

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 IN THE MATTER OF THE COMPLAINT }
3 AGAINST DOUGLAS BUSHELL, D.O. }
4 License No. 1128, }
5 }
 RESPONDENT.

Case No.: MA1001008

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

JUN 16 2010

6 **SETTLEMENT AGREEMENT AND ORDER**

FILED

7 **I. PARTIES**

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

13 **II. RECITALS**

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

- 15 A. WHEREAS, the Board, through the Investigative Board Member ("IBM") ascertained
16 certain information regarding litigation filed against Dr. Bushell. The information was
17 ascertained as a result of the Board's staff due diligence in investigating its
18 applicants/licenseses.
- 19 B. WHEREAS, the IBM has alleged as follows: (1) Re: patient "AJ." Suit was filed in
20 Illinois in June 2003; and the matter was tried in January 2008. The defense verdict
21 was appealed by the patient, but the appeal was ultimately dismissed in February
22 2009. Respondent answered "no" to the questions pertaining to medical malpractice
23 litigation within the prior year in the renewal applications for 2009, submitted in 2008,
24 and for 2010 submitted in 2009; however, the responses should have been "yes"
25 because of the "AJ" lawsuit. The IBM has alleged all such failures are violations of
26 NRS chapter 633 as discussed hereinafter.
- 27 C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
28 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 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

- 1 that should the Board find "that an osteopathic physician has violated any provision of
2 this section, **the Board may impose a fine of not more than \$5,000** against the
3 osteopathic physician **for each violation, in addition to any other fines or penalties**
4 **permitted by law.**" (Emphasis added.) This statute was added to the law in 2003. By
5 the use of the word "shall" by the Nevada State Legislature in this statute, the
6 Legislature intended to mandatorily require all osteopathic physicians to report any of
7 the four (4) events mentioned in the statute.
- 8 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
9 . . . statement . . . in applying for a license to practice osteopathic medicine or in
10 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
11 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
12 proceeding; and such discipline may include public reprimands, the suspension or
13 revocation of the license to practice osteopathic medicine in the State of Nevada, and
14 an assessment of **a fine not to exceed \$5,000 per violation.**
- 15 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
16 person reasonable attorney's fees and costs that are incurred by the regulatory body as
17 part of its investigative, administrative and disciplinary proceedings against the person
18 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 19 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
20 Board to file a formal disciplinary complaint.
- 21 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
22 parties and will then be offered to the Board for the entire Board's approval at the next
23 Board meeting, with the recommendation of the IBM that this matter be settled. The
24 Agreement shall not become effective until it has been approved by a majority of the
25 Board and endorsed by a representative member of the Board.
- 26 H. WHEREAS, Dr. Bushell understands that the Board is free to accept or reject this
27 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
28 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. Bushell
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. Bushell 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. Bushell 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. Bushell has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Bushell 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).
- M. WHEREAS, Dr. Bushell 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. Bushell, nor have any

1 promises been made other than those reflected in this Agreement. Dr. Bushell freely
2 and voluntarily entered into this agreement, motivated only by a desire to resolve the
3 issues addressed herein. Dr. Bushell has executed this Agreement only after a careful
4 reading of it and a full understanding of all its terms.

5 N. WHEREAS, Dr. Bushell is fully aware of his rights to contest the charges pending
6 against him. These rights include: representation by an attorney at his own expense,
7 the right to a public hearing on any charges or allegations filed, the right to confront and
8 cross-examine witnesses called to testify against him, the right to present evidence on
9 his own behalf, the right to compulsory process to secure the attendance of such
10 witnesses, the right to testify on his own behalf, the right to receive written findings of
11 fact and conclusions of law supporting the decision on the merits of the complaint and
12 the right to obtain judicial review of the Board's decision. Should the Board accept this
13 Agreement, Dr. Bushell voluntarily waives these rights.

14 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
15 of the State of Nevada.

16 P. WHEREAS, this Agreement and Order contains a complete description of the
17 agreement between the parties and it supersedes any previous agreements between
18 the parties. All material representations, understandings and promises of the parties
19 are contained in this Agreement. Any modifications must be set forth in writing, signed
20 by all the parties, and approved by the Board.

21 III. TERMS OF THE AGREEMENT

22 A. Dr. Bushell acknowledges that the failure to report allegations are true, and each
23 such act (failure to timely report and/or inaccurate information in renewal
24 applications) is a violation of NRS chapter 633 for which discipline is permissible
25 under Nevada law. In exchange for the Board not pursuing an administrative action
26 on either the non-reporting allegations or the inaccurate information allegations, and
27 Dr. Bushell not pursuing subsequent reviews by the appropriate appellate Courts,
28 the parties have agreed to resolve the current matter, and only this matter. Dr.
Bushell will henceforth insure that all lawsuits involving him 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. Bushell. If any lawsuit is not reported to the Board, such will be in
violation of this agreement as well as the applicable statutes. **ADDITIONALLY,
THE BOARD ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE,
THAT A 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 ISSUES.**

B. Dr. Bushell agrees to pay the sum of Seven Hundred Fifty Dollars (\$750.00) as the
fine imposed for having violated NRS 633.527(1) for the failure to timely report the
various dispositions/resolutions 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 \$250.00
each with the first payment being due on the _____ day of _____,
2010, and a like payment being due on the _____ day of each month thereafter until
said amount is paid in full.

pd full ct 2020

- 1 C. Should Dr. Bushell fail to satisfy and pay the indebtedness of \$750.00 in a timely
2 manner as discussed herein, Dr. Bushell understands and agrees that he will be
3 considered in default of this Agreement, and this agreement will be null and void,
4 with the Respondent receiving credit for payments made to date. The Board may
5 take whatever action it deems appropriate, including but not limited to reducing the
6 balance to judgment pursuant to NRS chapter 353C.
7 D. The Respondent, Dr. Bushell, agrees to bear his own fees and costs, including the
8 fees and expenses of his own attorney(s) if applicable.
9 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
10 the parties hereto and their respective heirs, personal representatives, assigns and
11 successors in interest of each party.
12 F. This Agreement and Order shall be construed in accordance with the laws of the
13 State of Nevada.
14 G. This agreement consists of five (5) pages and embodies the entire agreement
15 between the Board and the physician. It may not be altered, amended or modified
16 without the express consent of the parties, and any subsequent alteration,
17 amendment, or modification shall be in writing and subject to approval by the Board.
18 H. In consideration for the execution of this Agreement, Dr. Bushell hereby releases
19 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
20 and the Attorney General's Office (as counsel for the Board), and each of their
21 representatives, investigators, and employees, in their individual and representative
22 capacity (collectively the State of Nevada Agencies) from any and all manner of
23 actions, causes of actions, suits, debts, judgments, executions, claims, and
24 demands whatsoever known or unknown, in law and in equity, that he may have
25 had, now has, may have had, or claim to have against any and all of the persons
26 and entities named in this paragraph arising out of, or by reason of, the investigation
27 of the allegations raised in this matter, and other matters relating thereto.
28 I. Dr. Bushell, 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 herein shall have or may 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 in the month of June, 2010.

DOUGLAS BUSHELL, D.O.

By: [Signature] Bushell
Osteopathic Physician

Dated: 5/20/2010

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: _____
4 S. Paul Edwards, Esq.
Investigating Board Member

By *Dianna Hegeduis*
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: _____

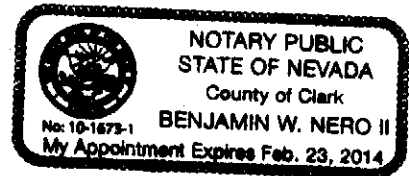
Dated: 6-10-10

7 **ACKNOWLEDGEMENT**

8 On this the 24th day of May, 2010, the said DOUGLAS
9 BUSHELL, D.O., personally appeared before me, a notary public, and signed the above
10 document, freely and voluntarily, under no duress.

11 _____
12 Notary Public

13 **ORDER OF THE BOARD**



15 **IT IS SO ORDERED.**

16 **IT IS FURTHER ORDERED** that should Dr. Bushell fail to comply with any terms or
17 conditions of this Agreement, Dr. Bushell will be in breach of this Agreement; and this
18 Agreement will be null and void. The Board may take whatever action it deems appropriate,
19 including but not limited to proceeding with the administrative action against Dr. Bushell.
20 Should this Agreement become null and void by Dr. Bushell's failure to comply with terms or
21 conditions of this Agreement, the Board may not only pursue an administrative action against
22 Dr. Bushell, but the Board may also seek the maximum fees, fines, and costs.

23 DATED this _____ day of _____, 2010.

24 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

25 BY: _____
26 Dr. Daniel K. Curtis, President of the Board
27
28

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: *S. Paul Edwards*
4 S. Paul Edwards, Esq.
Investigating Board Member

By _____
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: 6/11/10

Dated: _____

7 **ACKNOWLEDGEMENT**

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

11 _____
Notary Public

13 **ORDER OF THE BOARD**

14 **IT IS SO ORDERED.**

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18 Agreement will be null and void. The Board may take whatever action it deems appropriate,
19 including but not limited to proceeding with the administrative action against Dr. Bushell.
20 Should this Agreement become null and void by Dr. Bushell's failure to comply with terms or
21 conditions of this Agreement, the Board may not only pursue an administrative action against
22 Dr. Bushell, but the Board may also seek the maximum fees, fines, and costs.

23
24 DATED this 15 day of June, 2010.

25 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

26
27 BY: *Daniel K. Curtis*
Dr. Daniel K. Curtis, President of the Board
28 *DKC*

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

2 IN THE MATTER OF THE COMPLAINT
3 AGAINST DOUGLAS BUSHELL, D.O.
4 License No. 1128,
5 RESPONDENT.

Case No.: ~~MM1904008~~ BOARD OF
OSTEOPATHIC MEDICINE

Filed: JUN 16 2010

FILED

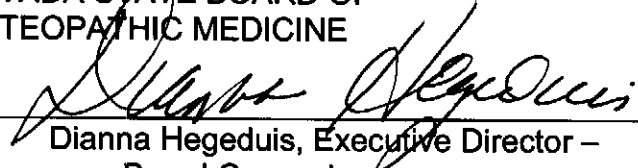
6 **WRITTEN NOTICE OF ENTRY OF SETTLEMENT AGREEMENT**
7 **& ORDER RE: SAME**

8 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has
9 approved the settlement agreement in the above-referenced matter; and a copy of the
10 agreement with order is attached.
11

12 DATED THIS 16 day of June, 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

20 **CERTIFICATE OF MAILING**

21 I hereby certify that on the 16 day of June, 2010, I served a copy of the foregoing
22 notice, with attached Settlement Agreement/Order, upon the respective parties to this matter
23 by depositing a true copy thereof in the U.S. mail, addressed to them at their last known
24 address on file with the Board, postage thereon prepaid.



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