BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER INVOLVING

WALTER UYESUGI, D.O., LIC. #DO1442

Respondent.

CASE NO. NR1709001

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Samir Pancholi, D.O., Investigative Board Member ("Dr. Pancholi" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine (Board) through the Board's Executive Director, Sandra Reed, and Walter Uyesugi, D.O. ("Dr. Uyesugi") (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 the Investigative Board Member ("IBM"), ascertained certain information regarding litigation filed against Dr. Uyesugi. The information was ascertained as a result of Board Staff’s due diligence in investigating its applicants/licensees.

B. WHEREAS, the IBM has alleged as follows: Plaintiff B.J. brought a claim alleging malpractice against Dr. Uyesugi in Indiana County, Pennsylvania, on or about September 20, 2010 (Court Case No 11809CD2010.). Plaintiff B.J. and Dr. Uyesugi resolved and disposed of the case on or about January 17, 2017. The IBM alleged that Dr. Uyesugi failed to notify the Board of the disposition of the case within the forty-five day reporting requirement set forth in NRS 633.527(1). This is Dr. Uyesugi’s second offense.

C. WHEREAS, NRS 633.527(1) states that a licensed "osteopathic physician shall report to the Board: (a) any action for malpractice against the osteopathic physician not later than 45 days after the osteopathic physician receives service of a summons and complaint for the action; (b) any claim for malpractice against the osteopathic physician that is submitted to arbitration or mediation not later than 45 days after the claim is submitted to arbitration or mediation; (c) any settlement, award, judgment or other disposition or any action or claim described in paragraphs (a) or (b) not later than 45 days after the settlement, award, judgment or other disposition; and (d) any sanctions imposed against the osteopathic physician that are reportable to the National Practitioner Data Bank not later than 45 days after the sanctions are imposed." This
statute was added to the law in 2003. By the use of the word “shall” by the Nevada State Legislature in this statute, the Legislature intended to mandatorily require all osteopathic physicians to report any of the four (4) events mentioned in the statute.

D. NRS 633.527(2) states that should the Board find “that an osteopathic physician has violated any provision of this section, the Board may impose a fine of not more than $5,000 against the osteopathic physician for each violation, in addition to any other fines or penalties permitted by law.” (Emphasis added.)

E. WHEREAS, NRS 622.400(1) states that a “regulatory body [such as this Board] may recover from a person reasonable attorney’s fees and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings against the person if the regulatory body” either enters a final order or enters into a settlement agreement.

F. WHEREAS, the Parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint and/or prove their allegations.

G. 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 IBM 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.

H. WHEREAS, Dr. Uyesugi understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a disciplinary complaint may be filed and a hearing 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. Uyesugi 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.

I. WHEREAS, Dr. Uyesugi 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.

J. WHEREAS, Dr. Uyesugi acknowledges that the Board has a reasonable basis to believe that the statutes and/or regulations regulating the practice of Osteopathic Medicine in the State of Nevada have been violated.

K. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding and to save further costs and expenses, Dr. Uyesugi has elected to enter into this Agreement to resolve this matter, and this matter only.

L. WHEREAS, Dr. Uyesugi acknowledges that once accepted by the Board, this Agreement and all associated documentation become a matter of public record (with the exception of medical information related to any patient).
M. WHEREAS, Dr. Uyesugi 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. Uyesugi, nor have any promises been made other than those reflected in this Agreement. Dr. Uyesugi freely and voluntarily entered into this Agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Uyesugi has executed this Agreement only after a careful reading of it and a full understanding of all its terms.

N. WHEREAS, Dr. Uyesugi is fully 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 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. Uyesugi voluntarily waives these rights.

O. 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. Uyesugi acknowledges that the allegations for failure to report are true, and each such act is a violation of NRS chapter 633 for which discipline is permissible under Nevada law. In the interest in resolving this matter, Dr. Uyesugi has entered into this Settlement Agreement and Order. The Parties have agreed to resolve the current matter, and only this matter. Dr. Uyesugi will henceforth ensure that all lawsuits involving him will be timely and accurately reported to the Board, and the failure to do so may result in the Board bringing a disciplinary action against the osteopathic medical license issued by the Board to Dr. Uyesugi. If any lawsuit is not reported to the Board, such will be in violation of this Agreement as well as the applicable statutes.

B. Dr. Uyesugi agrees to pay the sum of SEVEN HUNDRED AND FIFTY DOLLARS and NO CENTS ($750.00) as a fine imposed for having violated NRS chapter 633. This sum includes all fees and costs incurred by the Board up to and including the approval of this Agreement by the Board at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount shall be payable in a single payment due within thirty (30) days of the Board accepting this Agreement.

C. Should Dr. Uyesugi fail to satisfy and pay the indebtedness of $750.00 in a timely manner as discussed herein, Dr. Uyesugi understands and agrees that he will be considered in default of this Agreement, and this Agreement will be null and void, with the Respondent receiving credit for payments made to date. The Board may take whatever action it deems appropriate, including but not limited to reducing the balance to judgment pursuant to NRS chapter 353C. The Board will be entitled to its reasonable attorney’s fees and costs in any action under this paragraph.
D. Dr. Uyesugi agrees to bear his own fees and costs, including the fees and expenses of his own attorney(s) if applicable.

E. 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.

F. This Agreement and Order shall be construed in accordance with the laws of the state of Nevada.

G. This Agreement consists of six (6) pages and embodies the entire agreement between the Board and the osteopathic physician. It may not be altered, amended or modified without the express consent of the Parties, and any subsequent alteration, amendment, or modification shall be in writing and subject to approval by the Board.

H. In consideration for the execution of this Agreement, Dr. Uyesugi 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 (collectively the State 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 he 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 herein, and other matters relating thereto.

I. Dr. Uyesugi, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the state of Nevada, the State Board of Osteopathic Medicine, the 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 settlement or its administration.

J. This document may be prepared 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.

K. LASTLY, by executing this Agreement, Physician hereby expressly, knowingly, and intentionally waive the 21-working days notice requirement pursuant to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on the agenda for the Board’s approval in the month of February 2018, and that upon payment of the fine mentioned above, an order of fulfillment will be scheduled for approval by the Board in the month of March 2018.
Walter Uyesugi, D.O.

By: [Signature]
Osteopathic Physician
Dated:

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: [Signature]
Samir Pancholi, D.O.
Investigative Board Member
Dated:

Sandra Reed,
Executive Director
Dated:
Walter Uyesugi, D.O.

By: ____________________________
    Osteopathic Physician
    Dated:

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: ____________________________
    Samir Pancholi, D.O.
    Investigative Board Member
    Dated:

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: ____________________________
    Sandra Reed,
    Executive Director
    Dated:
ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 13th day of February, 2018.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: [Signature]

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

IN THE MATTER OF: Case No.: NR1709001

WALTER UYESUGI, D.O.

License No. DO1442

RESPONDENT.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of February, 2018, 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.

Walter Uyesugi, D.O.

[Signature]

An employee of the Nevada State Board of Osteopathic Medicine