

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

2 **IN THE MATTER OF THE COMPLAINT**
3 **AGAINST**
4 **MILES B. FINE, D.O.,**
5 **RESPONDENT.**

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

Case No.: 08-12106

APR 08 2009

FILED

Filed:

Executive Director

6
7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between the Nevada State Board of Osteopathic Medicine ("the Board") through their counsel,
11 Dianna Hegeduis, Sr. Deputy Attorney General, of the Nevada Attorney General's Office and
12 Miles B. Fine, D.O. ("Dr. Fine" or Respondent), through his counsel, Alan C. Sklar, Esq., of
13 Sklar Williams, LLP (collectively referred to as "the Parties").

14
15 **II. RECITALS**

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

- 17
- 18 A. WHEREAS, the Board, through Investigative Board Member Daniel Curtis, D.O.
19 ("Curtis") filed a complaint ("Complaint") in this action. The Complaint resulted from six
20 complaints being filed with the Board by patients of Dr. Fine, all indicating that a
21 nasal/sinus endoscopy, diagnostic with maxillary sinusoscopy procedure was not
22 performed but rather that only a nasal endoscopy, diagnostic, unilateral or bilateral was
23 performed.
- 24 B. WHEREAS, the Investigative Board Member alleged that Dr. Fine incorrectly indicated
25 in billing and medical records, and to insurance companies, that the services rendered
26 fell within Medical Billing Code 31233, when in fact, the procedures rendered fell within
27 Medical Billing Code 31231.
- 28 C. WHEREAS, Dr. Fine acknowledges that on the six patients identified in the
administrative complaint filed by the Board, the incorrect billing code was utilized,
although such utilization was inadvertent and was not willful.
- D. WHEREAS, the parties have agreed to settle this matter as described herein and the
previously scheduled Hearing was cancelled.
- E. 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

1 approved by a majority of the Board and endorsed by a representative member of the
2 Board.

- 3 F. WHEREAS, Dr. Fine understands that the Board is free to accept or reject this
4 Agreement and, if rejected by the Board, the formal disciplinary hearing on the
5 complaint against Dr. Fine will be rescheduled. The Board members who review this
6 matter for approval of this Agreement may be the same members who ultimately hear
7 the disciplinary complaint if this Agreement is not approved by the Board. Dr. Fine
8 hereby agrees to waive any rights he might have to challenge the impartiality of the
9 Board to hear the disciplinary complaint, based on prior knowledge obtained by the
10 Board through consideration of this Agreement, if after review by the Board, this
11 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
12 shall be regarded as null and void.
- 13 G. WHEREAS, Dr. Fine acknowledges that the Board will retain jurisdiction over this
14 matter until all terms and conditions set forth in this Agreement and Order have been
15 met to the satisfaction of the Board.
- 16 H. WHEREAS, Dr. Fine acknowledges that the Board had a reasonable basis to believe
17 that the statutes and/or regulations regulating the practice of Osteopathic Medicine in
18 the State of Nevada have been violated. Dr. Fine agrees to abide by all rules governing
19 the practice of osteopathic medicine in Nevada.
- 20 I. WHEREAS, in order to resolve the matter of disciplinary proceedings and to save
21 further costs and expenses, Dr. Fine has elected to enter into this Agreement.
- 22 J. WHEREAS, Dr. Fine acknowledges that once accepted by the Board, this Agreement
23 and all associated documentation become a matter of public record.
- 24 K. WHEREAS, Dr. Fine has had the opportunity to obtain the advice from competent
25 counsel of his choice concerning the terms and conditions of this Agreement and the
26 execution thereof. No coercion has been exerted upon Dr. Fine, nor have any
27 promises been made other than those reflected in this Agreement. Dr. Fine freely and
28 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.
- L. 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.
- M. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
of the State of Nevada.
- N. 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.

27 **III. TERMS OF THE AGREEMENT**

- 28 A. Dr. Fine agrees to reimburse the six patients and/or their insurance company for


1 any overpayments resulting from the incorrect utilization of the Medical Billing Code
2 as a resolution of this matter and in exchange therefore, the Board will forego the
3 prosecution of the complaint on file in this matter; and Dr. Fine acknowledges that
4 the Board is not mandating the same as such would be in excess of the Board's
5 authority. Dr. Fine is to provide the payments for the six patients and/or their third
6 party payors to the Board within thirty (30) days after the Board approves this
7 Settlement Agreement. The Board will thereafter make the distribution.

- 8 B. Dr. Fine acknowledges that after receipt of the administrative disciplinary complaint,
9 his counsel engaged the firm of Karen Zupko & Associates, Inc., a national
10 healthcare consulting company, to analyze the Respondent's billing coding
11 procedures and to audit Dr. Fine's billing system with respect to the subject matter
12 of the complaint in this matter and to render a report thereon ("Subject Report").
13 Respondent, Dr. Fine, agrees to (1) complete those billing and operational reviews;
14 (2) put into force and effect any such revisions to the practices and procedures
15 requested by Karen Zupko & Associates, Inc., under the Subject Report; (3) furnish
16 the Board with the Subject Report rendered by Karen Zupko & Associates, within
17 thirty (30) days after this Settlement Agreement has been approved by the Board,
18 and (4) cooperate with random audits by the Board upon reasonable notice to
19 assure his continued compliance with any and all recommendations of Karen Zupko
20 & Associates under the Subject Report. The random audits will be conducted for
21 two (2) years after the date of the Order approving this Settlement Agreement which
22 Order is expected to be entered at the Board's meeting on April 7, 2009, and during
23 that two year period, i.e., until April 7, 2011, there will be no more than two (2)
24 audits per year, i.e., each "year" being defined as from April 7, 2009 through April 6,
25 2010, and from April 7, 2010 through April 7, 2011.
- 26 C. Dr. Fine agrees to pay the sum of Ten Thousand (\$10,000.00) as fees and costs
27 incurred in the prosecution of this action pursuant to NAC 633.470; such amount
28 shall be payable in the amount of \$2,500.00 per month beginning on April 15, 2009,
and continuing thereafter in the amount of \$2,500.00 on the 15th day of each month,
until the full amount of Ten Thousand Dollars is paid.
- D. Should Dr. Fine fail to satisfy and pay the indebtedness of \$10,000.00 in a timely
manner as discussed herein and/or fails to perform any other term and condition set
forth in this Agreement, Dr. Fine 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 and the pursuit of an
administrative action for Dr. Fine's failure to comply with an order of this Board.
- E. Should Dr. Fine fail to satisfy and pay the indebtedness of \$10,000.00 in a timely
manner as discussed herein and fails to comply with all other terms and conditions
set forth herein, Dr. Fine understands and agrees that the Board may pursue the
remaining allegations set forth in the complaint against the said Dr. Fine.
- F. The Respondent, Dr. Fine, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s).
- G. 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.
- H. This Agreement and Order shall be construed in accordance with the laws of the
State of Nevada.

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

MILES B. FINE, D.O.

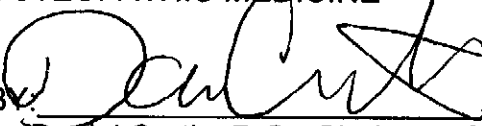
ALAN SKLAR, ESQ.

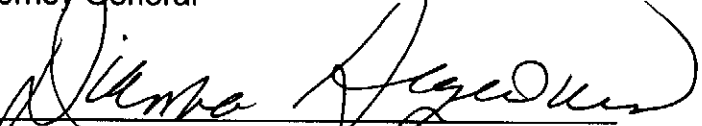

Respondent

By 
Attorney for Respondent Fine

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

CATHERINE CORTEZ MASTO
Attorney General

By 
Daniel Curtis, D.O., Chairman &
Investigating Board Member

By 
Dianna Hegeduis, Sr. Deputy Attorney General
Counsel for the Investigating Board Member

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Fine fail to comply with any terms or

1 conditions of this Agreement, Dr. Fine will be in breach of this Agreement; and this Agreement
2 will be null and void. The Board may take whatever action it deems appropriate, including but
3 not limited to proceeding with the administrative action against Dr. Fine. Should this
4 Agreement become null and void by Dr. Fine's failure to comply with terms or conditions of
5 this Agreement, the Board may not only pursue an administrative action against Dr. Fine, but
6 the Board may also seek the maximum fees, fines, and costs.

7 DATED this 7th day of April, 2009.

9 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

10
11 BY: Paul J. Keenan
12 Dr. C. Dean Milne, Vice-Chairman of the
Board