BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST KENNETH FULP, D.O.
License No. 1370
RESPONDENT.

Case No.: MA1002024
Filed: NV STATE BOARD OF OSTEOPATHIC MEDICINE
MAY 05 2010

SETTLEMENT AGREEMENT AND ORDER FILED

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 Kenneth Fulp, D.O. ("Dr.
Fulp") (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. Fulp. 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 "WR." Suit was filed and served on Respondent on or about June 14, 2008;
yet notification of the same was not provided to the Board until November 26, 2008
while Dr. Fulp was renewing his medical license, thus, it was not timely reported. The
matter was dismissed on or about December 19, 2008, and the physician also did not
timely report the same. The IBM has alleged all such 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. Fulp 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. Fulp 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. Fulp 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. Fulp 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. Fulp has elected to enter into this Agreement to resolve this matter, and this matter only.

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

M. WHEREAS, Dr. Fulp 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. Fulp 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. Fulp acknowledges that the failure to report allegations are true, and each such
act (failure to timely report) is a violation of NRS chapter 633 for which discipline is
permissible under Nevada law. In exchange for the Board not pursuing an
administrative action on the non-reporting allegations, and Dr. Fulp not pursuing
subsequent reviews by the appropriate appellate Courts, the parties have agreed to
resolve the current matter, and only this matter. Dr. Fulp 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. Fulp. 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 VIOLATION, I.E., NOT FOR ANY ALLEGATIONS
REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE
PHYSICIAN’S COMPETENCY.

B. Dr. Fulp agrees to pay the sum of Five Hundred Dollars ($500.00) as the fine
imposed for having violated NRS 633.527(1) for the failure to timely report the
settlement of the lawsuit. 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 $100.00 each with the first payment
being due on the 1st day of May, 2010, and a like payment being due on the 1st day
of each month thereafter until said amount is paid in full.

C. Should Dr. Fulp fail to satisfy and pay the indebtedness of $500.00 in a timely
manner as discussed herein, Dr. Fulp 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. Fulp, 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. Fulp 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. Fulp, 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, Respondent 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 April, 2010.

KENNETH FULP, D.O.
By: ____________________________
    Osteopathic Physician
    Dated: 4-6-2010

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 ___ day of ________, 2010, the said KENNETH FULP,
D.O., personally appeared before me, a notary public, and signed the above document, freely
and voluntarily, under no duress.

SUSAN DIANE LECHEFSKY
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this __ day of ____________, 2010

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY:

For Dr. C. Dean Milne, Vice-President of the Board
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

AGAINST KENNETH FULP, D.O.
License No. 1370
RESPONDENT.

Case No.: MA1002024
Filed: NV STATE BOARD OF OSTEOPATHIC MEDICINE
MAY 05 2010

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 _____ day of May, 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 5th day of May, 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:

Kenneth Fulp, D.O.
8405 Mystic Night Ave.
Las Vegas, NV 89142
PERSONAL & CONFIDENTIAL

An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE

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