

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)
ROBERT FOSTER, D.O., LIC. #1199)
Respondent.)

CASE NO. MA1103003
NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

AUG 10 2011

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Rota Rosaschi, Investigative Board Member ("Ms. Rosaschi" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Interim Executive Director, Barbara Longo, and Robert Foster, D.O. ("Dr. Foster"), (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. Foster. 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:
 - (1) Re: patient "W.R." Dr. Foster was sued on October 8, 2009. The case was removed to Federal court on January 21, 2010. The IBM has alleged that the physician did not timely report the commencement of the lawsuit to the Board, *i.e.*, within 45 days of the event; therefore he is in violation of (2c) NRS 633.527. IBM has further alleged that Dr. Foster did not report the initial service or the dismissal on his 2010 and 2011 renewal application in violation of (2c) NRS 633.131.
 - (2) Re: patient "W.R." Dr. Foster was sued on February 2, 2009. The case was dismissed October 13, 2009. The IBM has alleged that Dr. Foster did not report the initial service of the suit or the dismissal of the suit within 45 days; therefore he is in violation of (2c) NRS 633.527. The IBM has further alleged that Dr. Foster did not report the initial service of the suit or the dismissal of the suit on his 2010 renewal application in violation of (1c) NRS 633.131.
 - (3) Re: Patient "W.R." Dr. Foster was sued on October 18, 2010. The case was dismissed on April 18, 2011. The IBM has alleged that the physician did not report the initial service of the suit or the dismissal within 45 days; therefore he is in violation of (2c) NRS 633.527. The IBM further alleged that Dr. Foster did not report the initial service of the suit on his 2011 renewal application in violation of NRS (1c) NRS 633.131.
- 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

1 than 45 days after the osteopathic physician receives service of a summons and
2 complaint for the action; (b) any claim for malpractice against the osteopathic physician
3 that is submitted to arbitration or mediation not later than 45 days after the claim is
4 submitted to arbitration or mediation; (c) any settlement, award, judgment or other
5 disposition or any action or claim described in paragraphs (a) or (b) not later than 45
6 days after the settlement, award, judgment or other disposition; and (d) any sanctions
7 imposed against the osteopathic physician that are reportable to the National
8 Practitioner Data Bank not later than 45 days after the sanctions are imposed. NRS
9 633.527(2) states that should the Board find "that an osteopathic physician has
10 violated any provision of this section, **the Board may impose a fine of not more than**
11 **\$5,000** against the osteopathic physician **for each violation, in addition to any other**
12 **finest or penalties permitted by law.**" (Emphasis added.) This statute was added to
13 the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this
14 statute, the Legislature intended to mandatorily require all osteopathic physicians to
15 report any of the four (4) events mentioned in the statute.

- 16 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
17 . . . statement . . . in applying for a license to practice osteopathic medicine or in
18 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
19 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
20 proceeding; and such discipline may include public reprimands, the suspension or
21 revocation of the license to practice osteopathic medicine in the State of Nevada, and
22 an assessment of a fine not to exceed \$5,000 per violation.
- 23 E. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
24 recover from a person reasonable attorney's fees and costs that are incurred by the
25 regulatory body as part of its investigative, administrative and disciplinary proceedings
26 against the person if the regulatory body" either enters a final order or enters into a
27 settlement agreement.
- 28 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
Board to file a formal disciplinary complaint and/or prove their allegations.
- G. 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.
- H. WHEREAS, Dr. Foster understands that the Board is free to accept or reject this
Agreement and, if rejected by the Board, a disciplinary complaint may be filed and a
hearing scheduled. 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. Foster 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. Foster 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. Foster 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.

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

17 III. TERMS OF THE AGREEMENT

- 18 A. Dr. Foster acknowledges that the failure to report allegations are true, and each such
19 act is a violation of NRS chapter 633 for which discipline is permissible under Nevada
20 law. In exchange for the Board not pursuing an administrative action on the non-
21 reporting allegations or the inaccurate renewal applications/unprofessional conduct
22 allegations, and Dr. Foster not pursuing subsequent reviews by the appropriate
23 appellate Courts, the parties have agreed to resolve the current matter, and only this
24 matter. Dr. Foster will henceforth insure that all lawsuits involving him will be timely
25 and accurately reported to the Board, and the failure to do so may result in the Board
26 bringing a disciplinary action against the osteopathic medical license issued by the
27 Board to Dr. Foster. If any lawsuit is not reported to the Board, such will be in violation
28 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 TO RESOLVE THE NON-REPORTING ISSUE.** The
Board waives all other claims and/or allegations regarding any alleged inaccurate
renewal applications.
- B. Dr. Foster agrees to pay the sum of Two Hundred and Fifty Dollars and no cents
(\$250.00) as the fine imposed for having violated NRS chapter 633. This sum
includes all fees and costs incurred by the Board up to and including the approval of

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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 1st day of August, 2011, and a like payment being due on the 1st day of each month thereafter until said amount is paid in full. *Pd in full ck # 0113*

- C. Should Dr. Foster fail to satisfy and pay the indebtedness of \$250.00 in a timely manner as discussed herein, Dr. Foster 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. Foster, 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 five (5) 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. Foster hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada 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 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 herein, and other matters relating thereto.
- I. Dr. Foster, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the State Board of Osteopathic Medicine, the 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 August 2011, and that upon payment of the fine

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mentioned above, an order of fulfillment will be scheduled for approval by the Board in the month of September, 2011.

ROBERT FOSTER, D.O.

By: _____
Osteopathic Physician
Dated: _____

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: Rota Rosaschi
Rota Rosaschi, M.P.A.
Investigating Board Member
Dated: 7/25/11

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: _____
Barbara Longo, Interim Executive Director
Dated: _____

ACKNOWLEDGEMENT

On this the ___ day of _____, 2011, the said ROBERT FOSTER, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

Notary Public

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mentioned above, an order of fulfillment will be scheduled for approval by the Board in the month of September, 2011.

ROBERT FOSTER, D.O.

By: [Signature]
Osteopathic Physician
Dated: 7/19/11

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: _____
Rota Rosaschi, M.P.A.
Investigating Board Member
Dated: _____

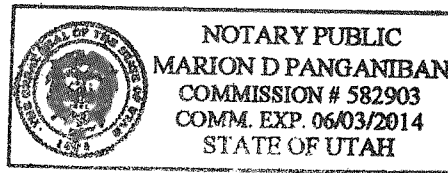
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: [Signature]
Barbara Longo, Interim Executive Director
Dated: 8.9.11

ACKNOWLEDGEMENT

On this the 22nd day of July, 2011, the said ROBERT FOSTER, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

[Signature]
Notary Public



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ORDER OF THE BOARD

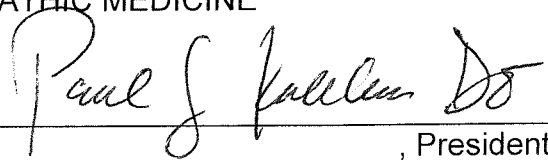
IT IS SO ORDERED.

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

DATED this 9 day of August, 2011.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY:



Dr.

, President of the Board

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

2 IN THE MATTER OF THE COMPLAINT)
3 AGAINST)
4 Robert Foster, D.O., LIC. #1199)
5 RESPONDENT.)

Case No.: MA1103003

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

AUG 10 2011

FILED

6 **WRITTEN NOTICE OF ENTRY OF ORDER**
7 **APPROVING SETTLEMENT AGREEMENT**

8 **PLEASE TAKE NOTICE** that the Nevada State Board of Osteopathic Medicine has
9 approving the Settlement Agreement entered into by Respondent, Robert Foster, D.O., and
10 the Board; and a file-stamped copy of the same is attached hereto.

11 DATED THIS 10th day of August, 2011.

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13 NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

14 By 

15 Barbara Longo, Interim Executive Director
16 901 American Pacific Dr., #180
Henderson, NV 89014

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on the 10th day of August, 2011, I served a copy of the ABOVE
19 Notice with attachment upon the parties to this matter, via U.S. Postal Service, postage
20 thereon prepaid, addressed as follows:

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22 An employee of the Nevada State Board of
23 Osteopathic Medicine
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