

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

2 IN A MATTER INVOLVING

3 GERALDINE GARDNER, D.O.,
4 License No. 822

5 **RESPONDENT.**

Case No.: MA1002004

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

MAY 05 2010

6 **SETTLEMENT AGREEMENT AND ORDER**

7 **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 Geraldine Gardner, D.O.
13 ("Dr. Gardner") (collectively referred to as "the Parties").

14 **II. RECITALS**

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

- 16 A. WHEREAS, the Board, through the Investigative Board Member ("IBM"), ascertained
17 certain information regarding litigation filed against Dr. Gardner. The information was
18 ascertained as a result of the Board's staff due diligence in investigating its
19 applicants/licensees.
- 20 B. WHEREAS, the IBM has alleged as follows: (1) Re: patient "BS." The IBM has alleged
21 that the malpractice lawsuit was filed in June 2004 and ultimately settled in April 2008.
22 The physician did not timely report the filing/service of the complaint in the malpractice
23 lawsuit, nor the dismissal/disposition thereof, pursuant to Nevada's reporting law as
24 discussed hereinafter. Physician did note the existence/status of the lawsuit in the
25 respective renewal applications. The IBM has alleged all such failures are violations of
26 NRS 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 Board's approval at the next Board
15 meeting, with the recommendation of the Investigating Board Member that this matter
16 be settled. The Agreement shall not become effective until it has been approved by a
17 majority of the Board and endorsed by a representative member of the Board.
- 18 G. WHEREAS, Dr. Gardner 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. Gardner
23 hereby agrees to waive any rights she might have to challenge the impartiality of the
24 Board to hear the disciplinary complaint, based on prior knowledge obtained by the
25 Board through consideration of this Agreement, if after review by the Board, this
26 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
27 shall be regarded as null and void.
- 28 H. WHEREAS, Dr. Gardner 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. Gardner 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. Gardner has elected to enter into this
Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Gardner 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. Gardner has had the opportunity to obtain the advice from competent
counsel of her choice concerning the terms and conditions of this Agreement and the
execution thereof. No coercion has been exerted upon Dr. Gardner, nor have any
promises been made other than those reflected in this Agreement. Dr. Gardner freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. Gardner has executed this Agreement only after a careful
reading of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Gardner is fully aware of her rights to contest the charges pending
against her. These rights include: representation by an attorney at her 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 her, the right to present evidence on

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

B. Dr. Gardner 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
events concerning 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 \$250.00 each with the first
payment being due on the 15 day of April, 2010, and a like
payment being due on the 15th day of each month thereafter until said amount is
paid in full.

C. Should Dr. Gardner fail to satisfy and pay the indebtedness of \$500.00 in a timely
manner as discussed herein, Dr. Gardner understands and agrees that she 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. Gardner, agrees to bear her own fees and costs, including the
fees and expenses of her 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

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- 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. Gardner hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the 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 she 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. Gardner, 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 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 hereby expressly, knowingly, and intentionally waive the 21-working days notice requirement pursuant to the Open Meeting Laws and acknowledges that this Agreement shall be on the agenda for the Board's approval in the month of May, 2010.

GERALDINE GARDNER, D.O.

Gardner DO
 Osteopathic Physician
 Dated: 4/5/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: *Daniel K. Curtis*
 Daniel K. Curtis, D.O.
 Investigating Board Member
 Dated: 4/23/10

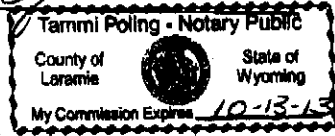
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: *Dianna Hegeduis*
 Dianna Hegeduis, Executive Director -
 Board Counsel
 Dated: 4-19-2010

ACKNOWLEDGEMENT

On this the 5 day of April, 2010, the said GERALDINE GARDNER, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.

Tammi Poling
Notary Public



ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 4th day of May, 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY: [Signature]
Dr. C. Dean Milne, Vice-President of the Board