement as well as the applicable statutes.

B. Dr. Wikler agrees to pay the sum of One Thousand, Five Hundred Dollars
(\$1,500.00) as the fine imposed for having violated NRS 633.527(1) for the
violations mentioned in this agreement. This sum **includes** all fees and costs
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 One Thousand, Five
Hundred Dollars is paid in full.

C. Should Dr. Wikler fail to satisfy and pay the indebtedness of \$1,500.00 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.

- 1 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
2 the parties hereto and their respective heirs, personal representatives, assigns and
3 successors in interest of each party.
4 F. This document shall be construed in accordance with the laws of Nevada.
5 G. This settlement agreement consists of five (5) pages and embodies the entire
6 agreement between the Board and the physician. It may not be altered, amended
7 or modified without the parties' express consent, and any subsequent alteration,
8 amendment, or modification shall be in writing and subject to the Board's approval.
9 H. In consideration for the execution of this Agreement, Dr. Wikler hereby releases
10 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
11 and the Nevada Attorney General's Office (as counsel for the Board), and each of
12 their representatives, investigators, and employees, in their individual and
13 representative capacity (collectively the State of Nevada Agencies) from any and all
14 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
15 and demands whatsoever known or unknown, in law and in equity, that she may
16 have had, now has, may have had, or claim to have against any and all of the
17 persons and entities named in this paragraph arising out of, or by reason of, the
18 investigation of the allegations raised in this matter, including those noted in the
19 administrative complaint on file herein, and other matters relating thereto.
20 I. Dr. Wikler, for himself, his heirs, executors, administrators, successors and assigns,
21 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
22 Board of Osteopathic Medicine, the Nevada Attorney General's office and each of
23 their members, agents and employees in their individual and representative
24 capacities against any and all claims, suits, demands, actions, debts, damages,
25 costs, charges, and expenses, including court costs and attorney's fees against any
26 persons or entities as well as all liability, losses, and damages of any nature
27 whatsoever that the persons and entities named in this paragraph shall have or
28 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.**

DAVID WIKLER, D.O.



Osteopathic Physician

Dated: 9-18-09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

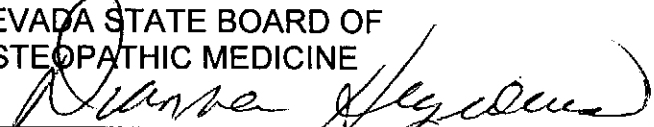
BY: 

Scott E. Manthei, D.O.

Investigating Board Member

Dated: 10-05-09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: 

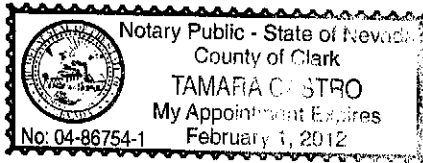
Dianna Hegeduis, Executive Director -

Board Counsel

Dated: 9-25-09

ACKNOWLEDGEMENT

1 On this the 18th day of September, 2009, the said DAVID 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

6 Notary Public

7 **ORDER OF THE BOARD**

8 **IT IS SO ORDERED.**

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

16 DATED this 18th day of September, 2009.

17
18 NEVADA STATE BOARD OF
19 OSTEOPATHIC MEDICINE

20 BY: [Signature]
21 Daniel Curtis, D.O., President of the
22 Board