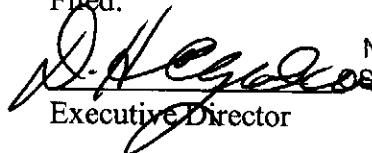


BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT)
)
AGAINST)
)
IRENE BOURGAULT, D.O., LIC. #350)
)
RESPONDENT)
_____)

Case No.: MA0908080

Filed:


Executive Director

RECEIVED

FEB 03 2010

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order (“Agreement and Order”) is made by and between S. Paul Edwards, Esq., Investigative Board Member (“Mr. Edwards” or “Investigative Board Member”) for the Nevada State Board of Osteopathic Medicine (“The Board”), Board’s Counsel-Executive Director, Dianna Hegeduis, Esq., and Irene Bourgault, D.O. (“Dr. Bourgault”), and her counsel Marie Ellerton, Esq., of the law firm of Mandelbaum, Schwarz, Ellerton & McBride, (collectively referred to as “the Parties”).

II. RECITALS/ALLEGATIONS

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

- A. WHEREAS, on June 3, 2009, the NSBOM Newsletter contained an article entitled “Who reads the statutes?” which reads as follows:

“The Nevada State Board of Osteopathic Medicine, in this current fiscal year, has received approximately one hundred applicants for licensure. Of those one hundred, we have licensed approximately seventy percent of the applicants while the other approximate thirty percent remain pending. The NSBOM ‘Active Licensee List’ that is

purchased from the office for a fee of seventy-five dollars currently boasts about 900 osteopathic physicians licensed in Nevada. What is the point to these statistics? Ideally, all of these licensees are informed enough to know that as a licensee, Nevada Revised Statute 633 Osteopathic Medicine is a handbook of sorts, a guide, for their practice of medicine as it relates to the public and the Board. In relating to the statutes as such, it's good to be familiar with Nevada Administrative Code 633 as well. Why? Some of the most common violations of law can easily take place due to ignorance. As a licensee, were you aware that any malpractice action or claim filed against you must be reported to the Board not later than forty-five days from the service of a summons? Failure to do so may result in a fine of up to five thousand dollars. The same fine is assessed for an osteopathic physician's failure to report the closure of a malpractice claim not later than forty-five days from the date of closure. Closure of a malpractice claim includes any settlement, judgment, award, or other disposition of any action or claim. Please refer to NRS 633.527 in its entirety for certain information that an osteopathic physician is required to report. It is a D.O.'s responsibility to be familiar with the statutes in order to avoid any penalties."

- B. WHEREAS Patient R.B. filed his complaint with the Nevada State Board of Osteopathic Medicine sometime on or about December 26, 2007. The above law firm notified the Board in a letter dated April 28, 2008, that it would be assisting Dr. Bourgault with her response to the complaint filed with the Board. That response was submitted to Dr. Larry J. Tarno and the Board on May 5, 2008. Thereafter, Dr. Bourgault received a copy of the Board's May 21, 2008 letter to patient R.B., wherein he was advised that the Board had found that there was no basis for disciplinary action in the administrative matter and no evidence of malpractice.
- C. WHEREAS The civil complaint by R.B. was filed on April 14, 2008, and service of process was effectuated on May 23, 2008. The above law firm was retained to represent Dr. Bourgault. Upon receipt of the assignment counsel reviewed West's Nevada Revised Statutes Annotated, the official version of the NRS, including the original volume that was printed in 2000 and the 2008 Cumulative Annual Pocket Part, which applies to the instant case. NRS 633.527 was not included in the 2008 Pocket Part and since the law was enacted in 2003, it was not in the original volume. Thus counsel did not know of the reporting requirement. It should be noted, however, that the Board has no control over the West Publication Company and is not responsible for any errors or omissions created by the said West Publication Company.
- D. WHEREAS On July 24, 2009, the law firm of Mandelbaum, Schwarz, Ellerton & McBride sent a letter of notification of a law suit filed by patient R.B. against Dr. Bourgault, when it became aware that the matter had not earlier been reported. Sometime in May or June of 2009, Plaintiffs voluntarily decided not to pursue the

- District Court action, with no money offered or paid. A Stipulation and Order of Dismissal with Prejudice was signed by the parties on June 17, 2009, and by the Judge on June 18, 2009. This Order was entered on July 1, 2009.
- E. WHEREAS, on August 2, 2009, Dr. Bourgault, independent of the actions of the above law firm, notified the Board of the lawsuit that had been filed by R.B. At that time, Dr. Bourgault had not been contacted by the Board and/or any of its investigators regarding any potential violation of N.R.S. 633.527. Dr. Bourgault advised the Board that after reading the Board's June 3, 2009, newsletter, (Who reads the statutes?) which article informed osteopathic physicians that they are responsible to notify the Board of actions filed and dismissed, she became aware of the statute and reporting requirement. Dr. Bourgault advised the Board that prior to reading the newsletter she was ignorant of the statute.
- F. WHEREAS, The aforementioned act of reporting by Dr. Bourgault was not in response to any allegations by or communications from the Board, but occurred as a result of the article. However, the above information was provided to the Investigative Board Member for review and disposition. Dr. Bourgault did appropriately report the lawsuit by R.B. when she renewed her license for 2009.
- G. WHEREAS The Board's duty to investigate administrative complaints lodged with it by patients is separate and distinct from the osteopathic physician's mandate to report certain events pertaining to medical malpractice cases filed within the court system; and the Board's knowledge of a complaint lodged with it does not extinguish a physician's responsibility to report the events of a medical malpractice case.
- H. WHEREAS, based upon the above-cited dates and facts, the Investigative Board Member has alleged that Dr. Bourgault failed to timely report the following: that the lawsuit by patient R.B. was served on her in May 2008. It is alleged that such failure to report is a violation of N.R.S. 633.527. The Board does acknowledge that information regarding this lawsuit was noted in the appropriate renewal application.
- I. WHEREAS, the Board acknowledges that no disciplinary action has ever been taken against Dr. Bourgault regarding the allegations identified herein, nor will any such action be taken in this matter. Further, no allegations of unprofessional conduct and/or allegations related to her competency have ever been taken by the Board regarding Dr. Bourgault's alleged non-reporting as identified in this document. This matter relates only to the late reporting of an action that was filed and was due to Dr. Bourgault being unaware of the statutory requirement. Dr. Bourgault reported the incident after she read the aforementioned article published in the Board's Newsletter.
- J. WHEREAS NRS 633.527(1) states that an "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 of 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.

- K. 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.
- L. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint.
- M. 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.
- N. WHEREAS, Dr. Bourgault understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed and a hearing scheduled on the same. 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. Bourgault hereby agrees to waive any rights she 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.
- O. WHEREAS, Dr. Bourgault 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.
- P. WHEREAS, Dr. Bourgault 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, i.e., timely reporting within 45 days after service of the summons and complaint; however, the Physician claims she was unaware of the reporting requirement.
- Q. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding and to save further costs and expenses, Dr. Bourgault has elected to enter

into this Agreement and all associated documentation become a matter of public record (with the exception of medical information related to the patient). This is required pursuant to NRS 622.330.

- R. WHEREAS, Dr. Bourgault has had opportunity to obtain the advice of competent counsel of his choice concerning the terms and conditions of this Agreement and the execution thereof. No coercion has been exerted upon Dr. Bourgault, nor have any promises been made other than those reflected in this Agreement. Dr. Bourgault freely and voluntarily entered into this Agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Bourgault has executed this Agreement only after a careful reading of it and a full understanding of all its terms.
- S. WHEREAS, Dr. Bourgault 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 on her own behalf, the right to compulsory process to secure the attendance of such witnesses, the right to testify on her own behalf, the right to receive written findings of fact and conclusions of law supporting the decisions 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. Bourgault voluntarily waives these rights.
- T. WHEREAS, this Agreement and Order shall be construed in accordance with the laws of the State of Nevada.
- U. 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. Bourgault acknowledges that if the failure to report, within 45 days, allegations were true, then such would be violations of NRS chapter 633 for which discipline is permissible under Nevada law. In exchange for the Board not pursuing a formal disciplinary action, and Dr. Bourgault not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matters described herein, and only such matter. **THE BOARD FURTHER ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE BOARD REGARDING THE ALLEGATIONS RAISED IN THIS DOCUMENT; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED FOR THE NON-REPORTING VIOLATION ONLY, I.E., NOT FOR ANY ALLEGATIONS REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE PHYSICIAN'S COMPETENCY.** Dr. Bourgault will henceforth insure that the status of all

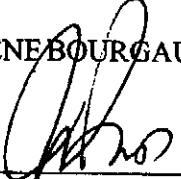
lawsuits involving her will be timely and accurately reported to the Board, and the failure to do so may result in the Board bringing a disciplinary action against the osteopathic medical license issued by the Board to Dr. Bourgault. If any lawsuit is not reported to the Board, such will be in violation of this agreement as well as the applicable statutes.

- B. Dr. Bourgault agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine imposed for having violated NRS 633.527(1) for the violation mentioned in this agreement. 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 the amount of \$250.00 per month beginning on the 15th day of February, 2010, and such amount shall continue to be due thereafter on the 15th day of each month, until the full amount of Five Hundred Dollars is paid in full.
- C. Should Dr. Bourgault fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Dr. Bourgault 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. Bourgault, 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 eight (8) 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. Bourgault 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 she 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 reasons 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. Bourgault, for herself, her 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.
- K. LASTLY, by executing this agreement IRENE BOURGAULT hereby expressly knowingly, and intentionally waives 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, 2010.

IRENE BOURGAULT, D.O.



Irene Bourgault, D.O.

Dated: 1/21/2010


MANDELBAUM, SCHWARZ, ELLERTON & McBRIDE

By: 

Marie Ellerton, Esq.

Dated: 1-20-2010

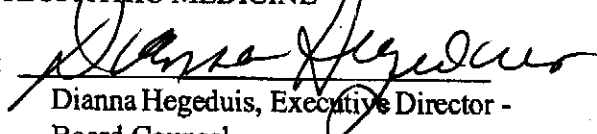
NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By: 

S. Paul Edwards, Esq.,
Investigating Board Member

Dated: 1/26/2010

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By: 

Dianna Hegeduis, Executive Director -
Board Counsel

Dated: 2-2-2010

ACKNOWLEDGMENT

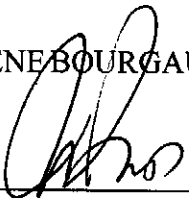
On this the _____ day of _____, 2010, the said IRENE BOURGAULT, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

Notary Public

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.
- K. LASTLY, by executing this agreement IRENE BOURGAULT hereby expressly knowingly, and intentionally waives 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, 2010.

IRENE BOURGAULT, D.O.



Irene Bourgault, D.O.

Dated: 1/21/2010

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: _____
S. Paul Edwards, Esq.,
Investigating Board Member

Dated: _____

MANDELBAUM, SCHWARZ, ELLERTON
& McBRIDE

By: 

Marie Ellerton, Esq.

Dated: 1-20-2010

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: _____
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: _____

ACKNOWLEDGMENT

On this the _____ day of _____, 2010, the said IRENE BOURGAULT, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 2nd day of February, 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By: _____

Dan Curtis
Daniel Curtis, D.O., President of the Board.

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 **IN THE MATTER OF THE COMPLAINT**)
3 **AGAINST**)
4 **IRENE BOURGAULT, D.O., LIC. #350**)
5 **RESPONDENT.**)

Case No.: MA0908080

RECEIVED

Filed:

FEB 03 2010

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

6
7 **WRITTEN NOTICE OF ENTRY OF ORDER**
8 **APPROVING SETTLEMENT AGREEMENT**

9 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine
10 approved the settlement agreement entered in the above-referenced matter; and a file-
11 stamped copy of the same is attached hereto.

12 DATED THIS 3rd day of February, 2010.

13 NEVADA STATE BOARD OF
14 OSTEOPATHIC MEDICINE

15 By 

16 Dianna Hegeduis, Executive Director –Board
17 Counsel

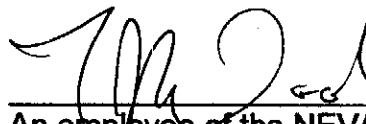
18 901 American Pacific Dr., # 180
19 Henderson, NV 89014

20 **CERTIFICATE OF MAILING**

21 I hereby certify that on the 3rd day of February, 2010, I served a copy of the above
22 notice with attached SETTLEMENT AGREEMENT/ORDER on the following individual(s)
23 addressed to them at their last known address, postage thereon prepaid, as follows:

24 **IRENE BOURGAULT, D.O.**
25 3150 No. Tenaya Way, # 660
26 Las Vegas, NV 89128

27 **MARIE ELLERTON, ESQ.**
28 2012 Hamilton Lane
 Las Vegas, NV 89106



An employee of the NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE