

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 IN THE MATTER OF THE COMPLAINT
3 AGAINST
4 DAVID J. BARCLAY, D.O.,
5 **RESPONDENT.**

RECEIVED

JUL 29 2009

NV
OSTEOPATHIC MEDICINE

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

Case No.: MA0904041

AUG 04 2009

Filed:

FILED
[Signature]
Executive Director

6
7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Lisa Miller-Roche, Investigative Board Member ("Ms. Miller-Roche" 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 David J. Barclay, D.O.
13 ("Dr. Barclay") (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 Miller-Roche, ascertained
18 certain information regarding a prior lawsuit filed against Dr. Barclay. 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. Barclay failed to timely
22 report a lawsuit being filed in Clark County, Nevada, **and** the settlement thereof, and
23 each such failure is a violation of NRS 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 by law."
 (Emphasis added.) This statute was added to the law in 2003. By the use of the word

- 1 "shall" by the Nevada State Legislature in this statute, the Legislature intended to
2 mandatorily require all osteopathic physicians to report any of the four (4) events
3 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
6 part of its investigative, administrative and disciplinary proceedings against the person
7 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 8 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
9 Board to file a formal disciplinary complaint.
- 10 F. WHEREAS, the parties understand that this Agreement will be signed by the respective
11 parties and will then be offered to the Board for the entire Board's approval at the next
12 Board meeting, with the recommendation of the Investigating Board Member that this
13 matter be settled. The Agreement shall not become effective until it has been
14 approved by a majority of the Board and endorsed by a representative member of the
15 Board.
- 16 G. WHEREAS, Dr. Barclay understands that the Board is free to accept or reject this
17 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
18 and a hearing scheduled on the same. The Board members who review this matter for
19 approval of this Agreement may be the same members who ultimately hear the
20 disciplinary complaint if this Agreement is not approved by the Board. Dr. Barclay
21 hereby agrees to waive any rights he might have to challenge the impartiality of the
22 Board to hear the disciplinary complaint, based on prior knowledge obtained by the
23 Board through consideration of this Agreement, if after review by the Board, this
24 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
25 shall be regarded as null and void.
- 26 H. WHEREAS, Dr. Barclay acknowledges that the Board will retain jurisdiction over this
27 matter until all terms and conditions set forth in this Agreement and Order have been
28 met to the satisfaction of the Board.
- I. WHEREAS, Dr. Barclay 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. Barclay has elected to enter into this
Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Barclay 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. Barclay 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. Barclay, nor have any
promises been made other than those reflected in this Agreement. Dr. Barclay freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. Barclay has executed this Agreement only after a careful
reading of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Barclay 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

1 fact and conclusions of law supporting the decision on the merits of the complaint and
2 the right to obtain judicial review of the Board's decision. Should the Board accept this
3 Agreement, Dr. Barclay voluntarily waives these rights.

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

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

11 **III. TERMS OF THE AGREEMENT**

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

23 B. Dr. Barclay agrees to pay the sum of Two Thousand Dollars (\$2,000.00) as the fine
24 imposed for having violated NRS 633.527(1) for the failure to timely report the
25 filing/service of the lawsuit **and** the failure to timely report the settlement of the
26 case. This sum **will include** all fees and costs incurred by the Board up to and
27 including the approval of this settlement agreement by the Board at its next
28 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 15th day of August,
2009, and such amount shall continue to be due thereafter on the 15th day of each
month, until the full amount of Two Thousand Dollars is paid.

C. Should Dr. Barclay fail to satisfy and pay the indebtedness of \$2,000.00 in a timely
manner as discussed herein, Dr. Barclay 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. Barclay, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s) if applicable.

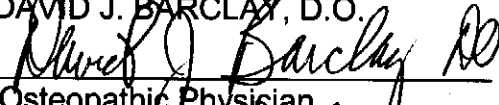
E. This Agreement and Order shall inure to the benefit of and be binding upon each of
the parties hereto and their respective heirs, personal representatives, assigns and
successors in interest of each party.

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

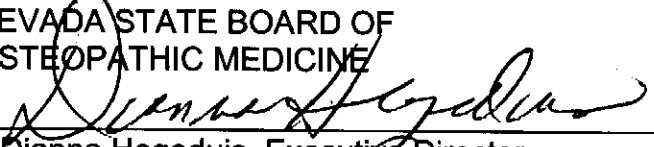
G. This settlement agreement consists of five (5) pages and embodies the entire
agreement between the Board and the osteopathic physician. It may not be altered,
amended or modified without the express consent of the parties, and any

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. Barclay hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada State 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 of Nevada 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 in this matter, including those noted in the administrative complaint on file herein, and other matters relating thereto.
- I. Dr. Barclay, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada State Board of Osteopathic Medicine, the Nevada 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 disciplinary action, 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.

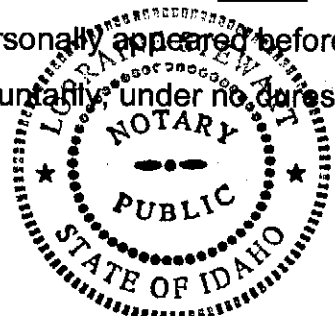
DAVID J. BARCLAY, D.O.

 Osteopathic Physician
 Dated: 22 July 2009

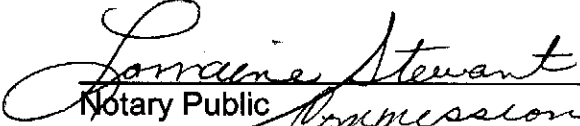
NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE
 BY: _____
 Lisa Miller-Roche,
 Investigating Board Member
 Dated: _____

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE
 By 
 Dianna Hegeduis, Executive Director -
 Board Counsel
 Dated: 7-22-09

ACKNOWLEDGEMENT

On this the 22nd day of July, 2009, the said DAVID J. BARCLAY, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.




 Notary Public
 Commission expires 3/17/2014

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. Barclay hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada State 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 of Nevada 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 in this matter, including those noted in the administrative complaint on file herein, and other matters relating thereto.
- I. Dr. Barclay, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada State Board of Osteopathic Medicine, the Nevada 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 disciplinary action, 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.

DAVID J. BARCLAY, D.O.

David J. Barclay DO
Osteopathic Physician
Dated: 22 July 2009

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: *Lisa Miller-Roche*
Lisa Miller-Roche,
Investigating Board Member
Dated: 7/23/09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: *Dianna Hegedus*
Dianna Hegedus, Executive Director -
Board Counsel
Dated: 7-22-09

ACKNOWLEDGEMENT

On this the 22 day of July, 2009, the said DAVID J. BARCLAY, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.



Lorraine Stewart
Notary Public
Commission expires 3/17/2014

Attorney General's Office
555 E. Washington, Suite 3500
Las Vegas, NV 89101

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ORDER OF THE BOARD

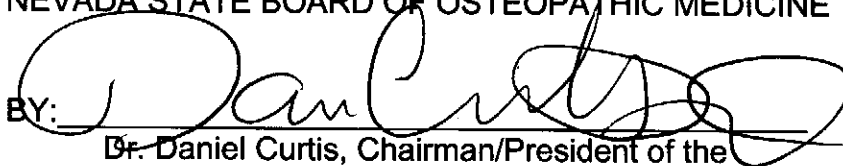
IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Barclay fail to comply with any terms or conditions of this Agreement, Dr. Barclay 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. Barclay. Should this Agreement become null and void by Dr. Barclay' failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Dr. Barclay, 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

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101