BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER INVOLVING

JOHN DI MURO, D.O., LIC. # 1392

RESPONDENT.

Case No.: MA1002008

F I L E D

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

MAY 05 2010

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and
between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative
Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and John DiMuro, D.O. ("Dr.
DiMuro") (collectively referred to as "the Parties").

II. RECITALS

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

A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain
information regarding litigation filed against Dr. DiMuro. The information was
ascertained as a result of the Board's staff due diligence in investigating its
applicants/licensees.

B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
Re: patient "KL" Suit was filed and served on or about April 3, 2009; and the case was
dismissed, with prejudice, on or about July 13, 2009. The IBM has alleged that the
physician did not timely report either event, although this lawsuit was properly noted on
the Respondent's renewal application for 2010 submitted in 2009. The IBM has
alleged all such non-reporting failures are violations of NRS chapter 633 as discussed
hereinafter.

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
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.

D. 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.

E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint.

F. 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.

G. WHEREAS, Dr. DiMuro understands that the Board is free to accept or reject this 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. DiMuro 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.

H. WHEREAS, Dr. DiMuro 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.

I. WHEREAS, 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. DiMuro has elected to enter into this Agreement to resolve this matter, and this matter only.

K. WHEREAS, Dr. DiMuro 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. DiMuro 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. DiMuro, nor have any promises been made other than those reflected in this Agreement. Dr. DiMuro freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. DiMuro has executed this Agreement only after a careful reading of it and a full understanding of all its terms.

M. WHEREAS, Dr. DiMuro 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
fact and conclusions of law supporting the decision 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. DiMuro voluntarily waives these rights.

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

O. 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. DiMuro acknowledges that if the failure to report allegations are true, then each
such act (failure to timely report) is a violation of NRS chapter 633 for which
discipline is permissible under Nevada law. Dr. DiMuro neither admits nor denies
that a statutory violation has occurred, but has simply elected to resolve this matter
through this settlement without incurring further expense. In exchange for the
Board not pursuing an administrative action on the non-reporting allegations, and
Dr. DiMuro not pursuing subsequent reviews by the appropriate appellate Courts,
the parties have agreed to resolve the current matter, and only this matter. Dr.
DiMuro 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. DiMuro. 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. DiMuro 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)(5). Such amount shall be
payable upon execution of this settlement agreement.

C. Should Dr. DiMuro fail to satisfy and pay the indebtedness of $750.00 in a timely
manner as discussed herein, Dr. DiMuro 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. DiMuro, 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.

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. DiMuro 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 he 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. DiMuro, for himself, his 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, brought by Dr. DiMuro, against any persons or entities named in this paragraph as well as all liability, losses, and damages of any nature whatsoever that such persons and entities 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.
K. LASTLY, by executing this agreement, Physician 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 April, 2010.

JOHN D’MURRO, D.O.
By: ____________________________
Osteopathic Physician
Dated: APRIL 2010

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: ____________________________
Daniel K. Curtis, D.O.
Investigating Board Member
Dated: 4/23/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: ____________________________
Dianna Hegeduis, Executive Director -
Board Counsel
Dated: 4/19/2010

ACKNOWLEDGEMENT

On this the 7th day of April, 2010, the said JOHN D’MURRO,
D.O., personally appeared before me, a notary public, and signed the above document, freely
and voluntarily, under no duress.

DEBORAH LYN DOYLE
Notary Public,
STATE OF NEVADA
My Appt. Exp. Nov. 19, 2010

ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 4th day of May, 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY: Dr. C. Dean Milner, Vice-President of the 

Board