BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

JON FREDRIC HARRELL, LIC. NO. 886,

RESPONDENT.

Case No.: MA1003025

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

Filed: JUN 16 2010

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Paul Kalekas, D.O., Investigative Board Member ("Dr. Kalekas" or "IBM") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Executive Director/In House Counsel, Dianna Hegeduis, Esq., and Jon Fredric Harrell, D.O. ("Dr. Harrell") (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 the Investigative Board Member, ascertained certain information regarding disciplinary action taken by the licensing boards in various states against Dr. Harrell. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensees.

B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:

1. State of California. On or about October 22, 2002, a 37-year-old female died while undergoing liposuction procedure. The malpractice case was settled in 2004 for the total amount of $650,000.00. The Osteopathic Medicine Board of the State of California ("the California Board") investigated the matter and found that the physician was grossly negligent in his treatment of the patient during the liposuction procedure. In June 2005, the Board settled the matter with Dr. Harrell and ordered him to pay a fine, complete an ethics class, and ordered that the physician complete an assessment/clinical education program at the University of California, San Diego (the "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
physician. The Board of Osteopathic Medicine, Department of Health, State of Florida, entered its final order in this matter on December 22, 2006. (3) State of Hawaii. The Department of Commerce & Consumer Affairs, Medical Board ("Hawaii Medical Board"), entered into a settlement agreement with Respondent Harrell on or about October 2008, concerning his failure to timely report the California Board action and discipline. The Respondent Physician paid a fine of $5,000 and a public reprimand was issued by the Hawaii Medical Board.

C. WHEREAS, the IBM in this case has alleged that the malpractice lawsuit and/or the discipline by the State of California were not reported to the Nevada State Board of Osteopathic Medicine in a timely fashion and pursuant to statute while Respondent had a full and active Nevada license. The initial State of California action and the medical malpractice case were, however, subsequently mentioned in Respondent’s renewal application for 2005.

D. WHEREAS, Respondent received his Nevada State Osteopathic Medicine License No. 886 in 1998. The Respondent renewed his license through the calendar year 2005; however, beginning on January 1, 2006, his license went into "inactive" status pursuant to NRS 633.491. NRS 633.491 states in part that a "licensee of the practice of osteopathic medicine who wishes to have a license placed on inactive status must provide the Board with an affidavit stating the date on which the licensee will cease the practice of osteopathic medicine in Nevada and any other facts that the Board may require." The physician may "renew" his Nevada Osteopathic medicine license by providing the board with proof of continuing medical education, an affidavit that information was not withheld from the board, and comply with all other statutory requirements for renew.

E. WHEREAS, although Dr. Harrell’s license was "inactive" commencing January 1, 2006, such a status did not relieve the physician of timely reporting the disciplinary actions by the States of Florida and Hawaii. Furthermore, NRS 633.509 states, in relevant part, 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.
O. WHEREAS, Dr. Harrell 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.

P. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding and to save further costs and expenses, Dr. Harrell has elected to enter into this Agreement to resolve this matter, and this matter only.

Q. WHEREAS, Dr. Harrell 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).

R. WHEREAS, Dr. Harrell 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. Harrell, nor have any promises been made other than those reflected in this Agreement. Dr. Harrell freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Harrell has executed this Agreement only after a careful reading of it and a full understanding of all its terms.

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

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

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

A. Dr. Harrell acknowledges that the failure to report allegations are true, and each such act (failure to timely report) is a violation of NRS chapter 633 for which discipline is permissible under Nevada law, including the imposition of a fine not to exceed $5,000 per violation. In exchange for the Board not pursuing an administrative action on the non-reporting allegations, and Dr. Harrell not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matter, and only this matter.

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
action, as well as the disciplinary actions by the States of Florida and Hawaii, and
(2) imposed for the alleged grossly negligent treatment of the patient and/or
professional incompetence. 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 ___ day of ___ , 2010, and a like
payment being due on the ___ day of each month thereafter until said amount is
paid in full.

D. Should Dr. Harrell fail to satisfy and pay the indebtedness of $3,000.00 in a timely
manner as discussed herein, Dr. Harrell 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.

E. The Respondent, Dr. Harrell, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s) if applicable.

F. 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.

G. This Agreement and Order shall be construed in accordance with the laws of the
State of Nevada.

H. This settlement agreement consists of seven (7) 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.

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.
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 agenda for the Board’s approval in the month of June 2010.

JON FREDRIC HARRELL, D.O.

By: [Signature] Osteopathic Physician

Dated: 4.25.10

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Paul Kalekas, D.O.
Investigating Board Member

Dated: 6.3.10

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

Dianna Hegeduis, Executive Director - Board Counsel

Dated: 6-3-10

ACKNOWLEDGEMENT

On this the _____ day of ____________________, 2010, the said JON FREDRIC 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 4th day of June 2010.

John Harrell, D.O.

By: ____________________________

[Signature]

Osteopathic Medicine

Osteopathic Medicine

By: ____________________________

[Signature]

By: ____________________________

[Signature]

ACKNOWLEDGEMENT

On this the 4th day of May 2010, the said JOHN HARRELL, D.O. personally appeared before me, a notary public, and signed the foregoing document, freely and voluntarily, under no duress.

CARRIE L. WALTERS
Notary Public

My Comm. Expires Sep 11, 2010
Commission # 00 835385
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. Harrell. Should this Agreement become null and void by Dr. Harrell’s failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Dr. Harrell, but the Board may also seek the maximum fees, fines, and costs.

DATED this ___ day of ___ , 2010.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY: 

Dr. Daniel K. Curtis, President of the Board
BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

JON FREDRIC HARRELL, LIC. NO. 886,
RESPONDENT.

Case No.: MA100302

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, 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.

An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE