BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF: )

DAVID MOON, D.O. ) Case No. AD129001 & AD1304002
License No. 705,

JAVIER AVILA, P.A., ) SETTLEMENT AGREEMENT AND
License No. PA-C0121, ) ORDER WITH DAVID MOON, D.O.

ISAAC TUNNELL, P.A., )
License No. PA-C0160, ) NV STATE BOARD OF

Respondents. ) OSTEOPATHIC MEDICINE

OCT 30, 2014

FILED

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 hereby enters into this Settlement Agreement and Order with David Moon, D.O. (License No. 705), represented by David J. Mortensen of the law firm of Alverson, Taylor, Mortensen & Sanders.

RECITALS

WHEREAS, Dr. Moon has been practicing osteopathic medicine in the State of Nevada since July 13, 1994;

WHEREAS, Dr. Moon is a Diplomate of the American Academy of Pain Management;

WHEREAS, there have been no malpractice lawsuits filed against Dr. Moon, since he began practicing medicine in Nevada;

WHEREAS, prior to the within matter there have been no prior disciplinary actions taken against Dr. Moon since he began practicing medicine 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 ("Amended Complaint") in the within action;

WHEREAS, Dr. Moon has responded to the Amended Complaint and denied the allegations set forth therein.

WHEREAS, the parties have agreed that the resolution of this matter without the cost and loss of productive time that would be occasioned by a full and fair hearing on the merits 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

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

1. Dr. Moon acknowledges that the conduct described in the Amended Complaint for
Disciplinary Action filed on September 11, 2013 in this matter, if proven at a hearing before the Board,
would constitute violations of the Nevada Osteopathic Medicine Practice Act (NRS & NAC 633). In
particular, Dr. Moon acknowledges that he has been charged with twelve causes of action related to four
general areas: (1) four causes of action related Dr. Moon’s arrest on April 17, 2013 at the McCarran
International Airport; (2) three causes of action related to Dr. Moon’s recordkeeping and prescribing
practices at his Las Vegas practice; (3) three causes of action related to Dr. Moon’s supervision and use of
physician assistants in his practice; and (4) one cause of action related to Dr. Moon’s failure to provide a
fingerprint card and related documents pursuant to Nevada law.

2. The Board acknowledges that Dr. Moon is not admitting that the Board’s claims have merit
and, in fact, that he is pleading “no contest” to these claims to resolve this matter, thus avoiding the costs
of hearing and potential subsequent litigation. Dr. Moon asserts that if this matter were to proceed to
hearing, he has evidence, witnesses, expert witnesses, and defenses to the facts alleged by the Board, but
for the purposes of resolving this matter and for no other purposes, Dr. Moon waives the presentation of
evidence, witnesses, expert witnesses, and defenses in order to effectuate this settlement agreement.

3. Both parties acknowledge that the State of Oklahoma is pursuing its own actions against Dr.
Moon based on various allegations, a majority of which stem from events which occurred here in Nevada.
The Parties agree that the Board will not take any disciplinary action against Dr. Moon for any action
taken by the Oklahoma State Board of Osteopathic Examiners for any allegations related to the
allegations made in the Amended Complaint and resolved by this Agreement. If the Oklahoma State
Board of Osteopathic Examiners imposes discipline upon Dr. Moon for allegations and charges unrelated
to the allegations made in the Amended Complaint and resolved by this Agreement, the IBM and Board
staff may consider whether to pursue additional discipline in Nevada against Dr. Moon for such
discipline imposed by the Oklahoma State Board of Osteopathic Examiners.

4. Dr. Moon shall pay the sum of Eighty Thousand Dollars ($80,000.00) for purposes of
reimbursement of various Board fees and costs for the investigation its concerns about him. Dr. Moon
shall make an initial payment in the amount of $5,000.00 to be received within five (5) business days of
when this Settlement and Monitoring Agreement is executed by all parties. Thereafter, Dr. Moon shall
pay at least $1,000.00 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: (a) the amount is fully paid, or (b)
Dr. Moon has paid a total of $60,000.00 within 24 months from the effective date of this Settlement and
Monitoring Agreement, at which point the remaining $20,000.00 will be waived. 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.

5. Dr. Moon shall maintain his license on either active or inactive status while he is subject to
this Agreement. Dr. Moon shall comply with all laws related to the practice of osteopathic medicine,
whether state or federal, whether statutory or regulatory, including NRS and NAC Chapters 633, 453,
454, 585 and 639.

6. Within nine months of the effective date of this Agreement, Dr. Moon shall, at his expense
and cost, take and successfully complete 15 units of approved continuing medical education related to
pain management, addictionology, and the proper prescribing and use of controlled substances. Dr.
Moon shall provide information in writing regarding the courses he intends to take to the Board’s
Investigating Board Member (IBM) in advance of taking the course, and the IBM shall notify Dr. Moon
in writing of approval or disapproval of such proposed courses within five days of such notification,
which approval shall not be unreasonably withheld. The 15 units of continuing medical education taken
under this paragraph cannot be online or correspondence courses, but may be included in the units of
continuing medical education needed by Dr. Moon for renewal of his license.
7. Dr. Moon shall, at his expense and cost, attend and successfully complete the Medical Record Keeping Seminar offered by the Center for Personalized Education for Physicians (CPEP) not later than June 30, 2015.

8. For any prescription drugs, including controlled substances, received from any patient or person (other than prescriptions for relatives written by another physician), Dr. Moon shall maintain, or continue to maintain, a “Sharps Container” or its equivalent for disposal of such prescription drugs. Prescription drugs received from any patient or person shall forthwith be deposited into the Sharps Container, with two signatures verifying such deposit. The Sharps Container shall be disposed of by a medical waste disposal service or other legally acceptable method (i.e. delivery to police station, etc.). Additionally, a written record with two signatures for all such deposits shall be maintained. Dr. Moon represents that no publication for which he is responsible (written, electronic, website, etc.) requests (or will request) to take back or otherwise receive prescription drugs from any patient or other person.

9. Dr. Moon’s license shall be placed on probation for a period of two years from the effective date of this Settlement Agreement and Order subject to the following terms and conditions:

   (a) Within 15 days of the effective date of this Agreement, the Board shall identify one or more physicians who are board certified in and practice pain management and pain medicine who may serve as a practice monitor. The Board shall provide Dr. Moon with a list of the prospective physicians in writing, and Dr. Moon shall inform the Board within five days thereafter of any objections or concerns he has with any of the prospective physicians. The Board shall consider Dr. Moon’s objections or concerns when selecting a prospective physician to serve as the practice monitor herein, but the ultimate choice of the practice monitor shall remain within the discretion of the Board. After receiving Dr. Moon’s objections or concerns, or if Dr. Moon does not provide any objections or concerns as allowed herein, the Board will thereafter notify Dr. Moon in writing of the Practice Monitor it has selected. The Practice Monitor will prospectively monitor Dr. Moon’s practice for compliance with the following:

      (1) Dr. Moon shall review the Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain published by the Federation of State Medical Boards (FSMB Policy), NRS 453.3643, and NRS 639.23507 and shall prepare written policies and procedures for his
practice that conform with FSMB Policy, NRS 453.3543, and NRS 639.23507 ("Policies and Procedures"). Dr. Moon shall present a draft of the Policies and Procedures to the Practice Monitor within 60 days of the effective date of this Agreement, and the Practice Monitor shall review the draft policies and procedures within 10 days after receiving them. The Practice Monitor may confer with Dr. Moon and the IBM regarding the draft policies and procedures, may make written comments and suggestions, or may indicate acceptance of the Policies and Procedures. Upon approval of the Policies and Procedures, Dr. Moon shall immediately thereafter implement them in his practice and shall assure that all other practitioners in his practice are aware of and practice according to the policies and procedures.

(2) Dr. Moon will review all relevant provisions in NRS Chapter 633 and NAC Chapter 633 relating to the use of physician assistants in an osteopathic medicine practice and shall prepare Policies and Procedures relating to the use of physician assistants in an osteopathic medicine practice that will conform with the relevant statutes and regulations. The policies and procedures created under this subsection shall be submitted to the Practice Monitor for review and approval similar to the process set out in the preceding subsection. Upon approval of the Policies and Procedures, Dr. Moon shall immediately thereafter implement them in his practice and shall assure that all other practitioners in his practice are aware of and practice according to the Policies and Procedures.

(b) Once Dr. Moon, the Practice Monitor, and the IBM have agreed upon the Policies and Procedures as set out in subparagraphs 9(a)(1) and 9(a)(2) above, thereafter, the Practice Monitor shall monitor Dr. Moon’s practice as follows by:

(1) For any new patients ("New Patients") being treated for pain management or chronic pain-related conditions or issues, Dr. Moon shall provide to the Practice Monitor the names of such new patients on a monthly basis.

(2) For such New Patients, the Practice Monitor shall be entitled to monitor as many patient files as the Practice Monitor deems necessary to confirm that Dr. Moon and his practice are complying with the Policies and Procedures (identified in subparagraphs 9(a)(1) and 9(a)(2)
and are otherwise compliant with applicable Nevada and federal law. For purposes of
clarification, the Practice Monitor is not required to monitor each and every patient file. Rather,
the review of New Patient files shall be in the reasonable discretion of the Practice Monitor to
satisfy the Practice Monitor’s requirements under this Agreement.

(3) Conferring with Dr. Moon regarding Dr. Moon’s and his practice’s treatment plans
and New Patient files regarding the patients that Dr. Moon and his practice are treating for pain-
related conditions or issues, including discussing various treatments, modalities, and therapies
that may work in substitution for, supplementary to, or complementary with controlled
substances with the goal of best managing each patient’s pain with the minimum necessary
controlled substances;

(4) Observing Dr. Moon’s practice at such times and under such conditions as the Practice
Monitor determines, in consultation with Dr. Moon, will further the Practice Monitor’s
compliance with his charge and duties herein;

(5) Writing quarterly reports to the Board detailing Dr. Moon’s and his practice’s pain
management practice, their compliance with Nevada and federal law, their conformance with the
prevailing standards of practice of pain management, their progress, and any other information
that the Practice Monitor may deem necessary for the Board to know concerning compliance with
this Agreement and applicable Nevada and federal law.
(c) Dr. Moon shall be responsible for the reasonable charges by the Practice Monitor for the
services necessary to comply with the terms and conditions of this Agreement.

(d) Dr. Moon shall meet with the Practice Monitor upon reasonable request and shall reasonably
cooperate with the Practice Monitor in his or her supervision, monitoring, investigation, or auditing to
assure compliance with the terms and conditions of this Agreement. Dr. Moon shall allow the Practice
Monitor or any employee of the Board at the direction of the Practice Monitor to enter his practice at any
time before or after the practice’s normal operating hours to monitor the practice and review any or all of
his patient records as are reasonably necessary to fulfill the Practice Monitor’s responsibility under this
Agreement. Because the visiting of Dr. Moon’s practice will occur before or after hours, Dr. Moon shall
assure that the staff and equipment necessary to assist the Practice Monitor are readily available at the
time of the visit. For good cause, the Practice Monitor may visit or may direct the Board’s staff to visit
Dr. Moon’s practice during regular office hours. Unless there is good cause to do otherwise, the Practice
Monitor or member of the Board’s staff shall give Dr. Moon at least four hours’ advance notice of the
intent to visit the practice.

(e) If at any time Dr. Moon has paid all of the fees and costs set out in paragraph #4 herein and
the Practice Monitor provides three consecutive quarterly reports regarding Dr. Moon’s practice that
acknowledge that Dr. Moon is in compliance with the terms of this Agreement, then the Board will enter
an Order of Fulfillment terminating this Agreement at its next regularly scheduled meeting. Regardless
of all other terms and conditions contained herein, the monitoring of Dr. Moon and his practice will not
terminate until all of the fees and costs ordered in paragraph #4 of this Agreement have been paid in full.

(f) If the Practice Monitor has concerns with Dr. Moon’s or his practice’s compliance herein, the
Practice Monitor shall confer with Dr. Moon regarding the concerns in order to have Dr. Moon address
the concerns through whatever means are appropriate. If Dr. Moon cannot or will not address the
Practice Monitor’s concern, the Practice Monitor shall confer with the IBM to determine a course of
action, which may include, but is not limited to, invoking paragraph #10 of this Agreement.

10. In the event Dr. Moon 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 Dr. Moon 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 Dr. Moon to cure the non-
compliance. If Dr. Moon timely cures the identified non-compliance, or has undertaken compliance and
continues to pursue compliance until satisfied, the Board will take no further action. If Dr. Moon does
not timely cure the identified non-compliance, the Board may take further action as it deems necessary
under the circumstances. The Board may direct the Practice Monitor to perform additional duties as the
Board (or IBM) director to assure compliance.
(b) Where Dr. Moon has materially failed to comply with the same term or condition under which the Board has previously notified him pursuant to paragraph 10(a), the Board may take further action as it deems necessary under the circumstances.

(c) Where the Practice Monitor and the IBM find that the public health, safety, or welfare imperatively require emergency action as a result of the non-compliance, the Board may take such action as it deems necessary under the circumstances and in accordance with applicable law, including without limitation, the suspension of Dr. Moon's license to practice osteopathic medicine in the State of Nevada without any action of the Board other than the issuance of an Order of Suspension by the Executive Director. Upon complying with the term or condition for which suspension was imposed, Dr. Moon's license will be automatically reinstated, assuming all other provisions of the Agreement are in compliance. If Dr. Moon desires and so indicates in writing within five days from the date of suspension, Dr. Moon shall be entitled to a hearing before the Board to determine whether suspension is warranted within 45 days of the issuance of the order of suspension.

(d) The Board may take further discipline by the Board, up to and potentially including revocation of his license, as a result of Dr. Moon's material failure to comply with a term or condition of this Agreement.

(e) 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. Dr. Moon is aware of, understands, and has been advised of the effect of this Agreement, which he has carefully read and fully acknowledged. Dr. Moon consulted with and was represented by competent counsel of his choice, namely David J. Mortensen, Esq. of Alverson, Taylor, Mortensen & Sanders.
2. Dr. Moon 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. Dr. Moon 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. Dr. Moon 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 Licensee 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. Dr. Moon 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.

6. Dr. Moon 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 Dr. Moon. It may not be altered, amended, or modified without the express consent of the parties.
7. Both parties acknowledge that it is in the best interests of each to resolve this matter without a full hearing on the merits because of the cost and risk involved for each party.

8. Both parties acknowledge that the Board has jurisdiction to consider and ratify this Agreement because Dr. Moon is an osteopathic physician licensed by the Board. Dr. Moon 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 October 17, 2014.

Signed this 15th day of October, 2014.

Respondent David Moon, D.O.

By David Moon, D.O., Respondent

Alverson, Taylor, Mortensen & Sanders

By David J. Mortensen
Counsel for Respondent

15 Oct 2014

Nevada Board of Osteopathic Medicine

By Louis Ling, Esq.

Louis Ling, Esq.

ORDER

WHEREAS, on October 17, 2014, the Nevada State Board of Osteopathic Medicine approved and adopted the terms and conditions set forth in the Agreement with David Moon, D.O. IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 30th day of October, 2014.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Ricardo Almaguer, D.O., Vice Chairman and Presiding Officer

-10-
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

David Moon, D.O.,

RESPONDENT.

Case No.: AD129001 & AD1304002

OCT 30 2014

FILED

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of October, 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, addressed as follows:

David Moon, D.O.
241 N. Buffalo, Bldg. 1
Las Vegas, NV 89145

David Mortensen
DMortensen@AlversonTaylor.com
Attorney for Respondent

An employee of the Nevada State Board of Osteopathic Medicine