

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

2 IN A MATTER INVOLVING)

3 DONALD JAY GLOEB, D.O.,)
4 License No. 698,)

5 RESPONDENT.)

Case No.: MA1002015

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

MAY 05 2010

6 **SETTLEMENT AGREEMENT AND ORDER** **FILED**

7 **I. PARTIES**

8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9 between Rota Rosaschi, M.P.A., Investigative Board Member ("Ms. Rosaschi" or
10 "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the
11 Board") through the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Donald
12 J. Gloeb, D.O. ("Dr. Gloeb") (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 litigation filed against Dr. Gloeb. The information was
17 ascertained as a result of the Board's staff due diligence in investigating its
18 applicants/licenses.
- 19 B. WHEREAS, the IBM has alleged as follows: (1) Re: patient "NC." Suit was filed and/or
20 served in February 2006; and the physician did not report the same within 45 days as is
21 required by Nevada law. The physician did properly note this litigation in his 2007
22 renewal application, submitted in 2006. The matter was resolved in June 2007, and the
23 physician learned of the settlement in late August or early September 2007; however, it
24 was not reported to the Board within 45 days. The physician did properly note this
25 settlement in the 2008 renewal application submitted in 2007. The IBM has alleged the
26 non-reporting such failures are violations of 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

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

- 8 D. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
9 person reasonable attorney's fees and costs that are incurred by the regulatory body as
10 part of its investigative, administrative and disciplinary proceedings against the person
11 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 12 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
13 Board to file a formal disciplinary complaint.
- 14 F. WHEREAS, the parties understand that this Agreement will be signed by the respective
15 parties and will then be offered to the Board for the entire Board's approval at the next
16 Board meeting, with the recommendation of the IBM that this matter be settled. The
17 Agreement shall not become effective until it has been approved by a majority of the
18 Board and endorsed by a representative member of the Board.
- 19 G. WHEREAS, Dr. Gloeb understands that the Board is free to accept or reject this
20 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
21 and a hearing scheduled on the same. The Board members who review this matter for
22 approval of this Agreement may be the same members who ultimately hear the
23 disciplinary complaint if this Agreement is not approved by the Board. Dr. Gloeb hereby
24 agrees to waive any rights he might have to challenge the impartiality of the Board to
25 hear the disciplinary complaint, based on prior knowledge obtained by the Board
26 through consideration of this Agreement, if after review by the Board, this Agreement is
27 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
28 as null and void.
- H. WHEREAS, Dr. Gloeb 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. Gloeb 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. Gloeb has elected to enter into this
Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Gloeb 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. Gloeb 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. Gloeb, nor have any
promises been made other than those reflected in this Agreement. Dr. Gloeb freely and
voluntarily entered into this agreement, motivated only by a desire to resolve the issues
addressed herein. Dr. Gloeb has executed this Agreement only after a careful reading
of it and a full understanding of all its terms.
- M. WHEREAS, Dr. Gloeb 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

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

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

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

14 III. TERMS OF THE AGREEMENT

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

B. Dr. Gloeb agrees to pay the sum of Seven Hundred Fifty Dollars (\$750.00) as the
fine imposed for having violated NRS 633.527(1) for the failure to timely report the
events of the litigation. 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 upon execution of this agreement.

C. Should Dr. Gloeb fail to satisfy and pay the indebtedness of \$750.00 in a timely
manner as discussed herein, Dr. Gloeb 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. Gloeb, 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 pursuant to Nevada laws.

- 1 G. This agreement consists of five (5) pages and embodies the entire agreement
 2 between the Board and the physician. It may not be altered, amended or modified
 3 without the express consent of the parties, and any subsequent alteration,
 4 amendment, or modification shall be in writing and subject to approval by the Board.
 5 H. In consideration for the execution of this Agreement, Dr. Gloeb hereby releases and
 6 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
 7 Attorney General's Office (as counsel for the Board), and each of their
 8 representatives, investigators, and employees, in their individual and representative
 9 capacity (collectively the State of Nevada Agencies) from any and all manner of
 10 actions, causes of actions, suits, debts, judgments, executions, claims, and
 11 demands whatsoever known or unknown, in law and in equity, that he may have
 12 had, now has, may have had, or claim to have against any and all of the persons
 13 and entities named in this paragraph arising out of, or by reason of, the investigation
 14 of the allegations raised in this matter, and other matters relating thereto.
 15 I. Dr. Gloeb, for himself, his heirs, executors, administrators, successors and assigns,
 16 hereby indemnifies and holds harmless the State of Nevada, the State Board of
 17 Osteopathic Medicine, the Attorney General's office and each of their members,
 18 agents and employees in their individual and representative capacities against any
 19 and all claims, suits, demands, actions, debts, damages, costs, charges, and
 20 expenses, including court costs and attorney's fees against any persons or entities
 21 as well as all liability, losses, and damages of any nature whatsoever that the
 22 persons and entities named herein shall have or may sustain or suffer by reason of
 23 this investigation, this settlement or its administration.
 24 J. This document may be prepared in multiple counterparts. Each counterpart,
 25 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
 26 shall be deemed an original hereof if executed by each of the Parties hereto.
 27 K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and
 28 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 May, 2010.

DONALD J. GLOEB, D.O.

By: _____

Osteopathic Physician

Dated: _____

22 NEVADA STATE BOARD OF
 23 OSTEOPATHIC MEDICINE

24 BY: Rota Rosaschi
 25 Rota Rosaschi, M.P.A.
 26 Investigating Board Member

27 Dated: 4-19-2010

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

By: Dianna Hegeduis
 Dianna Hegeduis, Executive Director -
 Board Counsel

Dated: 4-19-2010

- 1 G. This agreement consists of five (5) pages and embodies the entire agreement
 2 between the Board and the physician. It may not be altered, amended or modified
 3 without the express consent of the parties, and any subsequent alteration,
 4 amendment, or modification shall be in writing and subject to approval by the Board.
 5 H. In consideration for the execution of this Agreement, Dr. Gloeb hereby releases and
 6 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
 7 Attorney General's Office (as counsel for the Board), and each of their
 8 representatives, investigators, and employees, in their individual and representative
 9 capacity (collectively the State of Nevada Agencies) from any and all manner of
 10 actions, causes of actions, suits, debts, judgments, executions, claims, and
 11 demands whatsoever known or unknown, in law and in equity, that he may have
 12 had, now has, may have had, or claim to have against any and all of the persons
 13 and entities named in this paragraph arising out of, or by reason of, the investigation
 14 of the allegations raised in this matter, and other matters relating thereto.
 15 I. Dr. Gloeb, for himself, his heirs, executors, administrators, successors and assigns,
 16 hereby indemnifies and holds harmless the State of Nevada, the State Board of
 17 Osteopathic Medicine, the Attorney General's office and each of their members,
 18 agents and employees in their individual and representative capacities against any
 19 and all claims, suits, demands, actions, debts, damages, costs, charges, and
 20 expenses, including court costs and attorney's fees against any persons or entities
 21 as well as all liability, losses, and damages of any nature whatsoever that the
 22 persons and entities named herein shall have or may sustain or suffer by reason of
 23 this investigation, this settlement or its administration.
 24 J. This document may be prepared in multiple counterparts. Each counterpart,
 25 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
 26 shall be deemed an original hereof if executed by each of the Parties hereto.
 27 K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and
 28 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 May, 2010.

DONALD J. GLOEB, D.O.

By: Donald J. Gloeb
 Osteopathic Physician

Dated: 4/03/2010

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

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

Dated: _____

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

By _____
 Dianna Hegeduis, Executive Director -
 Board Counsel

Dated: _____

HAWAII ALL-PURPOSE ACKNOWLEDGMENT H.R.S 502-41

State of Hawaii

County of Honolulu } ss.
First Judicial Circuit

Document Description: Settlement Agreement
and agreement.

Document Date: 4/3/10 No. Pages: 5

On this 3rd day of April, 2010
Date Month Year

before me personally appeared

(1) Donald J. Gibbs
Name of Signer

and

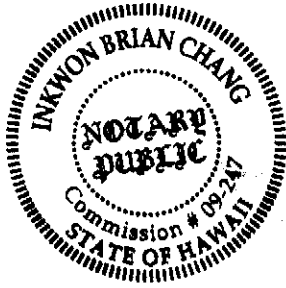
(2) _____
Name of Signer

to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

[Signature] 4/3/2010
Notary's Signature Date

Inkwon Brian Chang
Notary's Printed Name

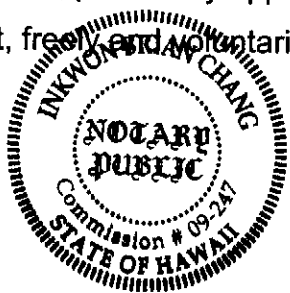
My commission expires: 06-28-2013



Place Notary Seal or Stamp Above

ACKNOWLEDGEMENT

On this the 3rd day of April, 2010, the said DONALD J. GLOEB, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.



[Signature]
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Gloeb fail to comply with any terms or conditions of this Agreement, Dr. Gloeb 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. Gloeb. Should this Agreement become null and void by Dr. Gloeb's failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Dr. Gloeb, 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. Daniel K. Curtis, President of the Board