

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST

DANA FORTE, D.O., Lic. # 649

RESPONDENT.

NV STATE BOARD OF
OSTEOPATHIC MEDICINE
Case No. MA 0161011

AUG 04 2009

Filed:

D. Hegeduis
FILED
Executive Director

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Lisa Miller-Roche, Esq., Investigative Board Member ("Ms. Miller-Roche" 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 Dana M. Forte, D.O. ("Dr. Forte") (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 Investigative Board Member Miller-Roche, ascertained certain information regarding two prior lawsuits filed against Dr. Forte. 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 alleges that Dr. Forte failed to timely report lawsuits being filed by "C.S." and "Z.D." as well as the settlement-resolution of the same; and such failures are violations of NRS 633.527. Dr. Forte alleges that such information was either called into the Board's office or mailed to the Board's offices. The insurance company did notify the Board of the one lawsuit being settled, i.e., the lawsuit filed by "C.S." The resolution of that matter, involving "C.S.," was not reported by Dr. Forte herself on the renewal application for 2009. On the 2007 renewal application, Dr. Forte did state that one case had settled, presumably, the "Z.D." matter although such information was not attached to the renewal application.
- C. NRS 633.527(1) states that an "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,

1 award, judgment or other disposition; and (d) any sanctions imposed against the
2 osteopathic physician that are reportable to the National Practitioner Data Bank not
3 later than 45 days after the sanctions are imposed. NRS 633.527(2) states that should
4 the Board find "that an osteopathic physician has violated any provision of this section,
5 the **Board may impose a fine of not more than \$5,000** against the osteopathic
6 physician **for each violation, in addition to any other fines or penalties permitted
7 by law.**" (Emphasis added.) This statute was added to the law in 2003. By the use of
8 the word "shall" by the Nevada State Legislature in this statute, the Legislature
9 intended to mandatorily require all osteopathic physicians to report any of the four (4)
10 events mentioned in the statute.

- 11 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
12 . . . statement . . . in applying for a license to practice osteopathic medicine or in
13 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
14 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
15 proceeding; and such discipline may include public reprimands, the suspension of the
16 license to practice osteopathic medicine in the State of Nevada, and even the
17 revocation of the license to practice osteopathic medicine in the State of Nevada.
- 18 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
19 person reasonable attorney's fees and costs that are incurred by the regulatory body
20 as part of its investigative, administrative and disciplinary proceedings against the
21 person if the regulatory body" either enters a final order or enters into a settlement
22 agreement.
- 23 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
24 Board to file a formal disciplinary complaint.
- 25 G. WHEREAS, the parties understand that this Agreement will be signed by the
26 respective parties and will then be offered to the Board for the entire Board's approval
27 at the next Board meeting, with the recommendation of the Investigating Board
28 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.
- H. WHEREAS, Dr. Forte understands that the Board is free to accept or reject this
Agreement and, if rejected by the Board, a formal disciplinary complaint will 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. Forte 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. Forte 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. Forte 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. Forte has elected to enter into this
Agreement to resolve this matter, and this matter only.

- 1 L. WHEREAS, Dr. Forte acknowledges that once accepted by the Board, this Agreement
2 and all associated documentation become a matter of public record (with the exception
3 of medical information related to any patient).
- 4 M. WHEREAS, Dr. Forte has had the opportunity to obtain the advice from competent
5 counsel of his choice concerning the terms and conditions of this Agreement and the
6 execution thereof. No coercion has been exerted upon Dr. Forte, nor have any
7 promises been made other than those reflected in this Agreement. Dr. Forte freely and
8 voluntarily entered into this agreement, motivated only by a desire to resolve the issues
9 addressed herein. Dr. Forte has executed this Agreement only after a careful reading
10 of it and a full understanding of all its terms.
- 11 N. WHEREAS, Dr. Forte is fully aware of her rights to contest the charges pending
12 against her. These rights include: representation by an attorney at her own expense,
13 the right to a public hearing on any charges or allegations filed, the right to confront
14 and cross-examine witnesses called to testify against her, the right to present evidence
15 on her own behalf, the right to compulsory process to secure the attendance of such
16 witnesses, the right to testify on her own behalf, the right to receive written findings of
17 fact and conclusions of law supporting the decision on the merits of the complaint and
18 the right to obtain judicial review of the Board's decision. Should the Board accept this
19 Agreement, Dr. Forte voluntarily waives these rights.
- 20 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
21 of the State of Nevada.
- 22 P. WHEREAS, this Agreement and Order contains a complete description of the
23 agreement between the parties and it supersedes any previous agreements between
24 the parties. All material representations, understandings and promises of the parties
25 are contained in this Agreement. Any modifications must be set forth in writing, signed
26 by all the parties, and approved by the Board.

16 **III. TERMS OF THE AGREEMENT**

- 17 A. Dr. Forte acknowledges that the allegations regarding failure to timely report certain
18 events and the inaccurate-incomplete renewal applications, if true, are violations of
19 NRS chapter 633 and discipline would be permissible under Nevada law. In
20 exchange for the Board not pursuing an administrative action and Dr. Forte not
21 pursuing subsequent reviews by the appropriate appellate Courts, the parties have
22 agreed to resolve the current matter, and only this matter. Dr. Forte will henceforth
23 insure that all lawsuits involving herself will be timely and accurately reported to the
24 Board, and the failure to do so may result in the Board bringing a disciplinary action
25 against the osteopathic medical license issued by the Board to Dr. Forte. If any
26 lawsuit is not reported to the Board, such will be in violation of this agreement as
27 well as the applicable statutes.
- 28 B. Dr. Forte agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the fine
imposed for having violated NRS 633.527(1) for the failure to timely report the
filing/service/settlement of the lawsuits and the incomplete-inaccurate information
contained within the renewal applications. 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 the amount of \$250.00 per
month beginning on the 15th day of August, 2009, and such amount shall continue
to be due thereafter on the 15th day of each month, until the full amount of One
Thousand Dollars (\$1,000.00) is paid.

PAID in FULL
7-29-09
DHH

- 1 C. Should Dr. Forte fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
2 manner as discussed herein, Dr. Forte understands and agrees that she 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. Forte, agrees to bear her own fees and costs, including the
8 fees and expenses of her 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 settlement agreement consists of six (6) pages and embodies the entire
15 agreement between the Board and the osteopathic physician. It may not be
16 altered, amended or modified without the express consent of the parties, and any
17 subsequent alteration, amendment, or modification shall be in writing and subject to
18 approval by the Board.
- 19 H. In consideration for the execution of this Agreement, Dr. Forte hereby releases and
20 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and
21 the Nevada State Attorney General's Office (as the Board's counsel), and each of
22 their representatives, investigators, and employees, in their individual and
23 representative capacity (collectively the State of Nevada Agencies) from any and all
24 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
25 and demands whatsoever known or unknown, in law and in equity, that she may
26 have had, now has, may have had, or claim to have against any and all of the
27 persons and entities named in this paragraph arising out of, or by reason of, the
28 investigation of the allegations raised in this matter, including those noted in the
administrative complaint on file herein, and other matters relating thereto.
- I. Dr. Forte, 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 disciplinary
action, this settlement or its administration.
- J. This document may be prepared in multiple counterparts. Each counterpart

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1 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy, shall be
2 deemed an original hereof if executed by each of the Parties hereto.

3 DANA M. FORTE, D.O.

4 Osteopathic Physician

5 Dated: 7-27-09

6 NEVADA STATE BOARD OF
7 OSTEOPATHIC MEDICINE

8 BY: _____

9 Lisa Miller-Roche, Esq.
10 Investigating Board Member

11 Dated: _____

12 NEVADA STATE BOARD OF
13 OSTEOPATHIC MEDICINE

14 By _____

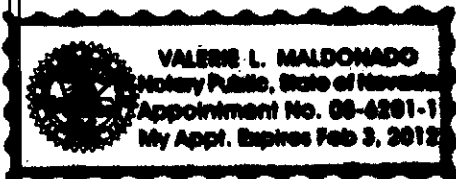
15 Dianna Hegeduis, Executive Director -
16 Board Counsel

17 Dated: 7-29-09

18 **ACKNOWLEDGEMENT**

19 On this the 27 day of July, 2009, the said DANA M. FORTE, D.O.,
20 personally appeared before me, a notary public, and signed the above document, freely and
21 voluntarily, under no duress.

22 Valerie L. Maldonado
23 Notary Public



24 **ORDER OF THE BOARD**

25 **IT IS SO ORDERED.**

26 **IT IS FURTHER ORDERED** that should Dr. Forte fail to comply with any terms or
27 conditions of this Agreement, Dr. Forte will be in breach of this Agreement; and this
28 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. Forte.

Should this Agreement become null and void by Dr. Forte's failure to comply with terms or

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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.

DANA M. FORTE, D.O.

Osteopathic Physician

Dated: 7-27-09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By Lisa Miller-Roche

Lisa Miller-Roche, Esq.
Investigating Board Member

Dated: 7/30/09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By Gianna Hegeduis

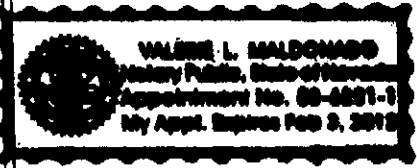
Gianna Hegeduis, Executive Director -
Board Counsel

Dated: 7-29-09

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Valerie L. Maldonado
Notary Public



ORDER OF THE BOARD

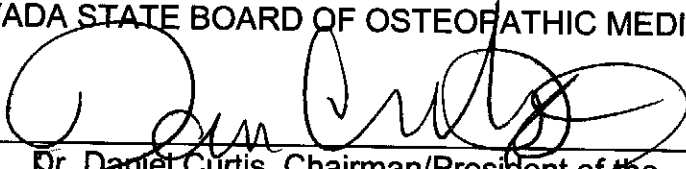
IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Forte fail to comply with any terms or conditions of this Agreement, Dr. Forte will be in breach of this Agreement; and this

1 conditions of this Agreement, the Board may not only pursue an administrative action against
2 Dr. Forte, but the Board may also seek the maximum fees, fines, and costs.

3 DATED this 4th day of AUGUST, 2009.

4 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

5
6 BY: 
7 Dr. Daniel Curtis, Chairman/President of the
8 Board