

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

2 IN THE MATTER OF THE COMPLAINT }

3 AGAINST KENNETH FULP, D.O. }

4 License No. 1370 }

5 RESPONDENT. }

Case No.: MA1002024

Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

MAY 05 2010

6 _____

7 **SETTLEMENT AGREEMENT AND ORDER** **FILED**

8 **I. PARTIES**

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

14 **II. RECITALS**

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

- 16
- 17 A. **WHEREAS**, the Board, through the Investigative Board Member, ascertained certain
18 information regarding litigation filed against Dr. Fulp. The information was ascertained
19 as a result of the Board's staff due diligence in investigating its applicants/licensees.
- 20 B. **WHEREAS**, the Investigative Board Member ("IBM") has alleged as follows:
21 Re: patient "WR." Suit was filed and served on Respondent on or about June 14, 2008;
22 yet notification of the same was not provided to the Board until November 26, 2008
23 while Dr. Fulp was renewing his medical license, thus, it was not timely reported. The
24 matter was dismissed on or about December 19, 2008, and the physician also did not
25 timely report the same. The IBM has alleged all such failures are violations of NRS
26 chapter 633 as discussed hereinafter.
- 27 C. **NRS 633.527(1)** states that a licensed "osteopathic physician **shall report** to the
28 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

1 this section, **the Board may impose a fine of not more than \$5,000** against the
2 osteopathic physician **for each violation, in addition to any other fines or penalties**
3 **permitted by law.** (Emphasis added.) This statute was added to the law in 2003. By
4 the use of the word "shall" by the Nevada State Legislature in this statute, the
5 Legislature intended to mandatorily require all osteopathic physicians to report any of
6 the four (4) events mentioned in the statute.

- 7 D. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
8 person reasonable attorney's fees and costs that are incurred by the regulatory body as
9 part of its investigative, administrative and disciplinary proceedings against the person
10 if the regulatory body" either enters a final order or enters into a 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 respective
14 parties and will then be offered to the Board for the entire Board's approval at the next
15 Board meeting, with the recommendation of the Investigating Board Member that this
16 matter be settled. The Agreement shall not become effective until it has been approved
17 by a majority of the Board and endorsed by a representative member of the Board.
- 18 G. WHEREAS, Dr. Fulp understands that the Board is free to accept or reject this
19 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
20 and a hearing scheduled on the same. The Board members who review this matter for
21 approval of this Agreement may be the same members who ultimately hear the
22 disciplinary complaint if this Agreement is not approved by the Board. Dr. Fulp hereby
23 agrees to waive any rights he might have to challenge the impartiality of the Board to
24 hear the disciplinary complaint, based on prior knowledge obtained by the Board
25 through consideration of this Agreement, if after review by the Board, this Agreement is
26 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
27 as null and void.
- 28 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

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

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

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

13 III. TERMS OF THE AGREEMENT

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

- 1 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
2 the parties hereto and their respective heirs, personal representatives, assigns and
3 successors in interest of each party.
- 4 F. This Agreement and Order shall be construed in accordance with the laws of the
5 State of Nevada.
- 6 G. This settlement agreement consists of six (6) pages and embodies the entire
7 agreement between the Board and the osteopathic physician. It may not be altered,
8 amended or modified without the express consent of the parties, and any
9 subsequent alteration, amendment, or modification shall be in writing and subject to
10 approval by the Board.
- 11 H. In consideration for the execution of this Agreement, Dr. Fulp hereby releases and
12 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
13 Nevada State Attorney General's Office (as counsel for the Board), and each of
14 their representatives, investigators, and employees, in their individual and
15 representative capacity (collectively the State of Nevada Agencies) from any and all
16 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
17 and demands whatsoever known or unknown, in law and in equity, that he may
18 have had, now has, may have had, or claim to have against any and all of the
19 persons and entities named in this paragraph arising out of, or by reason of, the
20 investigation of the allegations raised in this matter, and other matters relating
21 thereto.
- 22 I. Dr. Fulp, for himself, his heirs, executors, administrators, successors and assigns,
23 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
24 Board of Osteopathic Medicine, the Nevada Attorney General's office and each of
25 their members, agents and employees in their individual and representative
26 capacities against any and all claims, suits, demands, actions, debts, damages,
27 costs, charges, and expenses, including court costs and attorney's fees against any
28 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.

1 K. LASTLY, by executing this agreement, Respondent Physician hereby expressly,
2 knowingly, and intentionally waive the 21-working days notice requirement pursuant
3 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
4 the agenda for the Board's approval in the month of ~~April~~ ^{May}, 2010.

5 KENNETH FULP, D.O.

6 By: [Signature]
7 Osteopathic Physician

8 Dated: 4-6-2010

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 BY [Signature]
12 Daniel K. Curtis, D.O.
13 Investigating Board Member

14 Dated: 4/23/10

15 NEVADA STATE BOARD OF
16 OSTEOPATHIC MEDICINE

17 BY [Signature]
18 Dianna Hegeduis, Executive Director -
19 Board Counsel

20 Dated: 4-19-2010

21 State of Nevada
22 County of Clark

23 **ACKNOWLEDGEMENT**

24 On this the 6 day of April, 2010, the said KENNETH FULP,
25 D.O., personally appeared before me, a notary public, and signed the above document, freely
26 and voluntarily, under no duress.



29 [Signature]
30 Notary Public

31 **ORDER OF THE BOARD**

32 **IT IS SO ORDERED.**

33 **IT IS FURTHER ORDERED** that should Dr. Fulp fail to comply with any terms or
34 conditions of this Agreement, Dr. Fulp will be in breach of this Agreement; and this Agreement
35 will be null and void. The Board may take whatever action it deems appropriate, including but
36 not limited to proceeding with the administrative action against Dr. Fulp. Should this
37 Agreement become null and void by Dr. Fulp's failure to comply with terms or conditions of
38

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

3 DATED this 4th day of May 2010

4 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

5
6 BY: [Signature]
7 FOR Dr. C. Dean Milne, Vice-President of the
8 Board

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Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147

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

2 IN THE MATTER OF THE COMPLAINT

3 AGAINST KENNETH FULP, D.O.

4 License No. 1370

5 **RESPONDENT.**

Case No.: MA1002024

Filed: **NV STATE BOARD OF OSTEOPATHIC MEDICINE**

MAY 05 2010

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

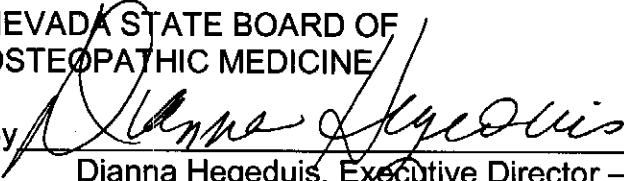
FILED

8 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine
9 approved the Settlement Agreement entered into by the parties to this matter; and a file-
10 stamped copy of the same is attached hereto.

11 DATED THIS 5th day of May, 2010.

12 NEVADA STATE BOARD OF
13 OSTEOPATHIC MEDICINE

14 By



15 Dianna Hegeduis, Executive Director –
Board Counsel

16 901 American Pacific Dr., # 180
17 Henderson, NV 89014

18 **CERTIFICATE OF MAILING**

19 I hereby certify that on the 5th day of May, 2010, I served a copy of the foregoing
20 notice, with attached Settlement Agreement/Order, upon the respective parties to this matter
21 by depositing a true copy thereof in the U.S. mail, addressed to them at their last known
22 address, postage thereon prepaid, addressed as follows:

23 Kenneth Fulp, D.O.
24 8405 Mystic Night Ave.
25 Las Vegas, NV 89142

26 **PERSONAL & CONFIDENTIAL**



27 An employee of the NEVADA STATE BOARD
28 OF OSTEOPATHIC MEDICINE