

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

MICHAEL WILCZYNSKI, D.O., LIC. #1196,
Respondent.

)
) CASE NO. MA 1007010 NV STATE BOARD OF
) OSTEOPATHIC MEDICINE

DEC 08 2010

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Paul Edwards, Esq., Investigative Board Member ("Mr. Edwards" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Michael Wilczynski, D.O. ("Dr. Wilczynski") (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 the Investigative Board Member, ascertained certain information regarding litigation filed against Dr. Wilczynski. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licenseses.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
 - (1) Re: patient "N.B." Suit was filed against the physician in 2007 and the matter was resolved in 2009. The IBM has alleged that the physician did not timely report the commencement or the dismissal of the lawsuit to the Board, i.e., within 45 days of the event, nor did the physician reference this medical malpractice case in the respective renewal applications. The physician claims that he was not served with the summons and complaint. (2) Re: patient "B.T." Suit was only recently filed in 2009 and has not yet settled and/or been dismissed. The physician did not timely report the commencement of this lawsuit. Additionally, the physician responded "no" to the questions about medical malpractice cases arising in 2009 in his renewal application for 2010; the proper response should have been "yes" because of this lawsuit. The IBM has alleged these are violations of NRS chapter 633 as discussed hereinafter.
- C. WHEREAS, Respondent further alleges that he was unaware of the statutory requirement to report such lawsuits as he does not practice within the State of Nevada.
- 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

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

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

- 1 M. WHEREAS, Dr. Wilczynski acknowledges that once accepted by the Board, this
2 Agreement and all associated documentation become a matter of public record (with
3 the exception of medical information related to any patient).
- 4 N. WHEREAS, Dr. Wilczynski has had the opportunity to obtain the advice from
5 competent counsel of his choice concerning the terms and conditions of this
6 Agreement and the execution thereof. No coercion has been exerted upon Dr.
7 Wilczynski, nor have any promises been made other than those reflected in this
8 Agreement. Dr. Wilczynski freely and voluntarily entered into this agreement, motivated
9 only by a desire to resolve the issues addressed herein. Dr. Wilczynski has executed
10 this Agreement only after a careful reading of it and a full understanding of all its terms.
- 11 O. WHEREAS, Dr. Wilczynski is fully aware of his rights to contest the charges pending
12 against him. These rights include: representation by an attorney at his own expense,
13 the right to a public hearing on any charges or allegations filed, the right to confront
14 and cross-examine witnesses called to testify against him, the right to present evidence
15 on his own behalf, the right to compulsory process to secure the attendance of such
16 witnesses, the right to testify on his own behalf, the right to receive written findings of
17 fact and conclusions of law supporting the decision on the merits of the complaint and
18 the right to obtain judicial review of the Board's decision. Should the Board accept this
19 Agreement, Dr. Wilczynski voluntarily waives these rights.
- 20 P. WHEREAS, this Agreement and Order contains a complete description of the
21 agreement between the parties and it supersedes any previous agreements between
22 the parties. All material representations, understandings and promises of the parties
23 are contained in this Agreement. Any modifications must be set forth in writing, signed
24 by all the parties, and approved by the Board.

25 III. TERMS OF THE AGREEMENT

- 26 A. Dr. Wilczynski acknowledges that if the failures to report allegations are true, then
27 each such act is a violation of NRS chapter 633 for which discipline is permissible
28 under Nevada law. In exchange for the Board not pursuing an administrative action
on the non-reporting allegations or the inaccurate renewal applications-
unprofessional conduct allegations, and Dr. Wilczynski not pursuing subsequent
reviews by the appropriate appellate Courts, the parties have agreed to resolve the
current matter, and only this matter. Dr. Wilczynski 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. Wilczynski. 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 all
other claims and/or allegations regarding any alleged inaccurate renewal
applications.
- B. Dr. Wilczynski agrees to pay the sum of Five Hundred Dollars (\$500.00) as an
administrative fine. 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 as follows: in monthly payments in the amount of \$ 500.00

pd full

pd full ck #15474

commencing on the _____ day of _____, 20____ and continuing on the _____ day of each month thereafter until the amount of \$500 is paid in full.

- C. Should Dr. Wilczynski fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Dr. Wilczynski 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. Wilczynski, 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 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. Wilczynski 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 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 herein, and other matters relating thereto.
- I. Dr. Wilczynski, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the State Board of Osteopathic Medicine, the 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

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147

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Open Meeting Laws and acknowledges that this Agreement shall be on the agenda for the Board's approval in the month of December, 2010 and that upon payment of the fine mentioned above, an order of fulfillment will be scheduled for approval by the Board in the month of January, 2011.

MICHAEL WILCZYNSKI, D.O.

By: Michael Wilczynski
Osteopathic Physician

Dated: 11/10/2010

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: _____
Paul Edwards, Esq.
Investigating Board Member

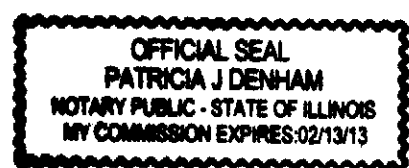
By: Dianna Hegedus
Dianna Hegedus, Executive Director -
Board Counsel

Dated: _____

Dated: 11-16-2010

ACKNOWLEDGEMENT

On this the 10th day of November, 2010, the said MICHAEL WILCZYNSKI, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.



Patricia J. Denham
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Wilczynski fail to comply with any terms or conditions of this Agreement, Dr. Wilczynski 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. Wilczynski. Should this Agreement become null and void by Dr. Wilczynski's failure to comply with terms

1 Open Meeting Laws and acknowledges that this Agreement shall be on the agenda
2 for the Board's approval in the month of _____, 201____ and that
3 upon payment of the fine mentioned above, an order of fulfillment will be scheduled
4 for approval by the Board in the month of _____, 201____.

5 MICHAEL WILCZYNSKI, D.O.

6 By: _____
7 Osteopathic Physician

8 Dated: _____

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 NEVADA STATE BOARD OF
12 OSTEOPATHIC MEDICINE

13 BY: *Paul Edwards*
14 Paul Edwards, Esq.
15 Investigating Board Member

16 By _____
17 Dianna Hegeduis, Executive Director -
18 Board Counsel

19 Dated: 11/15/10

20 Dated: _____

21 **ACKNOWLEDGEMENT**

22 On this the _____ day of _____, 201____, the said MICHAEL
23 WILCZYNSKI, D.O., personally appeared before me, a notary public, and signed the above
24 document, freely 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. Wilczynski fail to comply with any terms or
conditions of this Agreement, Dr. Wilczynski 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. Wilczynski.
Should this Agreement become null and void by Dr. Wilczynski's failure to comply with terms

1 or conditions of this Agreement, the Board may not only pursue an administrative action
2 against Dr. Wilczynski, but the Board may also seek the maximum fees, fines, and costs.

3 DATED this 7th day of December, 2010.

4 NEVADA STATE BOARD OF
5 OSTEOPATHIC MEDICINE

6 BY: *[Signature]*

7 Dr. Daniel K. Curtis, President of the Board

8 *[Handwritten initials]*

Nevada State Board of Osteopathic Medicine
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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)
MICHAEL WILCZYNSKI, D.O., LIC. #1196,)
Respondent.)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

DEC 08 2010

FILED

WRITTEN NOTICE OF ENTRY OF ORDER APPROVING
SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE that an order was entered regarding the Settlement Agreement in the above-referenced matter and a copy of the same is attached hereto.

DATED THIS 8th day of December, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By Dianna Hegeduis

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

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of December, 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.

Michelle Jones
An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE

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