

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

2 IN A MATTER INVOLVING

3 JON FREDRIC HARRELL, LIC. NO. 886,

4 RESPONDENT.

} Case No.: MA1003025

} Filed:

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

JUN 16 2010

5
6 **SETTLEMENT AGREEMENT AND ORDER**

FILED

7 **I. PARTIES**

8 This Settlement Agreement and Order ("Agreement and Order") is made by and
9 between Paul Kalekas, D.O., Investigative Board Member ("Dr. Kalekas" or "IBM") for the
10 Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Executive
11 Director/In House Counsel, Dianna Hegeduis, Esq., and Jon Fredric Harrell, D.O. ("Dr.
12 Harrell") (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, ascertained certain
- 16 information regarding disciplinary action taken by the licensing boards in various states
- 17 against Dr. Harrell. The information was ascertained as a result of the Board's staff
- 18 due diligence in investigating its applicants/licensees.
- 19 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
- 20 (1) State of California. On or about October 22, 2002, a 37-year old female died while
- 21 undergoing liposuction procedure. The malpractice case was settled in 2004 for the
- 22 total amount of \$650,000.00. The Osteopathic Medicine Board of the State of
- 23 California ("the California Board") investigated the matter and found that the physician
- 24 was grossly negligent in his treatment of the patient during the liposuction procedure.
- 25 In June 2005, the Board settled the matter with Dr. Harrell and ordered him to pay a
- 26 fine, complete an ethics class, and ordered that the physician complete an
- 27 assessment/clinical education program at the University of California, San Diego (the
- 28 "P.A.C.E. program"). In December, 2005, the California Board issued a
- reprimand/censure and issued its final order/decision. (2) State of Florida. In August,
- 2006, the State of Florida, Department of Health, filed an administrative complaint
- against Dr. Harrell alleging that Dr. Harrell violated Florida Statute 458.331(1)(b) by
- having a license to practice osteopathic medicine revoked, suspended or otherwise
- acted against, including a denial of licensure, by another jurisdiction. A settlement
- agreement was entered into in 2006, wherein the physician agreed to pay a fine of
- \$3,000, reimburse the board for costs/fees incurred of \$860.00, attend five (5) hours of
- continuing medical education classes, and a letter of concern was issued to the

1 physician. The Board of Osteopathic Medicine, Department of Health, State of Florida,
2 entered its final order in this matter on December 22, 2006. (3) State of Hawaii. The
3 Department of Commerce & Consumer Affairs, Medical Board ("Hawaii Medical
4 Board"), entered into a settlement agreement with Respondent Harrell on or about
5 October 2008, concerning his failure to timely report the California Board action and
6 discipline. The Respondent Physician paid a fine of \$5,000 and a public reprimand
7 was issued by the Hawaii Medical Board.

- 8 C. WHEREAS, the IBM in this case has alleged that the malpractice lawsuit and/or the
9 discipline by the State of California were not reported to the Nevada State Board of
10 Osteopathic Medicine in a timely fashion and pursuant to statute while Respondent
11 had a full and active Nevada license. The initial State of California action and the
12 medical malpractice case were, however, subsequently mentioned in Respondent's
13 renewal application for 2005.
- 14 D. WHEREAS, Respondent received his Nevada State Osteopathic Medicine License No.
15 886 in 1998. The Respondent renewed his license through the calendar year 2005;
16 however, beginning on January 1, 2006, his license went into "inactive" status pursuant
17 to NRS 633.491. NRS 633.491 states in part that a "licensee of the practice of
18 osteopathic medicine who wishes to have a license placed on inactive status must
19 provide the Board with an affidavit stating the date on which the licensee will cease the
20 practice of osteopathic medicine in Nevada and any other facts that the Board may
21 require." The physician may "renew" his Nevada Osteopathic medicine license by
22 providing the board with proof of continuing medical education, an affidavit that
23 information was not withheld from the board, and comply with all other statutory
24 requirements for renew.
- 25 E. WHEREAS, although Dr. Harrell's license was "inactive" commencing January 1, 2006,
26 such a status did not relieve the physician of timely reporting the disciplinary actions by
27 the States of Florida and Hawaii. Furthermore, NRS 633.509 states, in relevant part,
28 that the "expiration of a license by operation of law or by order or decision of the Board
or a court, or the voluntary surrender of a license by a licensee, does not deprive the
Board of jurisdiction to proceed with any investigation of, or action or disciplinary
proceeding against, the licensee or to render a decision suspending or revoking the
license."
- F. WHEREAS, 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 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 this section, **the Board may impose a fine of not more than
\$5,000 against the osteopathic physician for each violation, in addition to any other
fines or penalties permitted by law.**" (Emphasis added.) This statute was added to
the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this
statute, the Legislature intended to mandatorily require all osteopathic physicians to
report any of the four (4) events mentioned in the statute.

- G. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a person reasonable attorney's fees and costs that are incurred by the regulatory body as part of its investigative, administrative and disciplinary proceedings against the person if the regulatory body" either enters a final order or enters into a settlement agreement.
- H. WHEREAS, NRS 622.330 allows a state agency, board, or commission, such as the instant Board, to enter into a settlement agreement without the necessity of filing an administrative complaint.
- I. WHEREAS, NRS 633.511 sets forth the grounds upon which a disciplinary action may be commenced, and such grounds include, but are not limited to, malpractice or gross malpractice, which may be evidenced by a claim of malpractice settled against a practitioner, and professional incompetence.
- J. WHEREAS, NRS 633.651 sets forth possible disciplinary actions that may be ordered if a physician is found to have violated the provisions of NRS or NAC chapters 633, namely: (a) Place the person on probation for a specified period or until further order of the Board. (b) Administer to the person a public reprimand. (c) Limit the practice of the person to, or by the exclusion of, one or more specified branches of osteopathic medicine. (d) Suspend the license of the person to practice osteopathic medicine for a specified period or until further order of the Board. (e) Revoke the license of the person to practice osteopathic medicine. (f) Impose a fine not to exceed \$5,000 for each violation. (g) Require supervision of the practice of the person. (h) Require the person to perform community service without compensation. (i) Require the person to complete any training or educational requirements specified by the Board. (j) Require the person to participate in a program to correct alcohol or drug dependence or any other impairment; and (k) the order of the Board may contain any other terms, provisions or conditions as the Board deems proper and which are not inconsistent with law.
- K. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint and proceed with a formal disciplinary hearing.
- L. WHEREAS, the parties understand that this Agreement will be signed by the respective parties and will then be offered to the Board for the entire Board's approval at the next Board meeting, with the recommendation of the Investigating Board Member that this matter be settled. The Agreement shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.
- M. WHEREAS, Dr. Harrell understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed 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. Harrell 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.
- N. WHEREAS, Dr. Harrell 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.

- 1 O. WHEREAS, Dr. Harrell acknowledges that the Board had a reasonable basis to believe
2 that the statutes and/or regulations regulating the practice of Osteopathic Medicine in
3 the State of Nevada may have been violated.
- 4 P. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
5 and to save further costs and expenses, Dr. Harrell has elected to enter into this
6 Agreement to resolve this matter, and this matter only.
- 7 Q. WHEREAS, Dr. Harrell acknowledges that once accepted by the Board, this
8 Agreement and all associated documentation become a matter of public record (with
9 the exception of medical information related to the patient).
- 10 R. WHEREAS, Dr. Harrell has had the opportunity to obtain the advice from competent
11 counsel of his choice concerning the terms and conditions of this Agreement and the
12 execution thereof. No coercion has been exerted upon Dr. Harrell, nor have any
13 promises been made other than those reflected in this Agreement. Dr. Harrell freely
14 and voluntarily entered into this agreement, motivated only by a desire to resolve the
15 issues addressed herein. Dr. Harrell has executed this Agreement only after a careful
16 reading of it and a full understanding of all its terms.
- 17 S. WHEREAS, Dr. Harrell is fully aware of his rights to contest the charges pending
18 against him. These rights include: representation by an attorney at his own expense,
19 the right to a public hearing on any charges or allegations filed, the right to confront
20 and cross-examine witnesses called to testify against him, the right to present evidence
21 on his own behalf, the right to compulsory process to secure the attendance of such
22 witnesses, the right to testify on his own behalf, the right to receive written findings of
23 fact and conclusions of law supporting the decision on the merits of the complaint and
24 the right to obtain judicial review of the Board's decision. Should the Board accept this
25 Agreement, Dr. Harrell voluntarily waives these rights.
- 26 T. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
27 of the State of Nevada.
- 28 U. WHEREAS, this Agreement and Order contains a complete description of the
agreement between the parties and it supersedes any previous agreements between
the parties. All material representations, understandings and promises of the parties
are contained in this Agreement. Any modifications must be set forth in writing, signed
by all the parties, and approved by the Board.

III. TERMS OF THE AGREEMENT

- 21 A. Dr. Harrell acknowledges that the failure to report allegations are true, and each
22 such act (failure to timely report) is a violation of NRS chapter 633 for which
23 discipline is permissible under Nevada law, including the imposition of a fine not to
24 exceed \$5,000 per violation. In exchange for the Board not pursuing an
25 administrative action on the non-reporting allegations, and Dr. Harrell not pursuing
26 subsequent reviews by the appropriate appellate Courts, the parties have agreed to
27 resolve the current matter, and only this matter.
- 28 B. Dr. Harrell acknowledges that a medical malpractice case was settled with the
payment of funds on his behalf and that subsequent thereto, the California Board
did take disciplinary action against him for the alleged grossly negligent treatment of
the patient. Such is considered a ground for disciplinary action. The imposition of
a fine not to exceed \$5,000 per violation is permissible pursuant to Nevada law.
- C. Dr. Harrell agrees to pay the total sum of Three Thousand Dollars (\$3,000.00) as
the fine (1) imposed for having violated NRS 633.527(1) for the failure to timely
report the events of the medical malpractice lawsuit and the California disciplinary

1 action, as well as the disciplinary actions by the States of Florida and Hawaii, and
2 (2) imposed for the alleged grossly negligent treatment of the patient and/or
3 professional incompetence. This sum includes all fees and costs incurred by the
4 Board up to and including the approval of this settlement agreement by the Board
5 at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such
6 amount shall be payable in monthly installments of \$250.00 each with the first
7 payment being due on the 3rd day of MAY, 2010, and a like
8 payment being due on the 5th day of each month thereafter until said amount is
9 paid in full. *ck # 2862*

- 10 D. Should Dr. Harrell fail to satisfy and pay the indebtedness of \$3,000.00 in a timely
11 manner as discussed herein, Dr. Harrell understands and agrees that he will be
12 considered in default of this Agreement, and this agreement will be null and void,
13 with the Respondent receiving credit for payments made to date. The Board may
14 take whatever action it deems appropriate, including but not limited to reducing the
15 balance to judgment pursuant to NRS chapter 353C.
- 16 E. The Respondent, Dr. Harrell, agrees to bear his own fees and costs, including the
17 fees and expenses of his own attorney(s) if applicable.
- 18 F. This Agreement and Order shall inure to the benefit of and be binding upon each of
19 the parties hereto and their respective heirs, personal representatives, assigns and
20 successors in interest of each party.
- 21 G. This Agreement and Order shall be construed in accordance with the laws of the
22 State of Nevada.
- 23 H. This settlement agreement consists of seven (7) pages and embodies the entire
24 agreement between the Board and the osteopathic physician. It may not be
25 altered, amended or modified without the express consent of the parties, and any
26 subsequent alteration, amendment, or modification shall be in writing and subject to
27 approval by the Board.
- 28 I. In consideration for the execution of this Agreement, Dr. Harrell hereby releases
and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
and the Nevada State 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 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, and other matters relating
thereto.
- J. Dr. Harrell, 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 settlement or
its administration.

- 1 K. This document may be prepared in multiple counterparts. Each counterpart,
2 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
3 shall be deemed an original hereof if executed by each of the Parties hereto.
4 L. LASTLY, by executing this agreement, Respondent Physician hereby expressly,
5 knowingly, and intentionally waive the 21-working days notice requirement pursuant
6 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
7 the agenda for the Board's approval in the month of June,
8 2010.

9
10 JON FREDRIC HARRELL, D.O.

11 By: [Signature]
12 Osteopathic Physician

13 Dated: 4.25.10

14 NEVADA STATE BOARD OF
15 OSTEOPATHIC MEDICINE

16 BY: [Signature]
17 Paul Kalekas, D.O.
18 Investigating Board Member

19 Dated: 6/3/10

20 NEVADA STATE BOARD OF
21 OSTEOPATHIC MEDICINE

22 BY: [Signature]
23 Dianna Hegeduis, Executive Director -
24 Board Counsel

25 Dated: 6-3-10

26 **ACKNOWLEDGEMENT**

27 On this the _____ day of _____, 2010, the said JON FREDRIC
28 HARRELL, D.O., personally appeared before me, a notary public, and signed the above
document, freely and voluntarily, under no duress.

Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Harrell fail to comply with any terms or
conditions of this Agreement, Dr. Harrell will be in breach of this Agreement; and this

K. 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.
L. LASTLY, by executing this agreement, Respondent Physician hereby expressly, knowingly, and intentionally waive the 21-working days notice requirement pursuant to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on the record of the Board of Directors of June, 2010.

JOY HARRELL, D.O.

By: [Signature]
Osteopathic Physician

2010 5-7-10

OSTEOPATHIC MEDICINE

OSTEOPATHIC MEDICINE

BY: _____
D. M. HARRIS, D.O.

By _____
D. M. HARRIS, D.O.

ACKNOWLEDGEMENT

On this the 7 day of May, 2010, the said JOY HARRELL HARRELL, D.O. personally appeared before me, a Notary Public, and signed the above document, freely and voluntarily, under no duress.



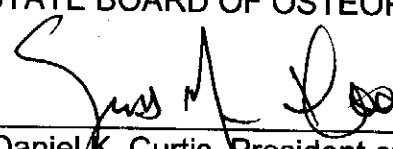
[Signature]
Notary Public

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive, Suite 180 Henderson, NV 89011
(702) 52-2147

1 Agreement will be null and void. The Board may take whatever action it deems appropriate,
2 including but not limited to proceeding with the administrative action against Dr. Harrell.
3 Should this Agreement become null and void by Dr. Harrell's failure to comply with terms or
4 conditions of this Agreement, the Board may not only pursue an administrative action against
5 Dr. Harrell, but the Board may also seek the maximum fees, fines, and costs.

6 DATED this 15 day of June, 2010.

7 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

8
9 BY: 
10 Dr. Daniel K. Curtis, President of the
11 Board FOR

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

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

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING
JON FREDRIC HARRELL, LIC. NO. 886,
RESPONDENT.

Case No.: MA100902 STATE BOARD OF
OSTEOPATHIC MEDICINE

Filed:

JUN 16 2010

FILED

WRITTEN NOTICE OF ENTRY OF SETTLEMENT AGREEMENT
& ORDER RE: SAME

PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has approved the settlement agreement in the above-referenced matter; and a copy of the agreement with order is attached.

DATED THIS 16 day of June, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By

Dianna Hegeduis

Dianna Hegeduis, Executive Director -
Board Counsel

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

CERTIFICATE OF MAILING

I hereby certify that on the 16 day of June, 2010, I served a copy of the foregoing notice, with attached Settlement Agreement/Order, upon the respective parties to this matter by depositing a true copy thereof in the U.S. mail, addressed to them at their last known address on file with the Board, postage thereon prepaid.

Michelle Romo

An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE