

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

2 IN THE MATTER INVOLVING)

3 JEROME ZIARKO, D.O.,)
4 License No. 461,)

5 RESPONDENT.)

Case No.: MA1003005

Filed:

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

MAY 05 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 Jerome Ziarko, D.O.
12 ("Dr. Ziarko") (collectively referred to as "the Parties").
13

14 **II. RECITALS**

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

- 16 A. WHEREAS, the Board, through the Investigative Board Member ("IBM"), ascertained
17 certain information regarding litigation filed against Dr. Ziarko. The information was
18 ascertained as a result of the Board's staff due diligence in investigating its
19 applicants/licenseses.
- 20 B. WHEREAS, the IBM has alleged as follows: (1) Re: patient "minor S.F." Suit was filed
21 and served on Respondent in or about March 2006; and the matter was dismissed by
22 the Court due to insufficiency of pleadings August 2006. Additionally, this litigation was
23 not noted in the appropriate renewal application when questioned about the existence
24 of medical malpractice claims , i.e., the 2007 renewal application submitted in
25 December 2006. The IBM has alleged all such failures are violations of NRS chapter
26 633 as discussed hereinafter.
- 27 C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
28 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 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

1 this section, **the Board may impose a fine of not more than \$5,000** against the
2 osteopathic physician **for each violation, in addition to any other fines or penalties**
3 **permitted by law.** (Emphasis added.) This statute was added to the law in 2003. By
4 the use of the word "shall" by the Nevada State Legislature in this statute, the
5 Legislature intended to mandatorily require all osteopathic physicians to report any of
6 the four (4) events mentioned in the statute.

- 7 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
8 . . . statement . . . in applying for a license to practice osteopathic medicine or in
9 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
10 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
11 proceeding; and such discipline may include public reprimands, the suspension or
12 revocation of the license to practice osteopathic medicine in the State of Nevada, and
13 an assessment of a fine not to exceed \$5,000 per violation.
- 14 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
15 person reasonable attorney's fees and costs that are incurred by the regulatory body as
16 part of its investigative, administrative and disciplinary proceedings against the person
17 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 18 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
19 Board to file a formal disciplinary complaint.
- 20 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
21 parties and will then be offered to the Board for the entire Board's approval at the next
22 Board meeting, with the recommendation of the IBM that this matter be settled. The
23 Agreement shall not become effective until it has been approved by a majority of the
24 Board and endorsed by a representative member of the Board.
- 25 H. WHEREAS, Dr. Ziarko 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. Ziarko 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. Ziarko 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. Ziarko 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. Ziarko has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Ziarko 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. Ziarko 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. Ziarko, nor have any
promises been made other than those reflected in this Agreement. Dr. Ziarko freely and

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

4 N. WHEREAS, Dr. Ziarko is fully aware of his rights to contest the charges pending
5 against him. These rights include: representation by an attorney at his own expense,
6 the right to a public hearing on any charges or allegations filed, the right to confront and
7 cross-examine witnesses called to testify against him, the right to present evidence on
8 his own behalf, the right to compulsory process to secure the attendance of such
9 witnesses, the right to testify on his own behalf, the right to receive written findings of
10 fact and conclusions of law supporting the decision on the merits of the complaint and
11 the right to obtain judicial review of the Board's decision. Should the Board accept this
12 Agreement, Dr. Ziarko voluntarily waives these rights.

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

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

20 III. TERMS OF THE AGREEMENT

21 A. Dr. Ziarko acknowledges that the failure to report allegations are true, and each
22 such act (failure to timely report and/or inaccurate information in renewal
23 applications) is a violation of NRS chapter 633 for which discipline is permissible
24 under Nevada law. In exchange for the Board not pursuing an administrative action
25 on either the non-reporting allegations or the inaccurate information allegations, and
26 Dr. Ziarko not pursuing subsequent reviews by the appropriate appellate Courts, the
27 parties have agreed to resolve the current matter, and only this matter. Dr. Ziarko
28 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. Ziarko. 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.**

29 B. Dr. Ziarko agrees to pay the sum of Seven Hundred Fifty Dollars (\$750.00) as the
30 fine imposed for having violated NRS 633.527(1) for the failure to timely report the
31 settlement of the lawsuit. This sum **includes** all fees and costs incurred by the
32 Board up to and including the approval of this settlement agreement by the Board at
33 its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount
34 shall be payable in monthly installments of \$250.00 each with the first payment
35 being due on the 4th day of May, 2010, and a like payment
36 being due on the 4th day of each month thereafter until said amount is paid in
37 full.

38 C. Should Dr. Ziarko fail to satisfy and pay the indebtedness of \$750.00 in a timely
manner as discussed herein, Dr. Ziarko understands and agrees that he will be

1 considered in default of this Agreement, and this agreement will be null and void,
2 with the Respondent receiving credit for payments made to date. The Board may
3 take whatever action it deems appropriate, including but not limited to reducing the
4 balance to judgment pursuant to NRS chapter 353C.

- 5 D. The Respondent, Dr. Ziarko, agrees to bear his own fees and costs, including the
6 fees and expenses of his own attorney(s) if applicable.
- 7 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
8 the parties hereto and their respective heirs, personal representatives, assigns and
9 successors in interest of each party.
- 10 F. This Agreement and Order shall be construed in accordance with the laws of the
11 State of Nevada.
- 12 G. This settlement agreement consists of five (5) pages and embodies the entire
13 agreement between the Board and the osteopathic physician. It may not be altered,
14 amended or modified without the express consent of the parties, and any
15 subsequent alteration, amendment, or modification shall be in writing and subject to
16 approval by the Board.
- 17 H. In consideration for the execution of this Agreement, Dr. Ziarko hereby releases and
18 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
19 Attorney General's Office (as counsel for the Board), and each of their
20 representatives, investigators, and employees, in their individual and representative
21 capacity (collectively the State of Nevada Agencies) from any and all manner of
22 actions, causes of actions, suits, debts, judgments, executions, claims, and
23 demands whatsoever known or unknown, in law and in equity, that he may have
24 had, now has, may have had, or claim to have against any and all of the persons
25 and entities named in this paragraph arising out of, or by reason of, the investigation
26 of the allegations raised in this matter, and other matters relating thereto.
- 27 I. Dr. Ziarko, for himself, his heirs, executors, administrators, successors and assigns,
28 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
Board of Osteopathic Medicine, the Nevada State 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 May, 2010.

JEROME ZIARKO, D.O.

By: 
Osteopathic Physician

Dated: 3-30-2010

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: Daniel K. Curtis
4 Daniel K. Curtis, D.O.
Investigating Board Member

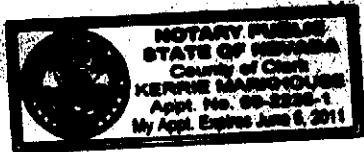
By Dianna Hegehuis
Dianna Hegehuis, Executive Director -
Board Counsel

5 Dated: 4.23.10

Dated: 4-19-2010

6 **ACKNOWLEDGEMENT**

7 On this the 30 day of March, 2010, the said JEROME ZIARKO,
8 D.O., personally appeared before me, a notary public, and signed the above document, freely
9 and voluntarily, under no duress.



Kerrie Markhouse
Notary/Public

13 **ORDER OF THE BOARD**

14 **IT IS SO ORDERED.**

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

22 DATED this 4th day of May, 2010

23
24 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

25
26 BY: C. Dean Milne
27 FOR Dr. C. Dean Milne, Vice-President of the
28 Board

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

2 IN THE MATTER INVOLVING

3 JEROME ZIARKO, D.O.,
4 License No. 461,

5 **RESPONDENT.**

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Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

MAY 05 2010

6 **WRITTEN NOTICE OF ENTRY OF**
7 **ORDER APPROVING AGREEMENT**

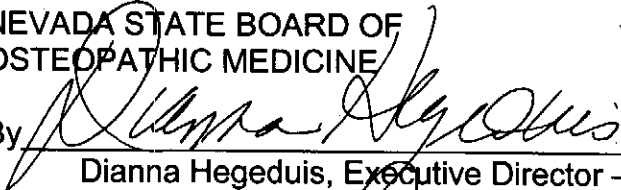
FILED

8 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine
9 approved the Settlement Agreement entered into by the parties to this matter; and a file-
10 stamped copy of the same is attached hereto.

11 DATED THIS 5th day of May, 2010.

12 NEVADA STATE BOARD OF
13 OSTEOPATHIC MEDICINE

14 By


15 Dianna Hegeduis, Executive Director –
Board Counsel

16 901 American Pacific Dr., # 180
17 Henderson, NV 89014

18 **CERTIFICATE OF MAILING**

19 I hereby certify that on the 5th day of May, 2010, I served a copy of the foregoing
20 notice, with attached Settlement Agreement/Order, upon the respective parties to this matter
21 by depositing a true copy thereof in the U.S. mail, addressed to them at their last known
22 address, postage thereon prepaid, addressed as follows:

23 Jerome Ziarko, D.O.
24 100 No. Green Valley Pkwy., # 110
Henderson, NV 89014

PERSONAL & CONFIDENTIAL

25 
26

27 An employee of the NEVADA STATE BOARD
28 OF OSTEOPATHIC MEDICINE