

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

2 IN THE MATTER OF THE COMPLAINT )

3 AGAINST )  
4 MICHELLE CONGER, D.O., )  
License No. 762 )  
5 RESPONDENT. )

Case No.: MA1002005

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

APR 07 2010

6 \_\_\_\_\_  
7 **SETTLEMENT AGREEMENT AND ORDER**

**FILED**

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 "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 Michelle Conger, D.O.  
13 ("Dr. Conger") (collectively referred to as "the Parties").

14 **II. RECITALS**

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

- 16 A. WHEREAS, the Board, through Investigative Board Member, ascertained certain
- 17 information regarding litigation filed against Dr. Conger. The information was
- 18 ascertained as a result of the Board's staff due diligence in investigating its
- 19 applicants/licenses.
- 20 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
- 21 (1) Re: patient "P.C." Respondent failed to timely report the 12/2007 dismissal of the
- 22 lawsuit filed by that patient, without payment being made on behalf of Respondent
- 23 Conger. (2) Furthermore, Respondent failed to properly respond to questions
- 24 contained in the appropriate renewal application regarding such settlement. The IBM
- 25 has alleged all such failures are violations of NRS chapter 633 as discussed
- 26 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 Investigating Board Member that this  
24 matter be settled. The Agreement shall not become effective until it has been  
25 approved by a majority of the Board and endorsed by a representative member of the  
26 Board.
- 27 H. WHEREAS, Dr. Conger understands that the Board is free to accept or reject this  
28 Agreement and, if rejected by the Board, a formal disciplinary complaint may 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. Conger  
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.
- I. WHEREAS, Dr. Conger 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. Conger 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. Conger has elected to enter into this  
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Conger 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. Conger has had the opportunity to obtain the advice from competent  
counsel of her choice concerning the terms and conditions of this Agreement and the

1 execution thereof. No coercion has been exerted upon Dr. Conger, nor have any  
2 promises been made other than those reflected in this Agreement. Dr. Conger freely  
3 and voluntarily entered into this agreement, motivated only by a desire to resolve the  
4 issues addressed herein. Dr. Conger has executed this Agreement only after a careful  
5 reading of it and a full understanding of all its terms.

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

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

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

### 22 III. TERMS OF THE AGREEMENT

23 A. Dr. Conger acknowledges that the failure to report allegations are true, and each  
24 such act (failure to timely report and/or inaccurate information in renewal  
25 applications) is a violation of NRS chapter 633 for which discipline is permissible  
26 under Nevada law. In exchange for the Board not pursuing an administrative action  
27 on either the non-reporting allegations or the inaccurate information allegations, and  
28 Dr. Conger not pursuing subsequent reviews by the appropriate appellate Courts,  
the parties have agreed to resolve the current matter, and only this matter. Dr.  
Conger will henceforth insure that 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. Conger. 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 FOR THE NON-  
REPORTING VIOLATION, I.E., NOT FOR ANY ALLEGATIONS REGARDING  
UNPROFESSIONAL CONDUCT AND/OR REGARDING THE PHYSICIAN'S  
COMPETENCY.**

B. Dr. Conger agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine  
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 \$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 in full*

- C. Should Dr. Conger fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Dr. Conger 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. Conger, 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 six (6) 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. Conger 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 reason of, the investigation of the allegations raised in this matter, and other matters relating thereto.
- I. Dr. Conger, 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 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.

1 K. LASTLY, by executing this agreement, Respondent Physician hereby expressly,  
2 knowingly, and intentionally waive the 21-working days notice requirement pursuant  
3 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on  
4 the agenda for the Board's approval in the month of April,  
5 2010.

6 MICHELLE CONGER, D.O.

7 Michelle Conger D.O.  
8 Osteopathic Physician

9 Dated: 3/18/2010

10 NEVADA STATE BOARD OF  
11 OSTEOPATHIC MEDICINE

12 BY: Daniel K. Curtis  
13 Daniel K. Curtis, D.O.  
14 Investigating Board Member

15 Dated: 3/17/10

16 NEVADA STATE BOARD OF  
17 OSTEOPATHIC MEDICINE

18 By: Dianna Hegeduis  
19 Dianna Hegeduis, Executive Director -  
20 Board Counsel

21 Dated: 3-17-10

22 **ACKNOWLEDGEMENT**

23 On this the 11 day of March, 2010, the said MICHELLE  
24 CONGER, D.O., personally appeared before me, a notary public, and signed the above  
25 document, freely and voluntarily, under no duress.



27 Julie Friedman  
28 Notary Public

**ORDER OF THE BOARD**

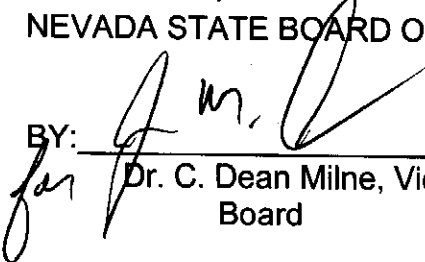
IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Conger fail to comply with any terms or  
conditions of this Agreement, Dr. Conger will be in breach of this Agreement; and this  
Agreement will be null and void. The Board may take whatever action it deems appropriate,

1 including but not limited to proceeding with the administrative action against Dr. Conger.  
2 Should this Agreement become null and void by Dr. Conger's failure to comply with terms or  
3 conditions of this Agreement, the Board may not only pursue an administrative action against  
4 Dr. Conger, but the Board may also seek the maximum fees, fines, and costs.

5 DATED this 6<sup>th</sup> day of April, 2010.

6 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

7  
8 BY:  \_\_\_\_\_  
9 Dr. C. Dean Milne, Vice-President of the  
10 Board

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