BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF

RYAN MITCHELL, D.O.,
License No. 1113

SETTLEMENT AGREEMENT & ORDER

FILED

DEC 09 2009

I. PARTIES

This Settlement Agreement ("Agreement") is made by and between the Nevada State Board of Osteopathic Medicine ("the Board") through their Counsel and Executive Director, Dianna Hegeduis, Esq., Investigating Board Member, Daniel Curtis, D.O., and Ryan Mitchell, D.O. ("Physician") through his counsel, Maria Nutile, Esq., (collectively referred to as "the Parties").

II. RECITALS

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

A. WHEREAS, the Physician has engaged in certain conduct that resulted in criminal charges being filed against him in Henderson, Nevada, once in 2008 and once in 2009. All such criminal charges have since been resolved. In renewing his license for the calendar year 2009, Physician responded "no" to certain questions regarding any investigations conducted of him by various entities, when in fact there had been an investigation

C. 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 Board Counsel that this Agreement be approved with such modifications as the Board and Physician mutually agree. The Agreement shall become effective the date it has been approved by the Board.

D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false . . . statement . . . in applying for a license to practice osteopathic medicine or in applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary proceeding; and
pursuant to NRS 633.651, such discipline may include public reprimands, the suspension of the license to practice osteopathic medicine in the State of Nevada, and even the revocation of the license to practice osteopathic medicine in the State of Nevada.

E. NAC 633.350 (9) states that “a licensee engages in unethical conduct if he . . . engages in any other conduct that the Board determines constitutes [an] unfit[ness to practice osteopathic medicine].”

F. 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.

G. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint regarding the inaccurate/incomplete application for renewal.

H. 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.

I. WHEREAS, the Physician understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed and a hearing scheduled on the same. 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. Physician 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, Physician 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, Physician 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, Physician has elected to enter into this Agreement to resolve this matter, and this matter only.

M. WHEREAS, Physician acknowledges that once accepted by the Board, this Agreement and all associated documentation become a matter of public record.

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

O. WHEREAS, Physician 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, Physician voluntarily waives these rights.
P. WHEREAS, this Agreement and Order shall be construed in accordance with the laws of the State of Nevada.

Q. 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. Physician acknowledges that violating NRS 633.131(1)(a), NRS 633.131(1)(h), and NAC 633.350(9) is grounds for discipline. The parties have agreed to resolve this matter without the necessity of filing a formal disciplinary complaint by entering into this Agreement. In exchange for the Board not pursuing an administrative action and Physician not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matter, and only this matter. Physician will henceforth insure that all matters 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. Mitchell.

B. The Board will issue to the Physician a letter of public reprimand in the form attached, for violation of NRS 633.131(1)(a) and NRS 633.511(14) for willfully making a false or fraudulent statement in applying for renewal of a license to practice osteopathic medicine.

C. Physician agrees to pay the sum of $15,600 Dollars ($15,600.00) as the fine imposed for having violated certain provisions of 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. Physician shall pay this amount in 18 monthly installments of $3333, commencing one year from the date of the Board’s approval of this Agreement.
D. Should the Physician fail to satisfy and pay the indebtedness in a timely manner as discussed herein, Physician 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.

E. The Physician agrees to bear his own fees and costs, including the fees and expenses of his own attorney(s) if applicable.

F. 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.

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

H. This 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.

I. In consideration for the execution of this Agreement, Physician hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada State 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 of Nevada 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 in this matter.

J. Physician, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada State Board of
Osteopathic Medicine, the Nevada 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 disciplinary action, this Agreement or its administration.

K. 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.

L. Lastly, by executing this agreement, Respondent Physician hereby expressly, knowingly, and intentionally waives the 21-working days notice requirement pursuant to Nevada's Open Meeting Law and acknowledges that this Agreement shall be on the agenda for the Board's approval in the month of December, 2009.

RYAN MITCHELL, D.O.

[Signature]
Ryan Mitchell, D.O.

NUTILE PITZ & ASSOCIATES

[Signature]
Maria Nutile, Esq.
Attorney for Dr. Ryan Mitchell

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

[Signature]
Dianna Hegeduis, Esq.
Board Counsel / Executive Director

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

[Signature]
Daniel Curtis, D.O., Investigative Board Member
ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Physician fail to comply with any terms or conditions of this Agreement, Physician 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 disciplinary action against Physician and his license to practice Osteopathic Medicine in the State of Nevada. Should this Agreement become null and void by Physician’s failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Physician, but the Board may also seek the maximum fees, fines, and costs.

IT IS ORDERED that the following public reprimand shall be issued by the Board immediately upon approval of this Agreement and that the public reprimand shall be posted on the Board’s website for a period of 40 days and thereafter maintained in the licensing file of this Physician. This public reprimand shall also be provided to the National Practitioner Data Bank pursuant to the applicable federal codes.

DATED this 5th day of December 2009.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By: ________________________________

C. Dean Milne, D.O., Vice-Chairman
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

RYAN MITCHELL, D.O., LIC. # 1113

RESPONDENT.

WRITTEN NOTICE OF ENTRY OF SETTLEMENT AGREEMENT AND ORDER

PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has approved the settlement agreement entered into by the above-name Respondent and the Enforcement Division of the Board. A copy of that agreement is attached.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By, Dianna Hegeduis, Executive Director - Board Counsel

Dated: DEC 09 2009

CERTIFICATE OF MAILING

On the 9th day of December, 2009, the undersigned served a copy of this notice along with the settlement agreement and order upon Respondent, at his last known address, postage thereon prepaid, addressed as follows:

Maria Nutile, Esq.
NUTILE PITZ & ASSOCIATES
1070 W. Horizon Ridge, Suite 210
Henderson, NV 89012
Attorney for Respondent

[Signature]
An employee of the Nevada State Board of Osteopathic Medicine