

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 **IN THE MATTER OF THE COMPLAINT**
3 **AGAINST**
4 **THOMAS A. GERACI, D.O., LIC. #767,**
5 **RESPONDENT.**

Case No.: MA0910002

RECEIVED

Filed:

FEB 03 2010

D. Hegeduis
Executive Director
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

6 **SETTLEMENT AGREEMENT AND ORDER**

7 **I. PARTIES**

8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9 between Rota Rosaschi, MPA, Investigative Board Member ("Ms. Rosaschi" or "Investigative
10 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
11 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and THOMAS A. GERACI,
12 D.O. ("Dr. Geraci") (collectively referred to as "the Parties").

13 **II. RECITALS**

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

- 15 A. WHEREAS, the Board, through the Investigative Board Member ("IBM"), ascertained
16 certain information regarding a prior lawsuit filed against Dr. Geraci. The information
17 was ascertained as a result of the Board's staff due diligence in investigating its
18 applicants/licenseses.
- 19 B. WHEREAS, the IBM alleged that Dr. Geraci failed to timely report a third party lawsuit
20 being filed regarding a patient with the initials of "R.L." in 2005 and an amended
21 medical malpractice complaint being filed by the patient in 2006, with the global
22 settlement thereof in 2007. The IBM has also alleged that Dr. Geraci failed to timely
23 report the filing of a complaint by patient "B.W." and the settlement thereof in 2008.
24 Such failures are violations of NRS 633.527. Additionally, the IBM alleged that Dr.
25 Geraci failed to identify the "R.L." lawsuit when renewing his license for the calendar
26 year 2007; nor did the physician identify the lawsuit's disposition in the renewal
27 application for 2008 submitted in 2007. Lastly, the IBM has alleged that Dr. Geraci
28 failed to identify the lawsuit pertaining to "B.W." as well as its settlement in the renewal
 applications for the respective years.
- 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

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

- D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
11 . . . statement . . . in applying for a license to practice osteopathic medicine or in
12 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
13 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
14 proceeding; and pursuant to NRS 633.651, such discipline may include public
15 reprimands, the suspension of the license to practice osteopathic medicine in the State
16 of Nevada, and even the revocation of the license to practice osteopathic medicine in
17 the State of Nevada.
- E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
18 person reasonable attorney's fees and costs that are incurred by the regulatory body as
19 part of its investigative, administrative and disciplinary proceedings against the person
20 if the regulatory body" either enters a final order or enters into a settlement agreement.
- F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
21 Board to file a formal disciplinary complaint.
- G. WHEREAS, the parties understand that this Agreement will be signed by the respective
22 parties and will then be offered to the Board for the entire Board's approval at the next
23 Board meeting, with the recommendation of the Investigating Board Member that this
24 matter be settled. The Agreement shall not become effective until it has been
25 approved by a majority of the Board and endorsed by a representative member of the
26 Board.
- H. WHEREAS, Dr. Geraci understands that the Board is free to accept or reject this
27 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
28 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. Geraci
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. Geraci 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. Geraci 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. Geraci has elected to enter into this
Agreement to resolve this matter, and this matter only.

- 1 L. WHEREAS, Dr. Geraci acknowledges that once accepted by the Board, this
2 Agreement and all associated documentation become a matter of public record (with
3 the exception of medical information related to the patient).
- 4 M. WHEREAS, Dr. Geraci 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. Geraci, nor have any
7 promises been made other than those reflected in this Agreement. Dr. Geraci freely
8 and voluntarily entered into this agreement, motivated only by a desire to resolve the
9 issues addressed herein. Dr. Geraci has executed this Agreement only after a careful
10 reading of it and a full understanding of all its terms.
- 11 N. WHEREAS, Dr. Geraci is fully aware of his rights to contest the charges pending
12 against him. These rights include: representation by an attorney at his own expense,
13 the right to a public hearing on any charges or allegations filed; the right to confront and
14 cross-examine witnesses called to testify against him, the right to present evidence on
15 his own behalf, the right to compulsory process to secure the attendance of such
16 witnesses, the right to testify on his 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. Geraci 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.

27 III. TERMS OF THE AGREEMENT

- 28 A. Dr. Geraci acknowledges that the failure to timely report allegations are true and
such failures are violations of NRS chapter 633 and discipline is permissible under
Nevada law. In exchange for the Board not pursuing an administrative action
against Dr. Geraci for the alleged inaccurate information contained within the
renewal application and the untimely reporting, and Dr. Geraci not pursuing
subsequent reviews by the appropriate appellate Courts, the parties have agreed to
resolve the current matter, and only this matter. Dr. Geraci 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. Geraci. 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
FOR THE NON-REPORTING VIOLATIONS, I.E., NOT FOR ANY ALLEGATIONS
REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE
PHYSICIAN'S COMPETENCY.**
- B. Dr. Geraci agrees to pay the sum of Three Thousand, ~~Five~~ ^{THREE} Hundred Dollars
(\$3,300.00) as the fine imposed for having violated NRS 633.527(1) for the failure to
timely report the filing/service of the lawsuits and the settlements thereof. This sum
- OH*

1 **includes** all fees and costs incurred by the Board up to and including the approval
2 of this settlement agreement by the Board at its next scheduled board meeting
3 pursuant to NAC 633.470(2)(b)(6). Such amount shall be payable in the amount of
4 \$500 per month beginning on the 1 day of Feb., 2010, and such
5 amount shall continue to be due thereafter on the 1 day of each month, until the
6 full amount of Three Thousand, ~~Five~~ Hundred Dollars is paid. *D.V.*

- 7 C. Should Dr. Geraci fail to satisfy and pay the indebtedness of \$3,300.00 in a timely
8 manner as discussed herein, Dr. Geraci understands and agrees that he will be
9 considered in default of this Agreement, and this agreement will be null and void,
10 with the Respondent receiving credit for payments made to date. The Board may
11 take whatever action it deems appropriate, including but not limited to reducing the
12 balance to judgment pursuant to NRS chapter 353C. *OX*
- 13 D. The Respondent, Dr. Geraci, agrees to bear his own fees and costs, including the
14 fees and expenses of his own attorney(s) if applicable.
- 15 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
16 the parties hereto and their respective heirs, personal representatives, assigns and
17 successors in interest of each party.
- 18 F. This Agreement and Order shall be construed in accordance with the laws of the
19 State of Nevada.
- 20 G. This settlement agreement consists of six (6) pages and embodies the entire
21 agreement between the Board and the osteopathic physician. It may not be altered,
22 amended or modified without the express consent of the parties, and any
23 subsequent alteration, amendment, or modification shall be in writing and subject to
24 approval by the Board.
- 25 H. In consideration for the execution of this Agreement, Dr. Geraci hereby releases
26 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
27 and the Nevada State Attorney General's Office (as counsel for the Board), and
28 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, including those noted in the
administrative complaint on file herein, and other matters relating thereto.
- I. Dr. Geraci, 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 disciplinary action,
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 _____, 20____.

5 THOMAS A. GERACI, D.O.

6 _____
7 Osteopathic Physician

8 Dated: _____

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 BY: Rota Rosaschi
12 Rota Rosaschi, MPA
13 Investigating Board Member

14 Dated: 1/8/10

15 NEVADA STATE BOARD OF
16 OSTEOPATHIC MEDICINE

17 BY: Dianna Hegedus
18 Dianna Hegedus, Executive Director -
19 Board Counsel

20 Dated: 1-20-2010

21 **ACKNOWLEDGEMENT**

22 On this the _____ day of _____ 2009, the said THOMAS A. GERACI, D.O.,
23 personally appeared before me, a notary public, and signed the above document, freely and
24 voluntarily, and under no duress.

25 _____
26 Notary Public

27 **ORDER OF THE BOARD**

28 **IT IS SO ORDERED.**

IT IS FURTHER ORDERED that should Dr. Geraci fail to comply with any terms or
conditions of this Agreement, Dr. Geraci 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. Geraci.

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 _____, 20____.

5 THOMAS A. GERACI, D.O.

6 Thomas A. Geraci, D.O.
7 Osteopathic Physician

8 Dated: 1-8-2010

9 NEVADA STATE BOARD OF
10 OSTEOPATHIC MEDICINE

11 NEVADA STATE BOARD OF
12 OSTEOPATHIC MEDICINE

13 BY: _____
14 Rota Rosaschi, MPA
15 Investigating Board Member

By _____
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: _____

Dated: _____

ACKNOWLEDGEMENT

ACKNOWLEDGMENT

1 State of California
2 County of San Joaquin

3 On Jan 7, 2010 before me, Laura Rogers
4 (insert name and title of the officer)

5 personally appeared Thomas A. Geraci
6 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (s) are
7 subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in
8 (his/her/their) authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
9 person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

10 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
11 paragraph is true and correct.

12 WITNESS my hand and official seal.



13 Signature Laura Rogers (Seal)


ORDER OF THE BOARD

IT IS SO ORDERED.

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

DATED this 2nd day of February, 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY: 
Dr. Daniel Curtis, Chairman/President of the Board