

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

DAVID FADELL, D.O., LIC. 996,

Respondent.

CASE NO. MA 1002016

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

AUG 04 2010

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between S. Paul Edwards, Esq., Investigative Board Member ("Mr. Edwards" 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 David Fadell, D.O. ("Dr. Fadell") (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. Fadell. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licenseses.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
 - (1) Re: patient "J.C." Suit was filed in Nevada in January 2006, and a defense verdict was rendered by the jury in December 2008. The IBM has alleged that the physician did not timely report either the commencement of the lawsuit or the judgment rendered to the Board, i.e., within 45 days of either event. The physician did, however, properly respond to the questions about medical malpractice cases in the respective yearly renewal applications. The IBM has alleged the untimely non-reporting acts violate NRS chapter 633 as discussed hereinafter.
- C. WHEREAS, 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**

Nevada State Board of Osteopathic Medicine
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(702) 732-2147

- 1 **\$5,000** against the osteopathic physician **for each violation, in addition to any other**
2 **fines or penalties permitted by law.**" (Emphasis added.) This statute was added to
3 the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this
4 statute, the Legislature intended to mandatorily require all osteopathic physicians to
5 report any of the four (4) events mentioned in the statute.
- 6 D. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
7 recover from a person reasonable attorney's fees and costs that are incurred by the
8 regulatory body as part of its investigative, administrative and disciplinary proceedings
9 against the person if the regulatory body" either enters a final order or enters into a
10 settlement agreement.
- 11 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
12 Board to file a formal disciplinary complaint.
- 13 F. WHEREAS, the parties understand that this Agreement will be signed by the
14 respective parties and will then be offered to the Board for the entire Board's approval
15 at the next Board meeting, with the recommendation of the Investigating Board
16 Member that this matter be settled. The Agreement shall not become effective until it
17 has been approved by a majority of the Board and endorsed by a representative
18 member of the Board.
- 19 G. WHEREAS, Dr. Fadell understands that the Board is free to accept or reject this
20 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
21 and a hearing scheduled on the same. The Board members who review this matter for
22 approval of this Agreement may be the same members who ultimately hear the
23 disciplinary complaint if this Agreement is not approved by the Board. Dr. Fadell hereby
24 agrees to waive any rights he might have to challenge the impartiality of the Board to
25 hear the disciplinary complaint, based on prior knowledge obtained by the Board
26 through consideration of this Agreement, if after review by the Board, this Agreement is
27 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
28 as null and void.
- H. WHEREAS, Dr. Fadell 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, Dr. Fadell 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. Fadell has elected to enter into this
 Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Fadell 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. Fadell 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. Fadell, nor have any
 promises been made other than those reflected in this Agreement. Dr. Fadell freely
 and voluntarily entered into this agreement, motivated only by a desire to resolve the
 issues addressed herein. Dr. Fadell has executed this Agreement only after a careful
 reading of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Fadell 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

1 and cross-examine witnesses called to testify against him, the right to present evidence
2 on his own behalf, the right to compulsory process to secure the attendance of such
3 witnesses, the right to testify on his own behalf, the right to receive written findings of
4 fact and conclusions of law supporting the decision on the merits of the complaint and
5 the right to obtain judicial review of the Board's decision. Should the Board accept this
6 Agreement, Dr. Fadell voluntarily waives these rights.

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

9 O. WHEREAS, this Agreement and Order contains a complete description of the
10 agreement between the parties and it supersedes any previous agreements between
11 the parties. All material representations, understandings and promises of the parties
12 are contained in this Agreement. Any modifications must be set forth in writing, signed
13 by all the parties, and approved by the Board.

14 **III. TERMS OF THE AGREEMENT**

15 A. Dr. Fadell acknowledges that the failure to report allegations are true, and each
16 such act (failure to timely report) are violations of NRS chapter 633 for which
17 discipline is permissible under Nevada law. In exchange for the Board not pursuing
18 an administrative action on the non-reporting allegations, and Dr. Fadell not
19 pursuing subsequent reviews by the appropriate appellate Courts, the parties have
20 agreed to resolve the current matter, and only this matter. Dr. Fadell will henceforth
21 insure that all lawsuits involving him will be timely and accurately reported to the
22 Board, and the failure to do so may result in the Board bringing a disciplinary action
23 against the osteopathic medical license issued by the Board to Dr. Fadell. If any
24 lawsuit is not reported to the Board, such will be in violation of this agreement as
25 well as the applicable statutes. **ADDITIONALLY, THE BOARD
26 ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A
27 DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE
28 BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
ADMINISTRATIVE FINE BEING ASSESSED SOLELY TO RESOLVE THE NON-
REPORTING ISSUE.**

19 B. Dr. Fadell agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
20 imposed for having violated NRS chapter 633. This sum **includes** all fees and
21 costs incurred by the Board up to and including the approval of this settlement
22 agreement by the Board at its next scheduled board meeting pursuant to NAC
23 633.470(2)(b)(6). Such amount shall be payable in monthly installments of \$250.00
24 each with the first payment being due on the _____ day of _____
25 2010, and a like payment being due on the _____ day of each month thereafter
26 until said amount is paid in full. *pd full ck 1274*

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

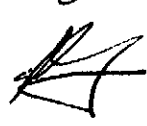
D. The Respondent, Dr. Fadell, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s) if applicable.

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- 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. Fadell 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. Fadell, 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 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.
- 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 Aug, 2010, on the board's agenda in September 2010 for fulfillment.

DAVID FADELL, D.O.

By: 
Osteopathic Physician



Dated: 6-11-10

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

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

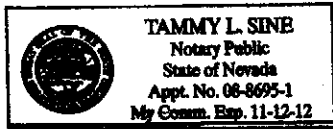
By _____
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: _____

Dated: _____

6
7 **ACKNOWLEDGEMENT**

8 On this the 11th day of June, 2010, the said DAVID FADELL,
9 D.O., personally appeared before me, a notary public, and signed the above document, freely
10 and voluntarily, under no duress.



11 Tammy L. Sine
12 Notary Public

13
14 **ORDER OF THE BOARD**

15 **IT IS SO ORDERED.**

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

23 DATED this _____ day of _____, 2010.

24
25 NEVADA STATE BOARD OF
26 OSTEOPATHIC MEDICINE

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

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

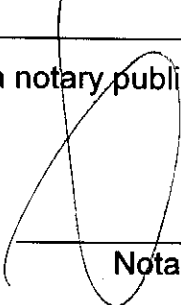
By Dianna Hegeduis
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: 6/18/10

Dated: 7-21-2010

7 **ACKNOWLEDGEMENT**

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



11 _____
12 Notary Public

14 **ORDER OF THE BOARD**

15 **IT IS SO ORDERED.**

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

24 DATED this 30 day of August, 2010.

25 NEVADA STATE BOARD OF
26 OSTEOPATHIC MEDICINE

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

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)

DAVID FADELL, D.O., LIC. 996,)

Respondent.)

CASE NO. MA 1002016

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

AUG 04 2010

WRITTEN NOTICE OF ENTRY OF ORDER

FILED

PLEASE TAKE NOTICE that an order, approving the settlement agreement in this matter was entered by the Board; and a file-stamped copy of the same is attached hereto.

DATED THIS 4th day of August, 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

By

Dianna Hegeduis
Dianna Hegeduis, Executive Director
Board Counsel

901 American Pacific Dr., # 180
Henderson, NV 89014

CERTIFICATE OF MAILING

I hereby certify that on the 4th day of August, 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 on file with the Board, postage thereon prepaid.

Michelle Row

An employee of the NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
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