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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE
IN THE MATTER OF THE COMPLAINT
AGAINST
RACHNA GUPTA, D.O., Lic. #1234
RESPONDENT.

NV STATE BOARD OF
OSTEOPATHIC MEDICINE
Case No.: MA0906060
AUG 04 2009
Filed: **FILED**
[Signature]
Executive Director

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Lisa Miller-Roche, Esq., Investigative Board Member ("Ms. Miller-Roche" 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 Rachna Gupta, D.O. ("Dr. Gupta") (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 Investigative Board Member Miller-Roche, ascertained certain information regarding prior lawsuits filed against Dr. Gupta. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensee.
- B. WHEREAS, the Investigative Board Member alleged that Dr. Gupta failed to timely report a lawsuit being filed regarding a patient ("C.L.") and failed to timely report that such matter was resolved. **Each** is a separation violation of NRS 633.527(1). Investigative Board Member has also alleged that Dr. Gupta failed to timely report the filing of a complaint by Patient "B.T." and such is a violation of NRS 633.527(1). It is noted that both case were mentioned on the appropriate license renewal applications and that Dr. Gupta did report the B.T. case, however, it was not within the 45 days mandated by statute.
- 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 settlement, award, judgment or other disposition; and (d) any sanctions imposed against the

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

10 D. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
11 person reasonable attorney's fees and costs that are incurred by the regulatory body
12 as part of its investigative, administrative and disciplinary proceedings against the
13 person if the regulatory body" either enters a final order or enters into a settlement
14 agreement.

15 E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
16 Board to file a formal disciplinary complaint.

17 F. WHEREAS, the parties understand that this Agreement will be signed by the
18 respective parties and will then be offered to the Board for the entire Board's approval
19 at the next Board meeting, with the recommendation of the Investigating Board
20 Member that this matter be settled. The Agreement shall not become effective until it
21 has been approved by a majority of the Board and endorsed by a representative
22 member of the Board.

23 G. WHEREAS, Dr. Gupta understands that the Board is free to accept or reject this
24 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
25 and a hearing scheduled on the same. The Board members who review this matter for
26 approval of this Agreement may be the same members who ultimately hear the
27 disciplinary complaint if this Agreement is not approved by the Board. Dr. Gupta hereby
28 agrees to waive any rights she 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. Gupta 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. Gupta 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. Gupta has elected to enter into this
Agreement to resolve this matter, and this matter only.

K. WHEREAS, Dr. Gupta 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. Gupta 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. Gupta, nor have any
promises been made other than those reflected in this Agreement. Dr. Gupta freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the

1 issues addressed herein. Dr. Gupta has executed this Agreement only after a careful
2 reading of it and a full understanding of all its terms.

- 3 M. WHEREAS, Dr. Gupta is fully aware of her rights to contest the charges pending
4 against her. These rights include: representation by an attorney at her own expense,
5 the right to a public hearing on any charges or allegations filed, the right to confront
6 and cross-examine witnesses called to testify against her, the right to present evidence
7 on her own behalf, the right to compulsory process to secure the attendance of such
8 witnesses, the right to testify on her own behalf, the right to receive written findings of
9 fact and conclusions of law supporting the decision on the merits of the complaint and
10 the right to obtain judicial review of the Board's decision. Should the Board accept this
11 Agreement, Dr. Gupta voluntarily waives these rights.
- 12 N. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
13 of the State of Nevada.
- 14 O. WHEREAS, this Agreement and Order contains a complete description of the
15 agreement between the parties and it supersedes any previous agreements between
16 the parties. All material representations, understandings and promises of the parties
17 are contained in this Agreement. Any modifications must be set forth in writing, signed
18 by all the parties, and approved by the Board.

11 **III. TERMS OF THE AGREEMENT**

- 12 A. Dr. Gupta acknowledges that if the failure to report allegations are true then each
13 act (failure to timely report the lawsuit) is a violation of NRS chapter 633 and
14 discipline would be permissible under Nevada law. In exchange for the Board not
15 pursuing an administrative action and Dr. Gupta not pursuing subsequent reviews
16 by the appropriate appellate Courts, the parties have agreed to resolve the current
17 matter, and only this matter. Dr. Gupta will henceforth insure that all lawsuits
18 involving herself will be timely and accurately reported to the Board, and the failure
19 to do so may result in the Board bringing a disciplinary action against the
20 osteopathic medical license issued by the Board to Dr. Gupta. If any lawsuit is not
21 reported to the Board, such will be in violation of this agreement as well as the
22 applicable statutes.
- 23 B. Dr. Gupta agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the fine
24 imposed for having violated NRS 633.527(1) for the failure to timely report the
25 filing/service of the two lawsuits and the settlement of the C.L. case. This sum
26 **includes** all fees and costs incurred by the Board up to and including the approval
27 of this settlement agreement by the Board at its next scheduled board meeting
28 pursuant to NAC 633.470(2)(b)(6). Such amount shall be payable in the amount of
\$500.00 per month beginning on the 15th day of August, 2009, and such amount
shall continue to be due thereafter on the 15th day of each month, until the full
amount of One Thousand Dollars (\$1,000.00) is paid.
- C. Should Dr. Gupta fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
manner as discussed herein, Dr. Gupta 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. Gupta, agrees to bear her own fees and costs, including the
fees and expenses of her 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 five (5) pages and embodies the entire
 7 agreement between the Board and the osteopathic physician. It may not be
 8 altered, 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. Gupta hereby releases
 12 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
 13 and the Nevada State Attorney General's Office (as the Board's counsel), and each
 14 of 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 she 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, including those noted in the
 21 administrative complaint on file herein, and other matters relating thereto.
 22 I. Dr. Gupta, for herself, her 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 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.

RACHNA GUPTA, D.O.

R Gupta
 Osteopathic Physician
 Dated: 7/23/09

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

BY: _____
 Lisa Miller-Roche, Esq.
 Investigating Board Member
 Dated: _____

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

By Dianna Hegeduis
 Dianna Hegeduis, Executive Director -
 Board Counsel
 Dated: 7-23-09

- 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 five (5) pages and embodies the entire
7 agreement between the Board and the osteopathic physician. It may not be
8 altered, 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. Gupta hereby releases
12 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
13 and the Nevada State Attorney General's Office (as the Board's counsel), and each
14 of 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 she 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, including those noted in the
21 administrative complaint on file herein, and other matters relating thereto.
- 22 I. Dr. Gupta, for herself, her 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 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.

RACHNA GUPTA, D.O.

Osteopathic Physician

Dated: _____

24 NEVADA STATE BOARD OF
25 OSTEOPATHIC MEDICINE

26 BY  _____

Lisa Miller-Roche, Esq.
Investigating Board Member

Dated: _____

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

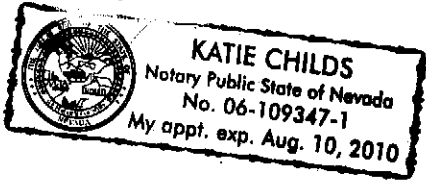
By _____

Dianna Hegeduis, Executive Director -
Board Counsel

Dated: _____

ACKNOWLEDGEMENT

1 On this the 23rd day of July, 2009, the said RACHNA GUPTA, D.O.,
2 personally appeared before me, a notary public, and signed the above document, freely and
3 voluntarily, under no duress.



4 
5 Notary Public

6
7 **ORDER OF THE BOARD**

8 **IT IS SO ORDERED.**

9
10 **IT IS FURTHER ORDERED** that should Dr. Gupta fail to comply with any terms or
11 conditions of this Agreement, Dr. Gupta will be in breach of this Agreement; and this
12 Agreement will be null and void. The Board may take whatever action it deems appropriate,
13 including but not limited to proceeding with the administrative action against Dr. Gupta.
14 Should this Agreement become null and void by Dr. Gupta's failure to comply with terms or
15 conditions of this Agreement, the Board may not only pursue an administrative action against
16 Dr. Gupta, but the Board may also seek the maximum fees, fines, and costs.

17 DATED this 4th day of AUGUST, 2009.

18
19 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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