BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF: )

DAVID MOON, D.O. ) Case No. AD129001 & AD1304002
License No. 705, ) SETTLEMENT AGREEMENT WITH
) JAVIER AVILA P.A.
) ) NV STATE BOARD OF
) ) OSTEOPATHIC MEDICINE
) ) APR 09 2014
) ) FILED

ISAAK TUNNELL, P.A., )
License No. PA-C0160, )
)
Respondents. )
)

The Nevada State Board of Osteopathic Medicine (the Board), by and through its investigating board member Ronald Hedger, D.O. and its counsel Louis Ling and Javier Avila (License No. PA-C121), represented by Lance Earl of the law firm of Holland & Hart, LLP hereby enter into this Settlement Agreement and Order (Agreement).

RECITALS

WHEREAS, PA Avila has been practicing as a physician assistant and registered with this Board in the State of Nevada since August 2, 2003;

WHEREAS, PA Avila is not presently actively registered with the Board and, since July 2011, has not been employed by an osteopathic physician;

WHEREAS, PA Avila presently is employed and supervised by an allopathic physician licensed by the Nevada State Board of Medical Examiners;

WHEREAS, there have been no malpractice lawsuits filed against PA Avila since he began practicing as a physician assistant in Nevada;

WHEREAS, prior to the within matter there have been no prior disciplinary actions taken against PA Avila since he began practicing as a physician assistant in Nevada;

WHEREAS, on July 31, 2013 the Board filed its Complaint for Disciplinary Action in the within action, and on September 11, 2013 the Board filed its Amended Complaint for Disciplinary Action in the within action;
WHEREAS, that under the unique circumstances of this case the parties both agree that resolution of this matter without censure, reprimand, limitation, discipline, or restrictions placed upon PA Avila's practice is in the best interests of the parties, the Board, and the patients of Nevada in accordance with the terms and conditions set forth herein;

NOW THEREFORE, the parties stipulate and agree as follows:

TERMS OF AGREEMENT

1. PA Avila and the Board agree that the terms and conditions of this Agreement are not intended as, and shall not be deemed to be, punitive or disciplinary, nor shall this Agreement constitute a censure, reprimand, limitation, or restriction, or placing of conditions or restrictions upon PA Avila or PA Avila's license to practice as a physician assistant. PA Avila and the Board do not consider this Agreement to be reportable to the National Practitioner's Data Bank (NPDB) and, consequently, the Board will not report this Agreement to the NPDB.

2. Upon approval of this Agreement by the Board, the Amended Complaint will be dismissed against PA Avila subject to the Board's right to reinstate the Amended Complaint in accordance with Paragraph 8.

3. For a period of three years from the effective date of this Agreement, if PA Avila desires to become a physician assistant under the supervision of an osteopathic physician and he is otherwise in compliance with the terms of this Settlement Agreement, PA Avila will appear before the Board at its next regularly scheduled meeting after his application so that the Board can discuss with PA Avila his planned practice. PA Avila acknowledges that pursuant to NRS 622.2617, the Board is authorized to place non-disciplinary conditions, limitations, or restrictions on PA Avila's license necessary to protect the public health, safety, or welfare.

4. PA Avila agrees to cooperate with the Board's investigation and prosecution of Dr. Moon, which shall include:

(a) Making himself reasonably available in person to the Board's staff for questioning and, where circumstances require, by telephone or e-mail;

(b) If deemed needed by the Board's staff, testifying at any hearing in this matter;
(c) Assuring that all information and answers provided are truthful and complete to the best of his ability;

(d) Providing access to and copies of any documents in his possession or which he could reasonably obtain to the Board’s staff upon reasonable request;

(e) Any similar assistance that may be sought by the Board’s staff in furtherance of its investigation and prosecution of the case against Dr. Moon.

5. If the Board’s staff believes that PA Avila has not satisfied his obligation to cooperate as set out in paragraph #4, including but not limited to, if the Board’s staff believes that PA Avila’s information and answers are false or evasive, then the Board’s staff shall notify PA Avila pursuant to and shall proceed as set out in paragraph 8 herein.

6. PA Avila shall pay the sum of Four Thousand Dollars ($4,000.00) for purposes of reimbursement of various Board fees and costs for the investigation its concerns about him. PA Avila shall make an initial payment in the amount of $200.00 to be received within five (5) business days of when this Settlement Agreement is executed by all parties. Thereafter, PA Avila shall pay $200.00 per month, to be received by the last day of each month beginning the next month following the receipt of the first payment under this Agreement, until the amount is fully repaid. The parties recognize that this amount does not represent all of the fees incurred by the Board in this matter, however, in the spirit of resolution and compromise, the parties believe that the amount agreed to herein is a fair and reasonable payment.

7. The parties acknowledge that PA Avila attended and completed 18 hours of continuing medical education regarding pain medicine and pain management at the National Conference on Pain on September 3-6, 2013, which was prior to the entry of this Settlement Agreement, and that the parties agree that in so doing, PA Avila satisfied any continuing medical education requirements that the IBM may have sought.

8. In the event PA Avila fails to materially comply with any term of this Agreement, the Board may pursue any one or combination of the following remedies:
(a) The Board may notify PA Avila in writing of the terms with which the Board deems he has materially failed to comply and the date by which the Board will allow PA Avila 15 days to cure the non-compliance. If PA Avila timely cures the identified non-compliance, the Board will take no further action. If PA Avila does not timely cure the identified non-compliance, the Board may take further action as it deems necessary under the circumstances.

(b) Where PA Avila has materially failed to comply with the same term that was subject to a notice of non-compliance pursuant to subparagraph 8(a) or is otherwise does not timely cure the identified non-compliance, then the Board may: (1) recommence prosecution of case numbers AD129001 in the ordinary course of the law; and/or (2) take further discipline, up to and potentially including revocation of his license.

(c) In the event that PA Avila fails to timely pay any or all of the amounts due under Paragraph 6 in accordance with the terms of this Agreement, the Board may withhold approval of any application or renewal of an application to practice as a physician assistant under the supervision of an osteopathic physician.

(d) The Board’s staff may take any and all actions it deems necessary to collect any sums ordered that remain unpaid. If the Board’s staff is required to pursue judicial action to effect such collections, it shall be entitled to recover its attorney’s fees and costs incurred in pursuing such judicial action in the event that it prevails in any such judicial action.

ACKNOWLEDGMENTS

This Agreement is made and based upon the following acknowledgments by the parties:

1. PA Avila is aware of, understands, and has been advised of the effect of this Agreement, which he has carefully read and fully acknowledged. PA Avila consulted with and was represented by competent counsel of his choice, namely Mr. Lance Earl and the law firm of Holland & Hart, LLP.

2. PA Avila has freely and voluntarily entered into the Agreement, and he is 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 formally 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 testify on his own behalf, the right to obtain any other type of formal judicial review of this matter, and any other rights which may be accorded to him pursuant the provisions of Chapters 233B, 622, 622A, and 633 of the NRS and the NAC. PA Avila is voluntarily waiving all these rights in exchange for the Board’s acceptance of this Agreement.

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

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

5. Subject to PA Avila’s compliance with the terms and conditions of this Agreement, including without limitation, his obligation to cooperate set for in Paragraph 4 of the Terms of Agreement, the Board agrees to release and discharge PA Avila from any and all manner of actions, causes of action, suits, claims, and demands whatsoever, known and unknown, in law or equity, arising from or relating to the Amended Complaint. Notwithstanding the foregoing, the Board shall not be prohibited from taking any action the Board determines necessary to protect the public health, safety, or welfare, including that if the Board received a complaint from a patient, a patient’s family, or any other person regarding the treatment rendered to a patient while PA Avila was employed and supervised by Dr. Moon, then the Board could still investigate and process such a complaint in the usual and ordinary course even where the patient was one of the patients whose records were involved in the Amended Complaint.
6. PA Avila acknowledges that the Agreement shall only become effective after both the Board and he have duly executed it, the execution of which may occur through counterparts.

7. PA Avila enters into this Agreement voluntarily after being fully advised of his rights and as to the consequences of this Agreement. This Agreement embodies the entire agreement reached between the Board and PA Avila. It may not be altered, amended, or modified without the express consent of the parties.

8. Both parties acknowledge that it is in the best interests of each to resolve this matter without an admission of violation of any of the causes of action alleged against him and without a full hearing on the merits because of the cost and risk involved for each party.

9. Both parties acknowledge that the Board has jurisdiction to consider and ratify this Agreement because PA Avila is a physician assistant who was licensed by the Board. PA Avila expressly, knowingly, and intentionally waives the 21-day notice requirement contained in the Nevada Open Meeting Law and acknowledges that this Agreement may be presented to the Board for its consideration and potential ratification at the Board’s meeting on April 8, 2014.

Signed this __ day of April, 2014.

Respondent Javier Avila, PA

Holland & Hart, LLP

By [Signature]  
Javier Avila, PA, Respondent

By [Signature]  
Lance Earl, Counsel for Respondent

Nevada Board of Osteopathic Medicine

Louis Ling, Esq.

By [Signature]  
Ronald Hedger, D.O.  
Investigating Board Member

By [Signature]  
Louis Ling, Board Counsel
ORDER

WHEREAS, on April 8, 2014, the Nevada State Board of Osteopathic Medicine approved and adopted the terms and conditions set forth in the Settlement Agreement with PA Javier Avila.

IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 8th day of April, 2014.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

[Signature]
Ricardo Almaguer, D.O., Vice Chairman and Presiding Officer
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

JAVIER AVILA, P.A.

License No. PA-C121

RESPONDENT.

Case No.: AD129001 & AD1304002

NV STATE BOARD OF

OSTEOPATHIC MEDICINE

APR 09 2014

FILED

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2014, I served a copy of the ABOVE Notice with attachment upon the parties to this matter, via U.S. Postal Service, postage thereon prepaid, at their last known address on file with this Board.

Javier Avila, P.A.

Lance Earl
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89131
Counsel for Respondent

An employee of the Nevada State Board of Osteopathic Medicine