

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE
NV STATE BOARD OF OSTEOPATHIC MEDICINE

DEC 11 2012

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3 IN THE MATTER OF:)
4 LONNIE EMPEY, D.O.)
5 License No. 841,)
6 Respondent.)

Case No. AD1207001
SETTLEMENT AGREEMENT AND
ORDER

FILED

7 The Nevada State Board of Osteopathic Medicine (the Board), by and through its investigating
8 board member Richard Almaguer, D.O., hereby enters into this settlement agreement with Lonnie
9 Empey, D.O. (License No. 841). Pursuant to chapter 233B and chapter 633 of the Nevada Revised
10 Statutes (NRS) and Nevada Administrative Code (NAC), it is hereby stipulated and agreed, by and
11 between the parties in the above-entitled matter, that this matter shall be fully and finally settled and
12 resolved upon terms and conditions set out herein.

13 PERTINENT FACTS

14 1. On July 7, 1997, Dr. Empey became licensed by the Board to practice as an osteopathic
15 physician in Nevada (License No. 841). Dr. Empey's practice address of record with the Board is 1301
16 Bertha Howe Avenue, Suite 1, Mesquite, Nevada, 89027.

17 2. On July 3, 2012, the Board's Executive Director filed a complaint against Dr. Empey based
18 upon information provided to her by the Nevada State Board of Pharmacy. The information received
19 from the Board of Pharmacy's investigator was that Dr. Empey was the medical director for a spa in
20 Mesquite called The View, 550 West Pioneer Boulevard in Mesquite, Nevada, and that employees at The
21 View had been dispensing and or administering dangerous drugs or controlled substances to clients of
22 The View. Thereafter, the Board's staff commenced an investigation.

23 3. The Board's investigation determined that Dr. Empey was the medical director at The View
24 but that Dr. Empey had not registered The View's location as a practice site with the Board.
25 Furthermore, Dr. Empey did not have a DEA registration or a Nevada controlled substances registration
26 (CS) at the location, nor did Dr. Empey have a Nevada dispensing practitioner's registration at the
27 location. The investigation also found at the premises of the The View human chorionic gonadotropin
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1 (HCG), a controlled substance in schedule IV, and Latisse, a dangerous drug. The investigation also
2 found quantities of a drug called Releana which purports to be a sublingual dosage form of HCG.

3 4. The investigation revealed that the owner of The View, who is not a licensed or registered
4 medical professional of any type, had a key to the room in which the controlled substances and dangerous
5 drugs were stored and that the controlled substances and dangerous drugs were administered and
6 dispensed to clients of The View. The investigation also revealed that Dr. Empey did not make or
7 maintain any medical records related to the clients of The View to whom controlled substances or
8 dangerous drugs were administered or dispensed.

9 5. Releana is not approved by the federal FDA for sale in the United States.

10 6. The Releana was purchased by Dr. Empey and was sent to Dr. Empey at his practice address at
11 1301 Bertha Howe Avenue, not to The View. The Releana was obtained from a company called Releana
12 located at 4341 Birch Street #107, Newport Beach, California, 92660. Releana (the company) is not
13 licensed with the Nevada State Board of Pharmacy as a pharmacy, wholesaler, or manufacturer, so
14 Releana's sale of controlled substances, namely HCG, to Dr. Empey was without lawful licensure or
15 authorization. It is unknown how the Releana was transferred to or otherwise provided by Dr. Empey to
16 The View.

17 ACKNOWLEDGMENTS AND APPLICABLE LAW

18 7. Dr. Empey admits that the facts contained in the preceding six paragraphs are true and correct,
19 and Dr. Empey understands and acknowledges that the conduct set out in the preceding six paragraphs
20 constitute violations of Nevada law and that agrees that he is subject to disciplinary action by the Board as
21 a result of that conduct. In particular, Dr. Empey agrees that the facts contained in the preceding six
22 paragraphs constitute violations of Nevada Revised Statutes (NRS) 633.511(1) as unprofessional conduct
23 as further defined in NRS 633.131(1)(f)(1), (g), (k), and (m), and NRS 633.511(12) and Nevada
24 Administrative Code (NAC) 633.350(1)(e). Because of these admissions, the Board will not file an
25 Accusation in this matter and the parties agree, instead, that the Board should rule upon this Settlement
26 Agreement and Order as containing all necessary elements of due process to authorize the Board to take
27 such action. If the Board approves this Settlement Agreement and Order, it shall be deemed and
28 considered disciplinary action by the Board against Dr. Empey.

1 8. Dr. Empey and Dr. Almaguer, the Investigating Board Member in this matter, agree that it is
2 in the best interests of Dr. Empey and the Board to resolve this matter without a full hearing on the
3 merits.

4 9. Dr. Empey is aware of, understands, and has been advised of the effect of this Settlement
5 Agreement, which he has carefully read and fully acknowledged. Dr. Empey acknowledges that he
6 reviewed this Settlement Agreement and that he was provided the opportunity to review this Settlement
7 Agreement with legal counsel of his own choice, which Dr. Empey declined to do.

8 10. Dr. Empey has freely and voluntarily entered into the Settlement Agreement, and he is aware
9 of his rights to contest the charges pending against him. These rights include representation by an
10 attorney at his own expense, the right to a public hearing on any charges or allegations formally filed, the
11 right to confront and cross-examine witnesses called to testify against him, the right to present evidence
12 on his own behalf, the right to testify on his own behalf, the right to obtain any other type of formal
13 judicial review of this matter, and any other rights which may be accorded to him pursuant the provisions
14 of Chapters 233B, 622, 622A, and 633 of the NRS and the NAC. Dr. Empey is voluntarily waiving all
15 these rights in exchange for the Board's acceptance of this Settlement Agreement.

16 11. Should the Settlement Agreement be rejected by the Board, it is agreed that presentation to
17 and consideration by the Board of such proposed Settlement Agreement or other documents or matters
18 pertaining to the consideration of this Settlement Agreement shall not unfairly or illegally prejudice the
19 Board or any of its members from further participation, consideration, adjudication, or resolution of
20 these proceedings and that no Board member shall be disqualified or challenged for bias.

21 12. Dr. Empey for himself, his executors, administrators, successors, and assigns hereby releases
22 and forever discharges and holds harmless the State of Nevada, the Nevada Board of Osteopathic
23 Medicine and each of their members, agents, investigators and employees in their individual and
24 representative capacities, from any and all manner of actions, causes of action, suit, debts, judgments,
25 executions, claims and demands whatsoever, known and unknown, in law or equity, that Licensee ever
26 had, now has, may have or claim to have against any or all of the persons or entities named in this
27 paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement
28 agreement or its administration.

1 13. In consideration for the execution of the settlement agreement, Dr. Empey hereby releases
2 and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada Attorne
3 General's Office (as counsel for the Board), and each of their representatives, investigators, and
4 employees, in their individual and representative capacity from any and all manner of actions, causes of
5 actions, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law
6 and in equity, that he may have had, now has, or claim to have against any and all of the persons and
7 entities named in this paragraph arising out of or by reason of the investigation of the allegations raised
8 herein and other matters relating thereto.

9 14. Dr. Empey acknowledges that the Settlement Agreement shall only become effective after
10 both the Board and he have duly executed it.

11 15. Dr. Empey enters into this settlement agreement voluntarily after being fully advised of his
12 rights and as to the consequences of this settlement agreement. This settlement agreement embodies the
13 entire agreement reached between the Board and Dr. Empey. It may not be altered, amended, or
14 modified without the express consent of the parties.

15 16. Both parties acknowledge that the Board has jurisdiction to consider and ratify this
16 settlement agreement and order because Dr. Empey is an osteopathic physician licensed by the Board.
17 Dr. Empey expressly, knowingly, and intentionally waives the 21-day notice requirement contained in the
18 Nevada Open Meeting Law and acknowledges that this settlement agreement and order may be presented
19 to the Board for its consideration and potential ratification at the Board's meeting on December 11,
20 2012.

21 **AGREED DISCIPLINARY ACTION**

22 THE PARTIES DO HEREBY AGREE as a result of the admissions and acknowledgements
23 contained in paragraphs 1 through 16 above that the following discipline is fair and appropriate and
24 should be imposed by the Board by way of resolution of this matter:

25 1. Dr. Empey shall pay the Board's fees and costs in the investigation and prosecution of this
26 matter totaling \$1,500.00 payable by cashier's or certified check or money order made payable to:
27 "Nevada State Board of Osteopathic Medicine." Payment shall be due within 90 days of the effective date
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1 of this Settlement Agreement and Order, but if Dr. Empey cannot make payment in full by that time, he
2 may make payment arrangements with and as are acceptable to the Board's Executive Director.

3 2. Dr. Empey shall pay no fine in this matter.

4 3. Dr. Empey shall not administer, prescribe, or dispense any controlled substances or dangerous
5 drugs from The View or any other practice location unless and until he satisfies the following conditions:

6 (a) Dr. Empey obtains a DEA registration and Nevada CS registration at the site of The View or
7 any other practice location. If Dr. Empey desires to dispense controlled substances or dangerous drugs
8 from The View or any other practice location, he must also obtain a Nevada dispensing practitioner's
9 registration. Dr. Empey shall provide written evidence of his registrations to the Board office.

10 (b) Dr. Empey secures the only key to the room in which the controlled substances and dangerous
11 drugs are stored such that only Dr. Empey unlocks the door every day that controlled substances and
12 dangerous drugs are to be administered at The View or any other practice location and that Dr. Empey
13 locks the door whenever controlled substances and dangerous drugs are not being administered to
14 patients at The View or any other practice location.

15 (c) Dr. Empey must personally see and assess each patient at The View or any other practice
16 location to determine that the patient has a valid medical condition or diagnosis for which a particular
17 controlled substance or dangerous drug is appropriate. Dr. Empey must make a medical record regarding
18 each patient he sees and assesses at The View or any other practice location, which record must include
19 the basic physical examination information, Dr. Empey's assessment, diagnoses, and controlled
20 substances or dangerous drugs administered. The medical records made pursuant to this subparagraph
21 must be maintained at The View or any other practice location. Dr. Empey may employ a physician
22 assistant or advanced practitioner of nursing under his supervision to see and assess the patients of The
23 View or any practice location and to make and maintain the records in the same manner as is required of
24 Dr. Empey under this paragraph.

25 (d) Dr. Empey shall report his purchase, administering, and dispensing of Releana to the federal
26 Food and Drug Administration using a Form 3500. Dr. Empey shall provide written evidence of his
27 filing of the Form 3500. Dr. Empey shall cooperate with any investigation or other requests from the
28 FDA related to his reporting of his purchase, administering, and dispensing of Releana.

1 (e) Dr. Empey shall provide to the Board office his policy and procedures that will be used at The
2 View or any practice location for the seeing, assessment, diagnosis, administering, prescribing, and
3 dispensing of controlled substances and dangerous drugs to patients at The View or any practice location.
4 Dr. Empey may not commence administering, prescribing, or dispensing controlled substances and
5 dangerous drugs from The View or any practice location until his policy and procedures have been
6 reviewed and approved by the Investigating Board Member.

7 4. Dr. Empey shall meet with the Board or its representatives upon request and shall cooperate
8 with such representatives in their supervision, monitoring, investigation, or auditing to assure compliance
9 with the terms and conditions of this order. Dr. Empey shall pay any and all reasonable and necessary
10 costs incurred by the Board resultant from this paragraph.

11 5. In the event Dr. Empey fails to materially comply with any term of this Settlement Agreement,
12 Dr. Empey agrees his license in the State of Nevada shall be automatically suspended without any action
13 of the Board other than the issuance of an Order of Suspension by the Executive Director. Upon
14 complying with the term, Dr. Empey's license in the State of Nevada will be automatically reinstated,
15 assuming all other provisions of the Settlement Agreement are in compliance. Additionally, Dr. Empey's
16 failure to comply with any term or condition of this Settlement Agreement may result in further
17 discipline by the Board, up to and potentially including revocation of her license. Board Staff may take
18 any and all actions it deems necessary to collect any sums ordered that remain unpaid. If Board Staff is
19 required to pursue judicial action to effect such collections, it shall be entitled to recover its attorney's fees
20 and costs incurred in pursuing such judicial action.

21 Signed this 30 day of November, 2012.

22 Respondent Lonnie Empey

Nevada State Board of Osteopathic Medicine

23
24 By  _____
25 Lonnie Empey, D.O., Respondent

24 By _____
25 Richard Almaguer, D.O.
26 Investigating Board Member

(702) 792-2147

1 substances and dangerous drugs to patients at The View. Dr. Empey may not commence administering,
2 prescribing, or dispensing controlled substances and dangerous drugs from The View until his policy and
3 procedures have been reviewed and approved by the Investigating Board Member.

4 4. Dr. Empey shall meet with the Board or its representatives upon request and shall cooperate
5 with such representatives in their supervision, monitoring, investigation, or auditing to assure compliance
6 with the terms and conditions of this order. Dr. Empey shall pay any and all reasonable and necessary
7 costs incurred by the Board resultant from this paragraph.

8 5. In the event Dr. Empey fails to materially comply with any term of this Settlement Agreement,
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15 any and all actions it deems necessary to collect any sums ordered that remain unpaid. If Board Staff is
16 required to pursue judicial action to effect such collections, it shall be entitled to recover its attorney's fees
17 and costs incurred in pursuing such judicial action.

18 Signed this 30 day of November, 2012.

19 Respondent Lonnie Empey

Nevada State Board of Osteopathic Medicine

21 By _____
22 Lonnie Empey, D.O., Respondent

21 By Richard Almaguer D.O.
22 Richard Almaguer, D.O.
23 Investigating Board Member

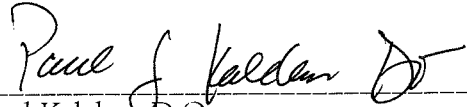
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ORDER

WHEREAS, on December 11, 2012, the Nevada State Board of Osteopathic Medicine approved and adopted the terms and conditions set forth in the Agreed Settlement and Order with Lonnie Empey, D.O. IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 11 day of December, 2012.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE



Paul Kalekas, D.O.
Chairman

301 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147

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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT
AGAINST
Lonnie R. Empey, D.O., License No. 841
RESPONDENT.

) Case No.: AD1207001
)
) **NV STATE BOARD OF**
) **OSTEOPATHIC MEDICINE**

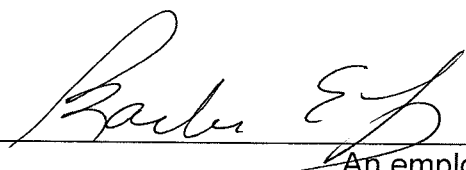
DEC 11 2012

FILED

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2012, 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:

Lonnie R. Empey, D.O.
1301 Bertha Howe Ave., Ste #1
Mesquite, NV 89027



An employee of the Nevada State Board of
Osteopathic Medicine