

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)
PHILIP BAKODY, D.O., LIC. #519)
Respondent.)

CASE NO. NR1111001

NV STATE BOARD OF OSTEOPATHIC MEDICINE

FEB 15 2012

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between S. PAUL EDWARDS, Investigative Board Member ("Mr. Edwards" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Interim Executive Director, Barbara Longo, and PHILIP BAKODY, D.O. ("Dr. Bakody") (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, ascertained certain information regarding litigation filed against Dr. Bakody. The information was ascertained as a result of the Board's staff's due diligence in investigating its applicants/licensees.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
 - (1) In November 2010, University Physician Hospital at Kino actively restricted/suspended Dr. Bakody's clinical privileges. Dr. Bakody failed to report this action to the Board, in violation of NRS 633.527.
 - (2) In May 2011, University Physician Hospital at Kino actively reinstated Dr. Bakody's clinical privileges. Dr. Bakody failed to report this to the Board in violation of NRS 633.527.
 - (3) In March 2007, the guardian of patient "T.D." sued Dr. Bakody in Jefferson County, Commonwealth, KY, Court Case/07-CI-011183. A disposition of the case occurred on or about January 2011. Dr. Bakody did not timely notify the Court of either the commencement or the disposition of that action. Dr. Bakody further stated "no" on his 2008 renewal application in response to the question regarding lawsuits failed against him. Dr. Bakody did report the disposition of this case on his 2012 renewal application, but well after the 45 time limit for such reporting. Dr. Bakody's failure to timely report this legal action is in violation of NRS 633.527.
- 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

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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 by law.**” (Emphasis added.) 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 633.131(1) defines “unprofessional conduct” as including “willfully making a false . . . statement . . . in applying for a license to practice osteopathic medicine or in applying for renewal of a license to practice osteopathic medicine.” Pursuant to NRS 633.511(1), “unprofessional conduct” is a ground for initiating a formal disciplinary proceeding; and such discipline may include public reprimands, the suspension or revocation of the license to practice osteopathic medicine in the State of Nevada, and an assessment of a fine not to exceed \$5,000 per violation.
- 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 Investigating Board Member 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. Bakody 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. Bakody 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. Bakody 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. Bakody 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.
- K. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding and to save further costs and expenses, Dr. Bakody has elected to enter into this Agreement to resolve this matter, and this matter only.

- 1 L. WHEREAS, Dr. Bakody acknowledges that once accepted by the Board, this
2 Agreement and all associated documentation become a matter of public record (with
3 the exception of medical information related to any patient).
4 M. WHEREAS, Dr. Bakody has had the opportunity to obtain the advice from competent
5 counsel of his choice concerning the terms and conditions of this Agreement and the
6 execution thereof. No coercion has been exerted upon Dr. Bakody, nor have any
7 promises been made other than those reflected in this Agreement. Dr. Bakody freely
8 and voluntarily entered into this agreement, motivated only by a desire to resolve the
9 issues addressed herein. Dr. Bakody has executed this Agreement only after a careful
10 reading of it and a full understanding of all its terms.
11 N. WHEREAS, Dr. Bakody is fully aware of his rights to contest the charges pending
12 against him. These rights include: representation by an attorney at his own expense,
13 the right to a public hearing on any charges or allegations filed, the right to confront
14 and cross-examine witnesses called to testify against him, the right to present evidence
15 on his own behalf, the right to compulsory process to secure the attendance of such
16 witnesses, the right to testify on his own behalf, the right to receive written findings of
17 fact and conclusions of law supporting the decision on the merits of the complaint and
18 the right to obtain judicial review of the Board's decision. Should the Board accept this
19 Agreement, Dr. Bakody voluntarily waives these rights.
20 O. WHEREAS, this Agreement and Order contains a complete description of the
21 agreement between the parties and it supersedes any previous agreements between
22 the parties. All material representations, understandings and promises of the parties
23 are contained in this Agreement. Any modifications must be set forth in writing, signed
24 by all the parties, and approved by the Board.

15 III. TERMS OF THE AGREEMENT

- 16 A. Dr. Bakody acknowledges that the failure to report allegations are true, and each such
17 acts are a violation of NRS Chapter 633 for which discipline is permissible under
18 Nevada law. In exchange for the Board not pursuing an administrative action on the
19 non-reporting allegations or the inaccurate renewal applications/unprofessional
20 conduct allegations, and Dr. Bakody not pursuing subsequent reviews by the
21 appropriate appellate Courts, the parties have agreed to resolve the current matter,
22 and only this matter. Dr. Bakody will henceforth insure that all lawsuits involving him
23 will be timely and accurately reported to the Board, and the failure to do so may result
24 in the Board bringing a disciplinary action against the osteopathic medical license
25 issued by the Board to Dr. Bakody. If any lawsuit is not reported to the Board, such will
26 be in violation of this agreement as well as the applicable statutes. **ADDITIONALLY,**
27 **THE BOARD ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A**
28 **DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE BOARD;**
AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE
BEING ASSESSED SOLELY TO RESOLVE THE NON-REPORTING ISSUE. The
Board waives all other claims and/or allegations regarding any alleged inaccurate
renewal applications.
B. Dr. Bakody agrees to pay the sum of Five Hundred Dollars and no cents (\$500.00) as
the 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 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 two installments of \$250.00 each,
the first being due within 30 days of acceptance by the Board of this settlement

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- agreement. The second payment of \$250.00 shall be due 30 days after the first payment is due.
- C. Should Dr. Bakody fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Dr. Bakody 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.
 - D. The Respondent, Dr. Bakody, 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 settlement agreement consists of five (5) 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. Bakody 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. Bakody, 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 on February 14, 2012, 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 May 2012.

1 PHILIP BAKODY, D.O.

2 By: Philip J. Bakody
3 Osteopathic Physician

Dated: 2-6-12

4 NEVADA STATE BOARD OF
5 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

6 By: S. Paul Edwards
7 S. Paul Edwards, Esq.
8 Investigating Board Member

By: Barbara Longo
Barbara Longo, Interim Executive Director

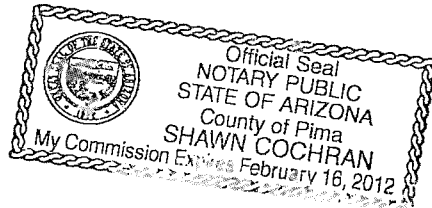
9 Dated: 2.14.12

Dated: 2.14.12

10 **ACKNOWLEDGEMENT**

11 On this the 6 day of February, 2012, the said DR. BAKODY, D.O.,
12 personally appeared before me, a notary public, and signed the above document, freely and
13 voluntarily, under no duress.

14 [Signature]
15 Notary Public



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ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 14 day of February, 2012.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: 
Dr. Paul Kalekas, President of the Board

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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

) Case No.: NR1111001

AGAINST

Philip Bakody, D.O., LIC. #519

RESPONDENT.

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

FEB 15 2012

FILED

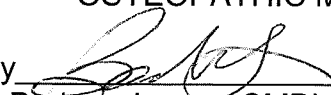
**WRITTEN NOTICE OF ENTRY OF ORDER
APPROVING SETTLEMENT AGREEMENT**

PLEASE TAKE NOTICE that on the 15th day of February, 2012 the Nevada State Board of Osteopathic Medicine entered an order approving the Settlement Agreement between the Respondent, Philip Bakody, D.O., and Enforcement Department of the Board. A file-stamped copy of the settlement agreement with order is attached.

DATED THIS 15th day of February, 2012.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

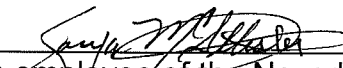
By



Barbara Longo, CMBI, Interim Executive Director
901 American Pacific Dr., #180
Henderson, NV 89014

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2012, 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:


An employee of the Nevada State Board of
Osteopathic Medicine