BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF:  
ROBERT TOLEDO, D.O.  
License No. 1057,  
Respondent.  

Case No. AD1606001

SETTLEMENT AGREEMENT AND ORDER

The Nevada State Board of Osteopathic Medicine (the Board), by and through its investigating board member Nicole Cavenagh, PhD, hereby enters into this settlement agreement with Robert Toledo, D.O. (License No. 1057). Pursuant to chapter 233B and chapter 633 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), it is hereby stipulated and agreed, by and between the parties in the above-entitled matter that this matter shall be fully and finally settled and resolved upon terms and conditions set out herein.

PERTINENT FACTS

1. On January 19, 2002, Dr. Toledo became licensed by the Board to practice as an osteopathic physician in Nevada (License No. 1057). Dr. Toledo’s practice address of record with the Board is 1552 West Warm Springs Road, #100 in Henderson, Nevada. The Board’s records show that Dr. Toledo is board certified in Obstetrics and Gynecology.

2. On March 30, 2016, the Board's staff and investigative staff from the Nevada State Board of Pharmacy conducted a joint investigation into a business entitled Henderson Wellness & Colonic (HWC) located at 9895 W. Maryland Parkway, Suite C in Las Vegas, Nevada. The business was owned by Dr. Toledo and his wife Nganha “Holly” Cheung and was managed by Dr. Toledo’s sister-in-law Kim Le. The business purported to be a medical practice and spa.

3. The Board’s investigation determined that HWC maintained a stock of prescription drugs that were readily accessible to all of HWC’s staff. The prescription drugs were for weight loss (such as phentermine) or cosmetic purposes (such as Latisse). In practice, a client of HWC appeared at HWC, requested the prescription drugs HWC maintained or
“prescribed” without being medically examined by a licensed medical professional, paid the
appropriate fee, and left with the prescription drug or a “prescription” for the drug. None of the
employees of HWC were licensed medical professionals. Based upon the client’s filling out of
a form and a cursory taking of vital signs, the staff of HWC would provide the client either
prescription medications taken from the stock maintained by HWC or would provide a
“prescription” to the client that had been pre-signed by Dr. Toledo via a stamp. The acts
performed by the employees of HWC constituted the practice of medicine since they involved
assessment, diagnosis, and treatment of HWC’s clients, and none of the employees of HWC
were licensed as physicians, physician assistants, or advanced practitioner registered nurses.
Dr. Toledo did not see any of the clients of HWC in any capacity and did not maintain medical
charts on any of the clients. All of the prescription drugs dispensed by HWC were obtained
with Dr. Toledo’s knowledge and through the exercise of Dr. Toledo’s authority to obtain or
prescribe such prescription drugs. Dr. Toledo was aware of and condoned the manner by
which HWC operated.

ACKNOWLEDGMENTS AND APPLICABLE LAW

4. In an effort to avoid the cost and uncertainty of a hearing, the parties have agreed to
settle this matter. In settling this matter, Dr. Toledo does not contest the facts contained in the
preceding three paragraphs. Dr. Toledo further acknowledges that certain facts contained in
the preceding three paragraphs could be found to constitute violations of Nevada Revised
Statutes (NRS) 633.511(1) as unprofessional conduct as further defined in NRS
633.131(1)(d), (f)(1), (g), (l) and (m), and NRS 633.511(12) and Nevada Administrative Code
(NAC) 633.350(1)(c) and (e) if this matter went to a Board hearing. Notwithstanding the
preceding, the Board has agreed not to file an Accusation in this matter and the parties agree,
instead, that the Board should rule upon this Settlement Agreement and Order as containing
all necessary elements of due process to authorize the Board to take such action. If the
Board approves this Settlement Agreement and Order, it shall be deemed and considered
disciplinary action by the Board against Dr. Toledo.
5. Dr. Toledo and Dr. Cavenagh, the Investigating Board Member in this matter, agree that it is in the best interests of Dr. Toledo and the Board to resolve this matter without a full hearing on the merits.

6. Dr. Toledo is aware of, understands, and has been advised of the effect of this Settlement Agreement, which he has carefully read and fully acknowledged. Dr. Toledo acknowledges that he reviewed this Settlement Agreement and that he was provided the opportunity to review this Settlement Agreement with legal counsel of his own choice, namely John Cotton of John Cotton & Associates.

7. Dr. Toledo has freely and voluntarily entered into the Settlement 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. Toledo is voluntarily waiving all these rights in exchange for the Board’s acceptance of this Settlement Agreement.

8. Should the Settlement Agreement be rejected by the Board, it is agreed that presentation to and consideration by the Board of such proposed Settlement Agreement or other documents or matters pertaining to the consideration of this Settlement 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. Likewise, should this Settlement Agreement be rejected by the Board, it is agreed that the terms of the Settlement Agreement, and any facts contained herein, shall not be used against Dr. Toledo in any future prosecution or other action by the Board.

9. Dr. Toledo 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 settlement
agreement or its administration.

10. In consideration for the execution of this Settlement Agreement, Dr. Toledo hereby
releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and
the Nevada Attorney General's Office (as counsel for the Board), and each of their
representatives, investigators, and employees, in their individual and representative capacity
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, 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 herein and
other matters relating thereto.

11. Dr. Toledo acknowledges that the Settlement Agreement shall only become
effective after both the Board and he have duly executed it.

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

13. Both parties acknowledge that the Board has jurisdiction to consider and ratify this
Settlement Agreement and order because Dr. Toledo is an osteopathic physician licensed by
the Board. Dr. Toledo expressly, knowingly, and intentionally waives the 21-day notice
requirement contained in the Nevada Open Meeting Law and acknowledges that this
Settlement Agreement and order may be presented to the Board for its consideration and potential ratification at the Board’s meeting on August 16, 2016.

AGREED DISCIPLINARY ACTION

THE PARTIES DO HEREBY AGREE as a result of the admissions and acknowledgements contained in paragraphs 1 through 13 above that the following discipline is fair and appropriate and should be imposed by the Board by way of resolution of this matter:

1. Dr. Toledo shall pay the Board’s fees and costs in the investigation and prosecution of this matter totaling $791.00, payable by cashier’s or certified check or money order made payable to: “Nevada State Board of Osteopathic Medicine.” Payment shall be due within 90 days of the effective date of this Settlement Agreement and Order, but if Dr. Toledo cannot make payment in full by that time, he may make payment arrangements with and as are acceptable to the Board’s Executive Director.

2. Dr. Toledo shall pay a fine of $5,000.00 in this matter, payable by cashier’s or certified check or money order made payable to: “Nevada State Board of Osteopathic Medicine.” Payment shall be due within 90 days of the effective date of this Settlement Agreement and Order, but if Dr. Toledo cannot make payment in full by that time, he may make payment arrangements with and as are acceptable to the Board’s Executive Director.

3. Dr. Toledo shall not allow any prescription drugs to be ordered, purchased, stored, or otherwise provided to HWC using his name or authority, and he shall take whatever action is necessary to assure that no prescription drugs are obtained in his name or authority.

4. Dr. Toledo may not administer, prescribe, dispense, order, or otherwise be involved with prescription drugs for purposes unrelated to his practice of obstetrics and gynecology at HWC or any other site until January 2, 2017. Dr. Toledo may administer, prescribe, dispense, order, or otherwise be involved with prescription drugs at HWC or any other site after January 2, 2017 only if he does so in compliance with subparagraphs 5(a), (b), and (c) below at HWC or any other site.
5. Dr. Toledo may administer, prescribe, dispense, order, or otherwise be involved with any controlled substances or dangerous drugs from his primary practice site so long as he does so in accordance with the following conditions:

   (a) Dr. Toledo obtains a DEA registration and Nevada CS registration at the site. Dr. Toledo shall also register the site as a practice site with the Board. If Dr. Toledo desires to dispense controlled substances or dangerous drugs from the site, he must also obtain a Nevada dispensing practitioner’s registration. Dr. Toledo shall provide written evidence of his registrations to the Board office.

   (b) Dr. Toledo must personally see and assess each patient at the site to determine that the patient has a legitimate medical condition or diagnosis for which a particular controlled substance or dangerous drug is appropriate. Dr. Toledo must make a medical record regarding each patient he sees and assesses at the site, which record must include the basic physical examination information, Dr. Toledo’s assessment, diagnoses, and controlled substances or dangerous drugs administered. The medical records made pursuant to this subparagraph must be maintained at the site. Dr. Toledo may employ a physician assistant or advanced practitioner of nursing under his supervision to see and assess the patients of the site and to make and maintain the records in the same manner as is required of Dr. Toledo under this paragraph.

   (c) Dr. Toledo shall provide to the Board office his policy and procedures or protocols that will be used at his primary practice location for the seeing, assessment, diagnosis, administering, prescribing, and dispensing of controlled substances and dangerous drugs to patients at the site. The policy and procedures or protocol must be in compliance with all laws related to the administering, prescribing, and dispensing of prescription drugs and controlled substances, including but not limited to NRS and NAC chapters 453, 454, 633, and 639 and shall address those concerns raised in this matter including (1) limiting access to dangerous drugs stored in his practices’ drug rooms; (2) assuring that controlled substances are properly and lawfully stored and secured; (3) limiting access to controlled substances; (4) packaging, repacking, and labeling of prescription drugs; and (5) assuring that all patients are examined
and that all necessary documentation is made to support the prescription, dispensing, and
refilling of dangerous drugs and controlled substances. The Board is aware that Dr. Toledo
has been working simultaneously with the Nevada State Board of Pharmacy and has been
developing policies and procedures or protocols in conjunction with the Nevada State Board of
Pharmacy. To satisfy the terms of this subparagraph, Dr. Toledo may present to the IBM
those policies and procedures or protocols developed with the Nevada State Board of
Pharmacy so long as those policies and procedures or protocols address the five concerns
addressed in this paragraph. The policies and procedures or protocols, whether those agreed
to with the Nevada State Board of Pharmacy or developed independent of the Nevada State
Board of Pharmacy, must be submitted to the IBM no later than 30 days after the effective
date of this Settlement Agreement and Order.

6. If Dr. Toledo desires in the future to administer, prescribe, or dispense dangerous
drugs or controlled substances from a site other than his primary practice site, Dr. Toledo
must notify the Board’s office at least 30 days before he commences practice at the site. Dr.
Toledo may not commence any practice at a site other than his primary practice site and HWC
until he satisfies the IBM that his practice at the site other than his primary practice site or
HWC will conform with all applicable Nevada and federal laws and the requirements of
paragraph 4 herein.

7. The parties acknowledge that the Board must report this Settlement Agreement to
the National Practitioners Data Bank (“Data Bank”).

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

9. In the event Dr. Toledo fails to materially comply with any term of this Settlement
Agreement, Dr. Toledo agrees his license in the State of Nevada shall be automatically
suspended without any action of the Board other than the issuance of an Order of Suspension
by the Executive Director. Upon complying with the term, Dr. Toledo’s license in the State of
Nevada will be automatically reinstated, assuming all other provisions of the Settlement Agreement are in compliance. Additionally, Dr. Toledo’s failure to comply with any term or condition of this Settlement Agreement may result in discipline by the Board, up to and potentially including revocation of his license. Board Staff may take any and all actions it deems necessary to collect any sums ordered that remain unpaid. If Board 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.

Signed this 20 day of July, 2016.

Respondent Robert Toledo

Nevada State Board of Osteopathic Medicine

By ________________________     By ________________________

Robert Toledo, D.O.                  Nicole Cavenagh, Ph.D
Respondent                            Investigating Board Member
7. The parties acknowledge that the Board must report this Settlement Agreement to the
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8. Dr. Toledo shall meet with the Board or its representatives upon request and shall cooperate
with such representatives in their supervision, monitoring, investigation, or auditing to assure compliance
with the terms and conditions of this order. Dr. Toledo shall pay any and all reasonable and necessary
costs incurred by the Board resultant from this paragraph.

9. In the event Dr. Toledo fails to materially comply with any term of this Settlement Agreement,
Dr. Toledo agrees his license in the State of Nevada shall be automatically suspended without any action
of the Board other than the issuance of an Order of Suspension by the Executive Director. Upon
complying with the term, Dr. Toledo’s license in the State of Nevada will be automatically reinstated,
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it deems necessary to collect any sums ordered that remain unpaid. If Board 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.

Signed this ___ day of July, 2016.

Respondent Robert Toledo

By ____________________________
Robert Toledo, D.O.
Respondent

Nevada State Board of Osteopathic Medicine

By ____________________________
Nicole Cavenagh, Ph.D
Investigating Board Member
ORDER

WHEREAS, on August 16, 2016, the Nevada State Board of Osteopathic Medicine approved and adopted the terms and conditions set forth in the Agreed Settlement and Order with Robert Toledo, D.O. IT IS SO ORDERED.

SIGNED AND EFFECTIVE this 16 day of August, 2016.

[Signature]

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Ronald Hedger, D.O.
Chairman
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT
AGAINST

Robert Toledo, D.O.,

RESPONDENT.

Case No.: AD1606001

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2016, 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:

Robert Toledo, D.O.
1552 W. Warm Springs Road, #100
Henderson, NV 89014

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