

SEP 09 2020

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF:

DARREN WIRTZ, D.O.,
License No. DO1466,

Respondent.

Case No. AD2001001

FILED

SETTLEMENT AGREEMENT AND ORDER

The Nevada State Board of Osteopathic Medicine (the Board), by and through its investigating board member Carla Perlotto, Ph.D. (hereinafter "IBM") hereby enters into this settlement agreement with Darren Wirtz, D.O. (License No. DO1466). 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. At all times pertinent to this matter, Darren Wirtz, D.O., was and is licensed by the Board to practice osteopathic medicine in Nevada (License No. DO1466). Dr. Wirtz is board certified in internal medicine.

2. On June 11, 2020, Dr. Wirtz entered a guilty plea in the case of *State v. Wirtz*, Clark County Justice Court Case No. 19F27048X. By this guilty plea, Dr. Wirtz plead guilty to one count of violation of Nevada Revised Statutes (NRS) 200.485(1)(a) (domestic battery, first offense), a misdemeanor. By his guilty plea, Dr. Wirtz agreed to the following recommendations as his sentence: (1) 35 hours of community service or a fine of \$345.00; (2) six months of domestic violence counseling, or whatever the Board of Osteopathic Medicine advises in lieu of the domestic violence counseling; (3) six months in jail suspended; and (4) obey all laws.

3. The facts underlying the criminal charge against Dr. Wirtz taken from the Amended Criminal Complaint filed against Dr. Wirtz were that on December 29, 2019, Dr. Wirtz committed acts of domestic violence against his wife in the presence of her minor from a previous relationship. The allegations included that Dr. Wirtz threatened Mrs. Wirtz with a firearm and that he struggled with Mrs. Wirtz' minor child over the firearm at some point in the incident. Additionally, the allegations

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1 documented that Dr. Wirtz obstructed the police officers who responded to the incident, including that
2 the police had to use bean bag guns and to sic a police dog on Dr. Wirtz to effectuate Dr. Wirtz' arrest.

3 4. At the time of the entry into this Settlement Agreement and Order, Dr. Wirtz is actively
4 engaged in his community service and domestic violence counseling and is, so far, successful in those
5 efforts.

6 5. Incident to the Board's investigation in this matter, Dr. Wirtz agreed to a forensic psychiatric
7 examination that was conducted by Dr. Melissa Piasecki. Dr. Piasecki documented that Dr. Wirtz had a
8 longstanding problem with alcohol that contributed to the domestic violence incident, but Dr. Piasecki
9 also documented that Dr. Wirtz had been sober since the date of the incident, that he was actively
10 engaged with Alcoholics Anonymous, that his toxicology screen obtained prior to her examination was
11 negative, and that he did not demonstrate any cognitive or psychiatric impairments at the time of her
12 assessment. Dr. Piasecki recommended that Dr. Wirtz continue in his substance abuse treatment,
13 including enrolling in the PRN program.

14 ACKNOWLEDGMENTS AND APPLICABLE LAW

15 This Settlement Agreement and Order is made and based upon the following acknowledgments
16 by the parties:

17 1. Dr. Wirtz is aware of, understands, and has been advised of the effect of this Settlement
18 Agreement and Order, which he has carefully read and fully acknowledged. Dr. Wirtz was represented
19 by an attorney of his choice throughout this matter, namely Thomas Pitaro of Pitaro & Fumo.

20 2. Dr. Wirtz has entered into the Settlement Agreement and Order, and he is aware of his rights
21 to contest the charges pending against him. Dr. Wirtz acknowledges that this Settlement Agreement
22 and Order is being entered into prior to and without a formal Complaint having been filed by the Board,
23 and he is voluntarily waiving his right to have the Board file a formal Complaint and all of his rights
24 that would flow therefrom. These rights include representation by an attorney at his own expense, the
25 right to a public hearing on any charges or allegations formally filed, the right to confront and cross-
26 examine witnesses called to testify against him, the right to present evidence on his own behalf, the
27 right to testify on his own behalf, the right to obtain any other type of formal judicial review of this
28 matter, and any other rights which may be accorded to him pursuant the provisions of Chapters 233B,

1 622, 622A, and 633 of the NRS and the NAC. Dr. Wirtz is waiving all these rights in exchange for the
2 Board's acceptance of this Settlement Agreement and Order.

3 3. Should the Settlement Agreement and Order be rejected by the Board, it is agreed that
4 presentation to and consideration by the Board of such proposed Settlement Agreement and Order or
5 other documents or matters pertaining to the consideration of this Settlement Agreement and Order
6 shall not unfairly or illegally prejudice the Board or any of its members from further participation,
7 consideration, adjudication, or resolution of these proceedings and that no Board member shall be
8 disqualified or challenged for bias. Additionally, in the event the Settlement Agreement and Order is
9 rejected by the Board, it is agreed that all of Dr. Wirtz's rights to contest the charges against him shall
10 remain in full effect.

11 4. Dr. Wirtz and the Board acknowledge that NRS 633.691 provides immunity for the Board,
12 its employees, and its retained specialists from any potential action that might be brought by Dr. Wirtz
13 and that for the purposes of NRS 633.691, Dr. Wirtz acknowledges that the Board, its employees, and
14 its retained specialists have acted in good faith throughout the conduct of this matter. Dr. Wirtz and the
15 Board further acknowledge that NRS 633.691 provides osteopathic physicians such as Dr. Wirtz with
16 certain protections against administrative actions by the Board, which protections are inapplicable in
17 this matter.

18 5. Dr. Wirtz acknowledges that the Settlement Agreement and Order shall only become
19 effective after both the Board and he have duly executed it.

20 6. Dr. Wirtz enters into this Settlement Agreement and Order after being fully advised of his
21 rights and as to the consequences of this Settlement Agreement and Order. This Settlement Agreement
22 and Order embodies the entire agreement reached between the Board and Dr. Wirtz. It may not be
23 altered, amended, or modified without the express consent of the parties.

24 7. In an effort to avoid the cost and uncertainty of a hearing, the parties have agreed to a
25 compromised settlement of this matter. Dr. Wirtz admits that the facts contained in the "Pertinent
26 Facts" section constitute violations of Nevada Revised Statutes (NRS) 633.511(1)(a) (unprofessional
27 conduct) and NRS 633.511(1)(b)(9) (conviction of a crime involving moral turpitude). If the Board
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1 approves this Settlement Agreement and Order, it shall be deemed and considered disciplinary action
2 by the Board against Dr. Wirtz.

3 8. Both parties acknowledge that it is in the best interests of each to resolve this matter without
4 a full hearing on the merits because of the cost and risk involved for each party.

5 9. Both parties acknowledge that the Board has jurisdiction to consider and ratify this
6 settlement agreement and order because Dr. Wirtz is an osteopathic physician licensed by the Board.
7 Dr. Wirtz expressly, knowingly, and intentionally waives the 21-day notice requirement contained in
8 the Nevada Open Meeting Law and acknowledges that this settlement agreement and order may be
9 presented to the Board for its consideration and potential ratification at the Board's meeting on
10 September 8, 2020.

11 **STIPULATED ADJUDICATION**

12 Based upon the above acknowledgments of the parties and their mutual agreement, the parties
13 stipulate and agree that the following terms of discipline should be imposed by the Board in this matter:

14 1. Dr. Wirtz shall pay the sum of \$1,000.00 as payment of the Board's actual costs for the
15 investigation and prosecution of this matter and shall pay the sum of \$5,000.00 as a fine pursuant to
16 NRS 633.651(1)(f). All sums shall be made by certified or cashier's check made payable to "Nevada
17 State Board of Osteopathic Medicine," within thirty (30) days of the effective date of the Settlement
18 Agreement and Order. Dr. Wirtz may make payment arrangements with the Board's Executive
19 Director by which payment of the fees and costs can be made over a period of six months from the
20 effective date of this Settlement Agreement and Order.

21 2. Dr. Wirtz's license (License No. DO1466) shall be on probation subject to the following
22 terms and conditions:

23 (a) Within ten days of the effective date of this Settlement Agreement and Order, Dr. Wirtz shall
24 arrange for an assessment by the PRN program with Larry Espadero, LADC at Montevista Hospital.
25 Dr. Wirtz shall cooperate with Mr. Espadero's assessment in all respects, which shall include executing
26 a release and documents as may be required by Mr. Espadero to allow Mr. Espadero to provide the
27 results of his assessment to, and will allow him to discuss them with, the Board's staff and the IBM.
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1 (b) If Mr. Espadero determines that Dr. Wirtz does not have a substance abuse disorder, then Dr.
2 Wirtz need not treat with Mr. Espadero.

3 (c) If Mr. Espadero determines that Dr. Wirtz does have a substance abuse disorder, then Dr.
4 Wirtz's terms of probation shall include:

5 (1) Dr. Wirtz shall enter into a contract with PRN setting forth the terms of his
6 participation in a substance abuse treatment program approved by Mr. Espadero, which he
7 deems necessary to address Dr. Wirtz's disorder and condition. Dr. Wirtz shall comply with the
8 terms of the contract and Mr. Espadero's reasonable requests related thereto.

9 (2) The term of the probation ordered herein shall be determined by Dr. Wirtz' progress
10 and prognosis as determined by Mr. Espadero.

11 (3) At least quarterly throughout the period of the probation, Mr. Espadero and PRN
12 shall provide to the Board's office a report detailing Dr. Wirtz's compliance with the terms of
13 his contract, his current status and diagnosis, his prognosis, and any other information Mr.
14 Espadero deems necessary or important to the Board and the IBM in assessing Dr. Wirtz's
15 competence and fitness to practice osteopathic medicine.

16 (4) Mr. Espadero shall promptly report to the Board's office all violations by Dr. Wirtz
17 of his contract and this Settlement Agreement and Order.

18 (5) When Mr. Espadero and PRN have determined that Dr. Wirtz is competent and fit to
19 practice osteopathic medicine, he shall provide a written notice to the Board's office.
20 Thereafter, the Board's staff shall schedule Dr. Wirtz and Mr. Espadero to appear at the next
21 regular Board meeting. At the Board meeting, Dr. Wirtz and Mr. Espadero shall appear to
22 answer the Board's questions and to address the Board's concerns, if any. If the Board
23 determines that Dr. Wirtz has addressed his issues such that he is competent and fit to practice
24 osteopathic medicine, the Board shall terminate Dr. Wirtz's probation upon such terms and
25 conditions as it deems just and necessary at the time, which may include, but is not limited to,
26 potential extension of the probationary term, requiring certain aftercare, requiring certain
27 reporting regarding the aftercare, and other similar terms and conditions.
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1 (5) Dr. Wirtz shall bear all costs associated with the compliance of his substance abuse
2 treatment contract. Failure to pay such costs shall be considered a breach of this Settlement
3 Agreement and Order.

4 (7) Dr. Wirtz may treat with any other mental health professional or substance abuse
5 counselor throughout the period of the probation as he deems necessary and appropriate. Dr.
6 Wirtz shall ensure that any other mental health professional or substance abuse counselor and
7 Mr. Espadero communicate and share such information and documents and otherwise cooperate
8 as necessary to further the treatment of Dr. Wirtz by both.

9 (d) Dr. Wirtz shall comply with all the terms and conditions of his guilty plea in *State v. Wirtz*,
10 Clark County Justice Court Case No. 19F27048X and any violation of those terms and conditions shall
11 be deemed a violation of this Settlement Agreement and Order. If there is any adjudication by the
12 Clark County Justice Court that Dr. Wirtz is in violation of his guilty plea, Dr. Wirtz shall notify the
13 Board in writing within 10 days of any such adjudication.

14 (e) Dr. Wirtz shall assure that he provides to the Board's office by the fifteenth day of each
15 month copies of any and all records made the preceding month by his domestic violence counseling and
16 treatment provider regarding his attendance and compliance with its program. Dr. Wirtz shall sign
17 whatever documents might be required by the provider to authorize the Board's Executive Director or
18 IBM to contact the provider directly with any questions or inquiries regarding Dr. Wirtz. The IBM
19 shall monitor the information provided by the provider to assure that Dr. Wirtz is progressing as
20 expected in his treatment, and if the IBM has concerns otherwise, she shall so notify Dr. Wirtz in
21 writing of her concerns and what Dr. Wirtz must do to assure compliance and satisfy the concerns of
22 the IBM.

23 (f) Dr. Wirtz shall provide to the Board any order indicating that he had satisfied the terms and
24 conditions of his sentencing in *State v. Wirtz*, Clark County Justice Court Case No. 19F27048X within
25 10 days of the entry of an order to that effect by the Superior Court. If the Superior Court enters any
26 other order related to Dr. Wirtz's criminal matter, he shall also provide a copy of any such order to the
27 Board's office within 10 days of the entry of any such order by the District Court.

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1 (g) Dr. Wirtz shall make good faith attempts to engage in marital or family counseling with his
2 wife and her minor son. Dr. Wirtz shall inform the IBM of his good faith efforts in complying with this
3 requirement. If Dr. Wirtz and his wife do engage in marital or family counseling, Dr. Wirtz shall sign
4 whatever documents are necessary from the provider of the counseling so that the provider of the
5 counseling can provide written quarterly reports regarding the status and progress of the counseling.

6 (h) Throughout the period of probation, the Board's staff will obtain reports from the Nevada
7 Prescription Controlled Substances Task Force computer program regarding Dr. Wirtz's personal
8 controlled substances prescriptions and regarding Dr. Wirtz' prescribing of controlled substances for his
9 patients. The IBM shall review these reports, and if the IBM determines that the reports document
10 concerns, the IBM will discuss those concerns with Dr. Wirtz in order to resolve the concerns. Dr.
11 Wirtz shall comply with any reasonable requests from the IBM intended to address the IBM's concerns
12 raised by the reports.

13 3. Dr. Wirtz shall meet with the Board or its representatives upon reasonable request and shall
14 reasonably cooperate with such representatives in their supervision, monitoring, investigation, or
15 auditing to assure compliance with the terms and conditions of this order.

16 4. In the event Dr. Wirtz's failure to comply with any term or condition of this Settlement
17 Agreement and Order, he agrees that his osteopathic physician's license in the State of Nevada shall be
18 automatically suspended without any action of the Board other than the issuance of an Order of
19 Suspension by the Executive Director. Should there be a dispute over whether Dr. Wirtz has failed to
20 materially comply with any term of this Settlement Agreement and Order, Dr. Wirtz shall be entitled to
21 a hearing before the Board, within 45 days of the issuance of the Order of Suspension, to determine
22 whether continued suspension is warranted. Additionally, Dr. Wirtz's failure to comply with any term
23 or condition of this Settlement Agreement and Order may result in further discipline by the Board, up to
24 and potentially including revocation of his license. The Board's staff may take any and all actions it
25 deems necessary to collect any sums ordered that remain unpaid. If the Board's staff is required to
26 pursue judicial action to effect such collections, it shall be entitled to recover its attorney's fees and
27 costs incurred in pursuing such judicial action.

28 Signed this _____ day of August, 2020.

1 Respondent Darren Wirtz, D.O.

Nevada State Board of Osteopathic Medicine

2
3 By *D. Wirtz*
Darren Wirtz, D.O., Respondent

By *Carla Perlotto PhD*
Carla Perlotto, Ph.D.
Investigating Board Member

5 ORDER

6 WHEREAS, on September 8, 2020, the Nevada State Board of Osteopathic Medicine
7 approved and adopted the terms and conditions set forth in the Settlement Agreement and Order with
8 Darren Wirtz, D.O. IT IS SO ORDERED.

9 SIGNED AND EFFECTIVE this 8th day of September, 2020.

10 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

11
12 *Ronald Hedger*
13 Ronald Hedger, D.O., President and Presiding Officer

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