BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

MILES FINE, D.O.,

RESPONDENT.

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Daniel Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "IBM") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Counsel, Dianna Hegeduis, Esq., and Miles B. Fine, D.O. ("Dr. Fine") through his attorneys of record, John H. Cotton, Esq., and Paul Hoffman, Esq. of John H. Cotton & Associates, Ltd. (collectively referred to as "the Parties").

II. JURISDICTION / 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 the alleged medical care rendered to various patients by Dr. Fine. The information was ascertained as a result of the IBM's and Board's staff due diligence in its statutorily-mandated investigation of its applicants/licensees and complaints filed with the Board.

B. WHEREAS, the "IBM" has alleged as follows in the formal administrative complaints on file with the Board (i.e., public records): (1) Re: patient "M.D." Among the allegations raised by the IBM are the allegations that Dr. Fine performed unwarranted surgeries, billed for performing "complete" bilateral mastoidectomies when such procedures had not been performed, deviated from the standard of care during the treatment of this patient, and provided the Board with an incomplete copy of the medical records on this patient. (2) Re: patient "J.G." Among the allegations raised by the IBM are the allegations that Dr. Fine performed unwarranted surgeries, billed for procedures not performed during a second surgery, failed to provide a complete copy of the medical records on this patient to the Board, and deviated from the standard of care during the treatment of this patient. The IBM has alleged these are all violations of NRS and NAC chapters 633, including but not limited to the laws pertaining to unprofessional conduct, unethical conduct, malpractice, and professional incompetency, as discussed more fully hereinafter.

C. WHEREAS, NRS 633.511(1) provides that unprofessional conduct is a ground for the initiation of disciplinary proceedings by this Board.
D. WHEREAS, NRS 633.131(1) defines "unprofessional conduct," in part, as follows:
   (f) Engaging in any:
      (1) Professional conduct which is intended to deceive or which the board by regulation has determined is unethical;
      (2) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not constitute gross or repeated malpractice or professional incompetence . . .
   (m) Failure of a licensee to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient . . .
   (o) Making or filing a report which the licensee knows to be false.

E. WHEREAS, and pursuant to NAC 633.350, a licensee engages in unethical conduct if he engages in any conduct that the Board determines constitutes an unfitness to practice osteopathic medicine; and pursuant to NAC 633.350, a licensee engages in unethical conduct if he willfully makes and files false reports, records, or claims in the licensee's osteopathic medicine practice.

F. WHEREAS, NRS 633.511(5) provides that professional incompetence, malpractice, and gross malpractice are grounds for the initiation of disciplinary proceedings against an osteopathic physician by this Board.

G. WHEREAS, "gross malpractice" is defined in NRS 633.041 as follows: "Gross malpractice" means malpractice where the failure to exercise the requisite degree of care, diligence or skill consists of:
   1. Performing surgery upon or otherwise ministering to a patient while the osteopathic physician is under the influence of alcohol or any controlled substance
   2. Gross negligence;
   3. Willful disregard of established medical procedures; or
   4. Willful and consistent use of medical procedures, services or treatment considered by osteopathic physicians in the community to be inappropriate or unnecessary in the cases where used.

H. WHEREAS, NRS 633.111 defines professional incompetence as including the lack of ability to safely and skillfully practice osteopathic medicine.

I. WHEREAS, and pursuant to NAC 633.370, if a medical competency examination determines that a licensee is not competent to practice osteopathic medicine with reasonable skill and safety to patients, the Board will consider that determination to constitute a rebuttal presumption of profession incompetence with regard to the licensee.

J. WHEREAS, NRS 633.151 states that the "purpose of licensing osteopathic physicians and physician assistants is to protect the public health and safety and the general welfare of the people of [the State of Nevada]. Any license issued pursuant to this chapter is a revocable privilege, and a holder of such a license does not acquire thereby any vested right."

K. WHEREAS, NRS 633.651 states, in part, as follows:
   1. If the Board finds a person guilty in a disciplinary proceeding, it shall by order take one or more of the following actions:
      a. Place the person on probation for a specified period or until further order of the Board.
      b. Administer to the person a public reprimand.
      c. Limit the practice of the person to, or by the exclusion of, one or more
specified branches of osteopathic medicine.

d. Suspend the license of the person to practice osteopathic medicine for a specified period or until further order of the Board.

e. Revoke the license of the person to practice osteopathic medicine.

f. Impose a fine not to exceed $5,000 for each violation,

g. Require supervision of the practice of the person,

h. Require the person to perform community service without compensation,

i. Require the person to complete any training or educational requirements specified by the Board,

j. Require the person to participate in a program to correct alcohol or drug dependence or any other impairment

The order of the Board may contain such other terms, provisions or conditions as the Board deems proper and which are not inconsistent with law.

2. The Board shall not administer a private reprimand.

L. WHEREAS, NRS 622.400(1) states that a “regulatory body [such as this Board] may recover from a person reasonable attorney's fees and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings against the person if the regulatory body” either enters a final order or enters into a settlement agreement.

M. WHEREAS, the parties have agreed to settle this matter rather than continuing with the prosecution of the two administrative cases mentioned herein.

N. WHEREAS, the parties understand that this Agreement will be signed by the respective parties and will then be offered to the Board for the entire Board's approval 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.

O. WHEREAS, Dr. Fine understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, the administrative hearings on the disciplinary complaints will be rescheduled and the matters prosecuted fully and completely. The Board members who review this matter for approval of this Agreement may be the same members who ultimately hear the disciplinary complaints if this Agreement is not approved by the Board. Dr. Fine 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.

P. WHEREAS, Dr. Fine 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.

Q. WHEREAS, Dr. Fine 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.

R. WHEREAS, in order to resolve the pending matters and to save further costs and expenses, the parties have elected to enter into this Agreement.

S. WHEREAS, Dr. Fine 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 any patient).

T. WHEREAS, Dr. Fine 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. Fine, nor have any promises been made other than those reflected in this Agreement. Dr. Fine freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Fine has executed this Agreement only after a careful reading of it and a full understanding of all its terms.

U. WHEREAS, Dr. Fine 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 fact and conclusions of law supporting the decision on the merits of the complaint and the right to obtain judicial review of the Board's decision. Should the Board accept this Agreement, Dr. Fine voluntarily waives these rights.

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

III. TERMS OF THE AGREEMENT

A. Dr. Fine admits that the billing/CPT code used in the alleged “complete” bilateral mastoidectomies on patient “M.D.” was incorrect and/or misleading. More specifically, the operative report prepared by Dr. Fine indicates that both left and right mastoidectomies were carried out “superficially” yet the code utilized was for one “complete” mastoidectomy.

B. Dr. Fine acknowledges that performing turbinectomies in all cases may not be appropriate in a dry climate, such as found in the Clark County, Nevada area. Dr. Fine agrees, upon the execution of this Agreement, to not perform turbinectomies without first assuring that there is substantial supporting documentation within the patients’ medical records warranting such procedures, and that such documentation should be able to withstand the scrutiny and approval of the procedure by another Otolaryngologist if that other Otolaryngologist is asked to review those medical records. Submucosal resections are permissible.

C. Dr. Fine acknowledges that physicians are required to maintain and retain complete and accurate medical records on all patients. Pursuant to NRS chapter 629, Dr. Fine agrees to provide the Board with photocopies of the complete medical records on patients when requested to do so at any time after the execution of this Agreement.

D. Dr. Fine agrees to a three (3) month suspension of his Nevada State Osteopathic medicine license based upon the allegations above, commencing on the 1st day of March, 2011 and concluding on the 31st day of May, 2011 at which point his license will be reinstated subject to the conditions below. In exchange for the three (3) month suspension, the Board will dismiss the two pending formal disciplinary actions filed by the Board against Dr. Fine. Additionally, in exchange for the three (3) month suspension, the Board will not pursue any investigations, and/or prosecution of potential billing or malpractice claims, including but not limited to any NAC or NRS 633 based claims, arising prior to the effective date of this Agreement.
E. Dr. Fine agrees, that during the three (3) month suspension, he will attend a two-day ethics class sponsored by either PBI Ethics, PACE, or other similarly recognized entities, as well as attend a class on creating/maintaining medical records. All costs associated with attendance at these classes shall be the sole responsibility of Dr. Fine; and the continuing medical education ("CME") credits received for attending these classes shall apply towards the yearly mandatory CMEs required of osteopathic physicians.

F. The parties agree that the terms and conditions of their Settlement Agreement dated April 7, 2009 have been satisfied, and an Order of Fulfillment of that Agreement and Order will be entered by the Board following approval of this Agreement.

G. Dr. Fine agrees that immediately upon the cessation of the suspension, his Nevada State Osteopathic medicine license will be active but placed on "probation" for a period of eighteen (18) months, beginning on the 1st day of June, 2011 and ending on the 1st day of December, 2012.

H. Dr. Fine agrees, during this eighteen (18) months of probation, the Board will receive a monthly list of all patients having surgery with/by him, including patient identification, the date and location of surgery and the diagnosis/reason for the surgery. Once the procedure-surgery has been completed, Dr. Fine will provide the Board with a copy of his operative report on each such patient as well as his billing-superbilling records on each such patient. Dr. Fine shall commence providing this report to the Board on the tenth (10th) day of July, 2011, i.e., the tenth (10th) day of the second (2nd) month of his probation and will terminate on the tenth (10th) day of November, 2012. Should Dr. Fine relocate outside the State of Nevada, this requirement will be stayed/deferred. Should Dr. Fine return to practice in the State of Nevada at any time thereafter, this reporting requirement will resume as a relicensing requirement and for the duration of the remaining time on the 18-month long probationary period.

I. Dr. Fine agrees, during this eighteen-month long probationary period, the Board retains the right to conduct an office visit and further retains the statutory right to receive photocopies of complete medical records and billing records on certain patients with a certificate from his records' custodian. These medical records will be reviewed by the IBM assigned to his matter or another Board member to assure compliance with this Agreement. The Board shall provide Dr. Fine or his counsel with 24-hour notice of the date of its inspection.

J. Dr. Fine agrees that a proctor assisting in his surgeries may be cost-prohibitive. In exchange for a requirement of a proctor, Dr. Fine agrees that one-fifth (1/5th) of the surgeries he performs during the 18-months of probation may be reviewed by at least one Otolaryngologist and/or one certified medical biller to assure compliance with the standard of medical care for this community and that the proper billing codes are being utilized. This 1/5th figure will be calculated on a monthly basis from the report due to the Board as described in Paragraph "H" above. The reviewing physician and/or certified medical biller may require additional information from Dr. Fine; and Dr. Fine agrees to cooperate fully with these individuals and provide all requested information in a timely fashion. All fees and costs associated with these reviews shall be the sole responsibility of Dr. Fine. The IBM assigned to this matter or his successor shall determine whether a lesser percentage of cases should be reviewed, commencing after the ninth month of the probationary period.

K. The Board agrees that at its next regularly scheduled Board meeting, immediately following the expiration of the 18-month probationary period, if all terms and
conditions of this Agreement have been fulfilled including the reimbursement to the Board of all fees, fines, and costs, a full and active Nevada State Osteopathic medicine license will be restored to Dr. Fine and an Order of Fulfillment will be entered by the Board.

L. Dr. Fine agrees to pay the sum of Fifty Thousand Dollars ($50,000.00) as the fines and fees imposed for having violated NRS and NAC chapters 633. 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).

M. Dr. Fine agrees that the sum of $50,000 shall be payable as follows: the sum of Four Thousand Dollars ($4,000) is due on or before the 20th day of March, 2011, and a like payment shall be due on the 20th day of each month thereafter, until the full amount of $50,000.00 is paid in full.

N. Should Dr. Fine fail to satisfy and pay this indebtedness to the Board in a timely manner as discussed herein, or fails to comply with any of the other terms and condition of this Agreement, Dr. Fine understands and agrees that he will be considered in default of this Agreement. The Board may take whatever action it deems appropriate, including but not limited to reducing the balance to judgment pursuant to NRS chapter 353C and/or the continuation of the prosecution of the disciplinary cases against Dr. Fine.

O. The Respondent, Dr. Fine, agrees to bear his own fees and costs, including the fees and expenses of his own attorney(s) if applicable.

P. 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.

Q. This Agreement and Order shall be construed in accordance with the laws of the State of Nevada.

R. This settlement agreement consists of eight (8) 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.

S. In consideration for the execution of this Agreement, Dr. Fine 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.

T. Dr. Fine, 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.

U. 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.

V. 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 February, 2011.

MILES B. FINE, D.O.  
By:  
Osteopathic Physician  
License # 686  
Respondent  
Dated: 1-14-11

JOHN H. COTTON & ASSOCIATES, LTD.  
By:  
John H. Cotton, Esq.  
Paul Hoffman, Esq.  
Attorneys for Respondent  
Dated: 01/14/2011

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE  
By:  
Daniel Curtis, D.O.  
Investigating Board Member  
Dated: 11/24/11

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE  
By:  
Dianna Hegeduis, ESQ.  
Board Counsel  
Dated: 1-24-11

ACKNOWLEDGEMENT

On this the 14th day of January, 2011, the said MILES B. FINE, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, for the purposes therein mentioned.

Notary Public  
[Signature]

NOTARY PUBLIC  
T. PINCOMBE-BRYSON  
STATE OF NEVADA - COUNTY OF CLARK  
MY APPOINTMENT EXPIRED AUGUST 21, 2014  
No. 02-77157-1
ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Fine fail to comply with any terms or conditions of this Agreement, Dr. Fine 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 actions against Dr. Fine as well as continue with any investigation, if any such confidential investigations are underway as well as seek the maximum fees, fines, and costs allowable under such circumstances. Should the Investigative Board Member assigned to this matter feel a summary suspension is warranted due to Dr. Fine's violating the terms and conditions of this Agreement, the Board's staff shall immediately proceed with such a summary suspension procedure.

IT IS FURTHER ORDERED that should Dr. Fine fail to comply with terms or conditions specified in this Agreement regarding the repayment of fees, fines, and costs, the Board may reduce the monies due and owing hereunder to Judgment pursuant to NRS chapter 353C as well as seek the maximum fees, fines, and costs allowable under such circumstances.

DATED this 1st day of February, 2011.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: [Signature]
Dr. Paul Kalekas, Secretary-Treasurer of the Board
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINTS

AGAINT

MILES B. FINE, D.O.
RESPONDENT.

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

FEB 02 2011

WRITTEN NOTICE OF ENTRY OF ORDER
APPROVING SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE that on the 1st day of February, 2011, the Nevada State Board of Osteopathic Medicine entered an order approving the Settlement Agreement between the Respondent, Miles B. Fine, D.O., and the Enforcement Department of the Board. A file-stamped copy of that settlement agreement with order is attached.

DATED THIS ___ day of February, 2011.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By ________________
Dianna Hegeduis, Esq., #5916
901 American Pacific Dr., # 180
Las Vegas, NV 89014
Board’s Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2011, I served a copy of the above Notice with attachment upon the parties to this matter, via U.S. Postal Service, postage thereon prepaid, addressed as follows:

Miles Fine, D.O.
1321 S. Rainbow Blvd., #220
Las Vegas, NV 89146

John Cotton, Esq.
JOHN COTTON & ASSOCIATES
2300 W. Sahara Ave., #420
Las Vegas, NV 89102
Attorneys of Record for Dr. Fine

________________________________________
An employee of the NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE