

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

2 IN THE MATTER INVOLVING

3 JOHN DAVIS, D.O.
4 License No. 851

5 **RESPONDENT.**

Case No.: MA1002026

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

Filed:

APR 07 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 Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" 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 John Davis, D.O. ("Dr.
12 Davis") (collectively referred to as "the Parties").

13 **II. RECITALS**

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

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- 16 A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain
17 information regarding litigation filed against Dr. Davis. The information was ascertained
18 as a result of the Board's staff due diligence in investigating its applicants/licenses.
- 19 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
20 Re: patient "BC." Suit was filed in Arizona on or about July 18, 2007. This lawsuit was
21 mentioned in Respondent's 2008 renewal application submitted on November 7, 2007,
22 but not independently and timely reported to the Board. The lawsuit was dismissed on
23 or about May 12, 2009 but was also not timely reported to the Board. Additionally,
24 Respondent responded "no" in his 2010 renewal application, submitted in 2009,
25 regarding whether any medical malpractice claims had been resolved; and based upon
26 this dismissal in May 2009, the answer should have been "yes." The IBM has alleged
27 all such failures are violations of NRS chapter 633 as discussed hereinafter.
- 28 C. NRS 633.527(1) states that a licensed "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 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. Davis 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. Davis 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. Davis 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. Davis 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. Davis has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Davis 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. Davis has had the opportunity to obtain the advice from competent
counsel of his choice concerning the terms and conditions of this Agreement and the

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

6 N. WHEREAS, Dr. Davis is fully aware of his rights to contest the charges pending against
7 him. These rights include: representation by an attorney at his own expense, the right
8 to a public hearing on any charges or allegations filed, the right to confront and cross-
9 examine witnesses called to testify against him, the right to present evidence on his
10 own behalf, the right to compulsory process to secure the attendance of such
11 witnesses, the right to testify on his 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. Davis 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. Davis acknowledges that the failure to report allegations are true, and each such
24 act (failure to timely report) is a violation of NRS chapter 633 for which discipline is
25 permissible under Nevada law. In exchange for the Board not pursuing an
26 administrative action on the non-reporting allegations, and Dr. Davis not pursuing
27 subsequent reviews by the appropriate appellate Courts, the parties have agreed to
28 resolve the current matter, and only this matter. Dr. Davis 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. Davis. 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 VIOLATIONS.**

B. Dr. Davis 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 failures to timely report
described above. 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 \$ 750⁰⁰ each with the first payment being due
on the 11th day of January 2010, and a like payment being due
on the 11th day of each month thereafter until said amount is paid in full.

C. Should Dr. Davis fail to satisfy and pay the indebtedness of \$750.00 in a timely
manner as discussed herein, Dr. Davis understands and agrees that he will be
considered in default of this Agreement, and this agreement will be null and void,

1 with the Respondent receiving credit for payments made to date. The Board may
2 take whatever action it deems appropriate, including but not limited to reducing the
3 balance to judgment pursuant to NRS chapter 353C.

- 4 D. The Respondent, Dr. Davis, agrees to bear his own fees and costs, including the
5 fees and expenses of his own attorney(s) if applicable.
- 6 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
7 the parties hereto and their respective heirs, personal representatives, assigns and
8 successors in interest of each party.
- 9 F. This Agreement and Order shall be construed in accordance with the laws of the
10 State of Nevada.
- 11 G. This settlement agreement consists of six (6) pages and embodies the entire
12 agreement between the Board and the osteopathic physician. It may not be altered,
13 amended or modified without the express consent of the parties, and any
14 subsequent alteration, amendment, or modification shall be in writing and subject to
15 approval by the Board.
- 16 H. In consideration for the execution of this Agreement, Dr. Davis hereby releases and
17 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
18 Nevada State Attorney General's Office (as counsel for the Board), and each of
19 their representatives, investigators, and employees, in their individual and
20 representative capacity (collectively the State of Nevada Agencies) from any and all
21 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
22 and demands whatsoever known or unknown, in law and in equity, that he may
23 have had, now has, may have had, or claim to have against any and all of the
24 persons and entities named in this paragraph arising out of, or by reason of, the
25 investigation of the allegations raised in this matter, and other matters relating
26 thereto.
- 27 I. Dr. Davis, for himself, his heirs, executors, administrators, successors and assigns,
28 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.

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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 JOHN DAVIS, D.O.

7 By: [Signature]
8 Osteopathic Physician

9 Dated: 3/10/10

10 NEVADA STATE BOARD OF
11 OSTEOPATHIC MEDICINE

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

15 Dated: 3/17/10

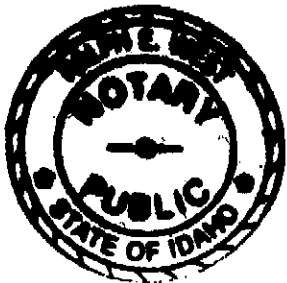
16 NEVADA STATE BOARD OF
17 OSTEOPATHIC MEDICINE

18 BY: [Signature]
19 Dianna Hegeduis, Executive Director -
20 Board Counsel

21 Dated: 3-17-10

22 **ACKNOWLEDGEMENT**

23 On this the 10th day of March, 2010, the said JOHN DAVIS,
24 D.O., personally appeared before me, a notary public, and signed the above document, freely
25 and voluntarily, under no duress.



26 [Signature]
27 Notary Public

28 **ORDER OF THE BOARD**

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Davis fail to comply with any terms or
conditions of this Agreement, Dr. Davis 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. Davis.

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

4 DATED this 6th day of April, 2010.

5 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

6
7 BY: 

8 for Dr. C. Dean Milne, Vice-President of the
9 Board

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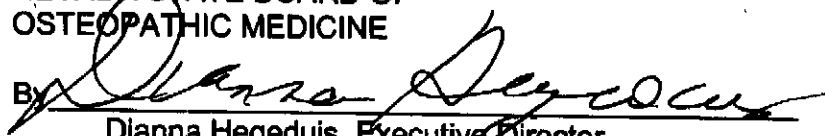
**WRITTEN NOTICE OF ENTRY OF
ORDER APPROVING AGREEMENT**

FILED

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

DATED THIS 7th day of April, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE


By 

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

CERTIFICATE OF MAILING

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

John Davis, D.O.
2390 Satterfield Dr.
Pocatello, Idaho 83201
PERSONAL & CONFIDENTIAL


An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE