

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 **IN THE MATTER OF THE COMPLAINT**
3 **AGAINST KEVIN A. BROWN, D.O.**
4 License No. 1016
5 **RESPONDENT.**

Case No.: MA1002012

Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

APR 07 2010

FILED

6
7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "IBM") for the
11 Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Executive
12 Director/Board Counsel, Dianna Hegeduis, Esq., and Kevin A. Brown, D.O. ("Dr. Brown")
13 (collectively referred to as "the Parties").
14

15 **II. RECITALS**

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

- 17 A. WHEREAS, the Board, through the IBM, ascertained certain information regarding
18 litigation filed against Dr. Brown. The information was ascertained as a result of the
19 Board's staff due diligence in investigating its applicants/licensees.
20 B. WHEREAS, the IBM has alleged as follows: Re: patient "CS." A lawsuit was filed and
21 eventually dismissed on or about January 2005; and the Board was not notified within
22 45 days thereafter. The IBM has alleged such failure is a violation of NRS chapter 633
23 as discussed hereinafter.
24 C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
25 Board: (a) any action for malpractice against the osteopathic physician not later than 45
26 days after the osteopathic physician receives service of a summons and complaint for
27 the action; (b) any claim for malpractice against the osteopathic physician that is
28 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 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

- 1 the use of the word "shall" by the Nevada State Legislature in this statute, the
2 Legislature intended to mandatorily require all osteopathic physicians to report any of
3 the four (4) 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
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. Brown understands that the Board is free to accept or reject this
17 Agreement and, if rejected by the Board, a formal disciplinary complaint may 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. Brown hereby
21 agrees to waive any rights he might have to challenge the impartiality of the Board to
22 hear the disciplinary complaint, based on prior knowledge obtained by the Board
23 through consideration of this Agreement, if after review by the Board, this Agreement is
24 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
25 as null and void.
- 26 H. WHEREAS, Dr. Brown 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. Brown 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. Brown has elected to enter into this
Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Brown 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. Brown 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. Brown, nor have any
promises been made other than those reflected in this Agreement. Dr. Brown freely and
voluntarily entered into this agreement, motivated only by a desire to resolve the issues
addressed herein. Dr. Brown has executed this Agreement only after a careful reading
of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Brown 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. Brown 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. Brown acknowledges that the failure to report allegation is true, and such act
13 (failure to timely report) is a violation of NRS chapter 633 for which discipline is
14 permissible under Nevada law. In exchange for the Board not pursuing an
15 administrative action on the non-reporting allegations, and Dr. Brown not pursuing
16 subsequent reviews by the appropriate appellate Courts, the parties have agreed to
17 resolve the current matter, and only this matter. Dr. Brown will henceforth insure
18 that all lawsuits involving him will be timely and accurately reported to the Board,
19 and the failure to do so may result in the Board bringing a disciplinary action against
20 the osteopathic medical license issued by the Board to Dr. Brown. If any lawsuit is
21 not reported to the Board, such will be in violation of this agreement as well as the
22 applicable statutes. **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND
23 THE PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL
24 NOT AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE PARTIES
25 HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED
26 SOLELY FOR THE NON-REPORTING VIOLATION.**

27 B. Dr. Brown agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
28 imposed for having violated NRS 633.527(1) for the failure to timely report the
settlement of the lawsuit. 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 monthly installments of \$ 100.00 each with the first payment
being due on the 26 day of April, 2010, and a like payment
being due on the 26 day of each month thereafter until said amount is paid in
full.

C. Should Dr. Brown fail to satisfy and pay the indebtedness of \$500.00 in a timely
manner as discussed herein, Dr. Brown 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. Brown, 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.

- 1 G. This settlement agreement consists of five (5) pages and embodies the entire
 2 agreement between the Board and the osteopathic physician. It may not be altered,
 3 amended or modified without the express consent of the parties, and any
 4 subsequent alteration, amendment, or modification shall be in writing and subject to
 5 approval by the Board.
 6 H. In consideration for the execution of this Agreement, Dr. Brown hereby releases and
 7 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
 8 Nevada State Attorney General's Office (as counsel for the Board), and each of
 9 their representatives, investigators, and employees, in their individual and
 10 representative capacity (collectively the State of Nevada Agencies) from any and all
 11 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
 12 and demands whatsoever known or unknown, in law and in equity, that he may
 13 have had, now has, may have had, or claim to have against any and all of the
 14 persons and entities named in this paragraph arising out of, or by reason of, the
 15 investigation of the allegations raised in this matter, and other matters relating
 16 thereto.
 17 I. Dr. Brown, for himself, his heirs, executors, administrators, successors and assigns,
 18 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
 19 Board of Osteopathic Medicine, the Nevada Attorney General's office and each of
 20 their members, agents and employees in their individual and representative
 21 capacities against any and all claims, suits, demands, actions, debts, damages,
 22 costs, charges, and expenses, including court costs and attorney's fees against any
 23 persons or entities as well as all liability, losses, and damages of any nature
 24 whatsoever that the persons and entities named in this paragraph shall have or may
 25 at any time sustain or suffer by reason of this investigation, this settlement or its
 26 administration.
 27 J. This document may be prepared in multiple counterparts. Each counterpart,
 28 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, Respondent 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 Board's agenda for approval in the month of April, 2010.

KEVIN A. BROWN, D.O.

By: *Kevin A. Brown*
 Osteopathic Physician

Dated: 3/15/10

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE
 BY: *Daniel K. Curtis*
 Daniel K. Curtis, D.O.
 Investigating Board Member

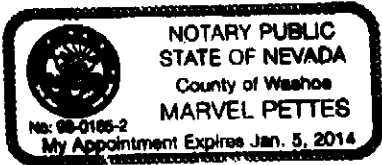
NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE
 By: *Dianna Hegeduis*
 Dianna Hegeduis, Executive Director -
 Board Counsel

Dated: 3-25-10

Dated: 3-25-2010

ACKNOWLEDGEMENT

On this the 15th day of MARCH, 2010, the said KEVIN A. BROWN, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.



Marvel Pettes
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 6th day of April, 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY: [Signature]
For Dr. C. Dean Milne, Vice-President of the Board

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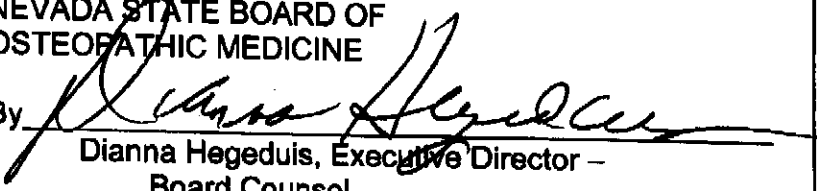
7 **WRITTEN NOTICE OF ENTRY OF**
8 **ORDER APPROVING AGREEMENT**

FILED

9 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine
10 approved the Settlement Agreement entered into by the parties to this matter; and a file-
11 stamped copy of the same is attached hereto.

12 DATED THIS 7th day of April, 2010.

13 NEVADA STATE BOARD OF
14 OSTEOPATHIC MEDICINE

15 By 

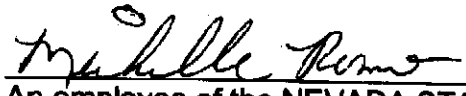
16 Dianna Hegeduis, Executive Director -
17 Board Counsel
18 901 American Pacific Dr., # 180
19 Henderson, NV 89014

18 **CERTIFICATE OF MAILING**

19 I hereby certify that on the 7th day of April, 2010, I served a copy of the foregoing
20 notice, with attached Settlement Agreement/Order, upon the respective parties to this matter
21 by depositing a true copy thereof in the U.S. mail, addressed to them at their last known
22 address, postage thereon prepaid, addressed as follows:

22 Kevin Brown, D.O.
23 832 Willow Street
24 Reno, NV 89502

24 **PERSONAL & CONFIDENTIAL**

25 

26 An employee of the NEVADA STATE BOARD
27 OF OSTEOPATHIC MEDICINE