

1
2 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
3 IN THE MATTER OF THE COMPLAINT
4 AGAINST
5 NANCY BAKER, D.O.,
6 RESPONDENT.

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**
Case No.: MA0904036
AUG 04 2009

Filed: **FILED**
D. Hegeduis
Executive Director

7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Paul Kalekas, D.O., Investigative Board Member ("Dr. Kalekas" or "Investigative
11 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
12 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Nancy Baker, D.O. ("Dr.
13 Baker") (collectively referred to as "the Parties").

14 **II. RECITALS**

15 As a preamble to this Agreement, the Parties agree to the following:

- 16
- 17 A. WHEREAS, the Board, through Investigative Board Member Kalekas, ascertained
18 certain information regarding a prior lawsuit filed against Dr. Baker. The information
19 was ascertained as a result of the Board's staff due diligence in investigating its
20 applicants/licensee.
 - 21 B. WHEREAS, the Investigative Board Member alleged that Dr. Baker failed to report a
22 lawsuit being filed regarding a patient ("R.B."), and such failure is a violation of NRS
23 633.527.
 - 24 C. NRS 633.527(1) states that an "osteopathic physician **shall** report to the Board: (a) any
25 action for malpractice against the osteopathic physician not later than 45 days after the
26 osteopathic physician receives service of a summons and complaint for the action;
27 (b) any claim for malpractice against the osteopathic physician that is submitted to
28 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. 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**

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1 by law." (Emphasis added.) This statute was added to the law in 2003. By the use of
2 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)
3 events mentioned in the statute.

4 D. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
5 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
6 person if the regulatory body" either enters a final order or enters into a settlement
7 agreement.

8 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
Board to file a formal disciplinary complaint.

9 F. WHEREAS, the parties understand that this Agreement will be signed by the
10 respective parties and will then be offered to the Board for the entire Board's approval
11 at the next Board meeting, with the recommendation of the Investigating Board
12 Member that this matter be settled. The Agreement shall not become effective until it
13 has been approved by a majority of the Board and endorsed by a representative
14 member of the Board.

15 G. WHEREAS, Dr. Baker understands that the Board is free to accept or reject this
16 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
17 and a hearing scheduled on the same. The Board members who review this matter for
18 approval of this Agreement may be the same members who ultimately hear the
19 disciplinary complaint if this Agreement is not approved by the Board. Dr. Baker hereby
20 agrees to waive any rights she might have to challenge the impartiality of the Board to
21 hear the disciplinary complaint, based on prior knowledge obtained by the Board
22 through consideration of this Agreement, if after review by the Board, this Agreement is
23 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
24 as null and void.

25 H. WHEREAS, Dr. Baker acknowledges that the Board will retain jurisdiction over this
26 matter until all terms and conditions set forth in this Agreement and Order have been
27 met to the satisfaction of the Board.

28 I. WHEREAS, Dr. Baker acknowledges that the Board had a reasonable basis to believe
that the statutes and/or regulations regulating the practice of Osteopathic Medicine in
the State of Nevada may have been violated.

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

K. WHEREAS, Dr. Baker 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 the patient).

L. WHEREAS, Dr. Baker 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. Baker, nor have any
promises been made other than those reflected in this Agreement. Dr. Baker freely and
voluntarily entered into this agreement, motivated only by a desire to resolve the issues
addressed herein. Dr. Baker has executed this Agreement only after a careful reading
of it and a full understanding of all its terms.

M. WHEREAS, Dr. Baker is fully aware of her rights to contest the charges pending
against her. These rights include: representation by an attorney at her 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 her, the right to present evidence

1 on her own behalf, the right to compulsory process to secure the attendance of such
2 witnesses, the right to testify on her own behalf, the right to receive written findings of
3 fact and conclusions of law supporting the decision on the merits of the complaint and
4 the right to obtain judicial review of the Board's decision. Should the Board accept this
5 Agreement, Dr. Baker voluntarily waives these rights.

6 N. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
7 of the State of Nevada.

8 O. WHEREAS, this Agreement and Order contains a complete description of the
9 agreement between the parties and it supersedes any previous agreements between
10 the parties. All material representations, understandings and promises of the parties
11 are contained in this Agreement. Any modifications must be set forth in writing, signed
12 by all the parties, and approved by the Board.

13 **III. TERMS OF THE AGREEMENT**

14 A. Dr. Baker acknowledges that the failure to report allegations are true and each act
15 (failure to timely report the lawsuit) is a violation of NRS chapter 633 and discipline
16 is permissible under Nevada law. In exchange for the Board not pursuing an
17 administrative action and Dr. Baker not pursuing subsequent reviews by the
18 appropriate appellate Courts, the parties have agreed to resolve the current matter,
19 and only this matter. Dr. Baker will henceforth insure that all lawsuits involving
20 herself will be timely and accurately reported to the Board, and the failure to do so
21 may result in the Board bringing a disciplinary action against the osteopathic
22 medical license issued by the Board to Dr. Baker. If any lawsuit is not reported to
23 the Board, such will be in violation of this agreement as well as the applicable
24 statutes.

25 B. Dr. Baker agrees to pay the sum of Two Thousand Dollars (\$2,000.00) as the fine
26 imposed for having violated NRS 633.527(1) for the failure to timely report the
27 filing/service of the lawsuit. This sum **will include** all fees and costs incurred by
28 the Board up to and including the approval of this settlement agreement by the
Board at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6).
Such amount shall be payable in the amount of \$500.00 per month beginning on
the 1st day of August, 2009, and such amount shall continue to be due thereafter on
the 1st day of each month, until the full amount of Two Thousand Dollars
(\$2,000.00) is paid.

C. Should Dr. Baker fail to satisfy and pay the indebtedness of \$2,000.00 in a timely
manner as discussed herein, Dr. Baker understands and agrees that she 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.

D. The Respondent, Dr. Baker, agrees to bear her own fees and costs, including the
fees and expenses of her 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 settlement agreement consists of five (5) pages and embodies the entire
agreement between the Board and the osteopathic physician. It may not be

1 altered, amended or modified without the express consent of the parties, and any
2 subsequent alteration, amendment, or modification shall be in writing and subject to
3 approval by the Board.

- 4 H. In consideration for the execution of this Agreement, Dr. Baker hereby releases and
5 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and
6 the Nevada State Attorney General's Office (as the Board's counsel), and each of
7 their representatives, investigators, and employees, in their individual and
8 representative capacity (collectively the State of Nevada Agencies) from any and all
9 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
10 and demands whatsoever known or unknown, in law and in equity, that she may
11 have had, now has, may have had, or claim to have against any and all of the
12 persons and entities named in this paragraph arising out of, or by reason of, the
13 investigation of the allegations raised in this matter, including those noted in the
14 administrative complaint on file herein, and other matters relating thereto.
- 15 I. Dr. Baker, for herself, her heirs, executors, administrators, successors and assigns,
16 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
17 Board of Osteopathic Medicine, the Nevada Attorney General's office and each of
18 their members, agents and employees in their individual and representative
19 capacities against any and all claims, suits, demands, actions, debts, damages,
20 costs, charges, and expenses, including court costs and attorney's fees against any
21 persons or entities as well as all liability, losses, and damages of any nature
22 whatsoever that the persons and entities named in this paragraph shall have or
23 may at any time sustain or suffer by reason of this investigation, this disciplinary
24 action, this settlement or its administration.
- 25 J. This document may be prepared in multiple counterparts. Each counterpart,
26 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
27 shall be deemed an original hereof if executed by each of the Parties hereto.

28 NANCY BAKER, D.O.

Nancy Baker, D.O.

Osteopathic Physician

Dated: 7/16/09

20 NEVADA STATE BOARD OF
21 OSTEOPATHIC MEDICINE

22 BY: *Paul Kalekas*

Paul Kalekas, D.O.
Investigating Board Member

23 Dated: 7-21-09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

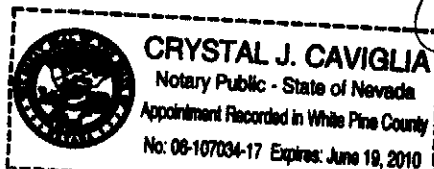
24 By: *Dianna Hegeduis*

Dianna Hegeduis, Executive Director -
Board Counsel

25 Dated: 7-21-09

ACKNOWLEDGEMENT

26 On this the 16th day of July, 2009, the said NANCY BAKER, D.O.,
27 personally appeared before me, a notary public, and signed the above document, freely and
28 voluntarily, under no duress.



Crystal J. Caviglia
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 4 day of August, 2009.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY:


Dr. Daniel Curtis, Chairman/President of the
Board