BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT )  NV STATE BOARD AD0903016
AGAINST ) OSTEOPATHIC MEDICINE AD0903017
) MAY 05 2009
MING-WEI WU, D.O. ) AD0903018
) FILED

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES
This Settlement Agreement and Order ("Agreement and Order") is made by and between the Nevada State Board of Osteopathic Medicine ("the Board") through their counsel, Dianna Hegeduis, Sr. Deputy Attorney General, of the Nevada Attorney General's Office and Ming-Wei Wu, D.O. ("Dr. Wu") through his counsel, Maria Nutile, Esq. and L. Kristopher Rath, Esq. (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 Investigating Board Member, Daniel Curtis, D.O. ("Curtis") filed five (5) complaints ("Complaint") in this action as well as a request for an emergency order for summary suspension of Dr. Wu's license to practice in the State of Nevada. An emergency hearing ("Hearing") was noticed for Wednesday, March 11, 2009, at 6:00 p.m.
B. WHEREAS, Dr. Wu alleges, but the Board does not agree, that the request for an emergency order for summary suspension of Dr. Wu's license to practice in the State of Nevada was improper.
C. WHEREAS, on March 10, 2009, a Stipulation ("Stipulation") was entered into, whereby Dr. Wu agreed he will not perform any surgical procedures at Desert View Hospital which require general anesthesia and that any surgical procedures requiring general anesthesia performed outside of Desert View Hospital will be performed with another general surgeon until further action is taken by the Board. The Board agreed that the Emergency Board Meeting set for March 11, 2009, is cancelled.
D. WHEREAS, the Board issued a Notice of Hearing on Case AD0903016, scheduled for March 28, 2009.
E. WHEREAS, due to a conflict of interest, the original Investigating Board Member, Daniel Curtis, D.O., was replaced by Lisa Miller-Roche, Esq., to act as Investigating Board Member.
F. WHEREAS, during the Hearing on Case AD0903016 on March 28, 2009, two of the three charges against Dr. Wu were dismissed; one remained.
G. WHEREAS, Case AD0903020, one of the five (5) original complaints filed, was dismissed with prejudice by the Board on April 9, 2009.

H. WHEREAS, the Hearing on Case AD0903017 was scheduled for May 15, 2009 and an Answer to that Complaint was filed by Dr. Wu on April 8, 2009.

I. WHEREAS, the Board was not aware when the Complaint was filed, that Dr. Wu had participated in the University of California, San Diego Physician Assessment and Clinical Education ("PACE") Program Phase I and Phase II for evaluation, or the Mayo Clinic, Scottsdale, Arizona course titled, "Minimally Invasive Laparoscopic Colectomy Surgery Series 2008" in September 2008, or the American College of Surgeons Annual Clinical Congress in October 2008, or the PACE Medical Record Keeping course in November 2007, or that Dr. Wu had completed extensive remediation including proctoring of seventy-nine (79) surgical cases and continuing medical education courses.

J. WHEREAS, the Parties have agreed to settle this matter and if approved by the Board, the remainder of the Hearings will be cancelled.

K. 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.

L. WHEREAS, Dr. Wu understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a formal disciplinary hearing on the Complaint against Dr. Wu will remain as 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. Wu 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.

M. WHEREAS, Dr. Wu 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.

N. WHEREAS, Dr. Wu 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. He agrees to abide by all rules governing the practice of osteopathic medicine in Nevada.

O. WHEREAS, in order to resolve the matter of disciplinary proceedings and to save further costs and expenses, Dr. Wu has elected to enter into this Agreement.

P. WHEREAS, Dr. Wu acknowledges that once accepted by the Board, this Agreement and all associated documentation become a matter of public record, with the exception of Dr. Wu’s Confidential Settlement Agreement with Desert Springs Hospital Medical Center and associated peer review material in the Board’s possession, for which Dr. Wu has not waived the privilege under NRS
49.121, which will remain sealed pursuant to the Order of the Hearing Officer assigned to the Complaint.

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

R. WHEREAS, Dr. Wu is fully aware of his rights to contest the charges pending against him. These rights include: representation by an attorney(s) 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. Wu voluntarily waives these rights.

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

T. 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. Wu will accept a letter of public reprimand, in the form attached, relating to Complaint AD0903018, for an admission of surgical error, a violation of NRS 633.131(1)(f)(2).

B. Dr. Wu shall participate in an assessment of his skills by the Texas A&M Knowledge Skills Training Assessment and Research (“KSTAR”) physician evaluation program, the Drexel University College of Medicine Assessment Program, or such other program that is mutually agreed upon, sanctioned by the Federation of State Medical Boards, and equipped to assess a surgeon’s skills. Each program referenced in this section shall be referred to as an “Assessment.”

C. The Parties will agree upon the submission of documents to the Assessment, which shall include but not be limited to the following:
   i. The Board Complaints, Dr. Wu’s answers to such Complaints to date, closing briefs in matter AD0903018, including correspondence from Dr. Wu’s counsel related to additional training of Dr. Wu since June 2007;
   ii. The results of Dr. Wu’s evaluation at the PACE program;
   iii. The proctoring evaluations; and
iv. The hearing transcript in AD0903016.

Further, the Board and its counsel agree not to influence or discuss with the Assessment program directors to find any specific outcome. Dr. Wu's counsel agrees not to influence or discuss with the Assessment program directors to find any specific outcome.

D. Dr. Wu will follow and comply with any recommended terms of the result of the Assessment. If the Assessment results in no recommendation of remediation for Dr. Wu, the Board agrees to abide by such recommendation.

E. In addition to any recommended remediation by the Assessment, Dr. Wu shall participate in the following:

a. Society of American Gastrointestinal and Endoscopic Surgeons ("SAGES") 2009 Scientific Session and Postgraduate Course and provide evidence of his participation and a complete description of the hands-on and educational courses within thirty (30) days after acceptance of this Agreement by the Board.

b. University of California, Los Angeles Laparoscopic Colectomy Course, August 22, 2009, and provide evidence of his participation and a complete description of the course within thirty (30) days after completion of the course.

F. Dr. Wu maintains the ability to work full-time without restriction and in that regard, the Stipulation dated March 10, 2009 is immediately lifted as of the approval of this Agreement and Order by the Board.

G. Dr. Wu shall pay $21,577.00 towards the cost of the Board's investigation, in monthly installments of $2,000.00 commencing June 5, 2009 with the last payment of $1,577.00 on April 5, 2010. Dr. Wu shall be solely responsible for attorneys' fees and cost incurred, fees and costs incurred in the Assessment, any recommended training, and any other courses required by this Agreement.

H. 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 and shall resolve any and all matters, actions or complaints for services provided by Dr. Wu on or before December 31, 2008, regardless of when such matter, action or complaint is filed or brought to the attention of the Board.

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

J. In consideration for the execution of this Agreement, Dr. Wu hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada State Attorney General's Office, and each of their respective 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 she 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, including those noted in the administrative Complaint on file herein, and other matters relating thereto.

K. Dr. Wu, 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 settlement or its administration.

L. This Agreement and Order may be executed 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.

MING-WEI WU, D.O.  

NUTILE PITZ & ASSOCIATES  

By Maria Nutile, Esq.  
Attorney for Dr. Ming-Wei Wu

HUTCHISON & STEFFEN, LLC  

By L. Kristopher Rath, Esq.  
Attorney for Dr. Ming-Wei Wu

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE  

CATHERINE CORTEZ MASTO  
Attorney General

By Lisa Miller-Roche, Esq.  
Investigating Board Member  

Dianna Hegeduis, Sr. Deputy Attorney General  
Counsel for the Investigating Board Member
matter, including those noted in the administrative Complaint on file herein, and other matters relating thereto.

K. Dr. Wu, 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 settlement or its administration.

L. This Agreement and Order may be executed 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.

MING-WEI WU, D.O.

NUTILE PITZ & ASSOCIATES

By Maria Nutile
Attorney for Dr. Ming-Wei Wu

HUTCHISON & STEFFEN, LLC

By L. Kristopher Rath
Attorney for Dr. Ming-Wei Wu

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By Catherine Cortez Masto
Attorney General

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

Lisa Miller-Roche, Esq.
Investigating Board Member
ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 5th day of May 2009.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By: ____________________________________

C. Dean Milne, D.O., Vice-Chairman
PUBLIC REPRIMAND

On March 4, 2009, complaint AD0903018 ("Complaint") was filed by the Nevada State Board of Osteopathic Medicine ("Board"), alleging that Ming-Wei Wu, D.O. ("Dr. Wu") failed to render proper medical care to the patient at issue in this matter. The Board has alleged that this failure constitutes unprofessional conduct within the meaning of Nevada Revised Statutes 633.131(1)(f)(2).

The Board and Dr. Wu have agreed to resolve the Complaint via a Settlement Agreement ("Settlement"). On May 5, 2009, the Board approved the Settlement recommended by the Investigating Board Member and entered into between Dr. Wu and the Board.

Dr. Wu is hereby publicly reprimanded for the conduct described in this public reprimand and the Complaint on file herein.