

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

MICHAEL HARTSTEIN, D.O., LIC. #604,

Respondent.

CASE NO. MA 1005005

NV STATE BOARD OF OSTEOPATHIC MEDICINE

SEP 08 2010

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Paul Edwards, Esq., Investigative Board Member ("Mr. Edwards" 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 Michael Hartstein, D.O. ("Dr. Hartstein") (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 litigation filed against Dr. Hartstein. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licenseses.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
 - (1) Re: patient "R.W." Suit was filed against the physician in California in February 2006 and settled in November 2009. The IBM has alleged that the physician did not timely report the commencement or settlement of the lawsuit to the Board, i.e., within 45 days of the event. Additionally, the physician responded "no" to the questions about medical malpractice cases in the 2007 and 2010 renewal applications when the proper responses should have been "yes" because of the "R.W." lawsuit. The IBM has alleged these are violations of NRS chapter 633 as discussed hereinafter.
- C. WHEREAS, NRS 633.527(1) states that a licensed "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**

1 **\$5,000** against the osteopathic physician **for each violation, in addition to any other**
2 **finest or penalties permitted by law.**” (Emphasis added.) This statute was added to
3 the law in 2003. By the use of the word “shall” by the Nevada State Legislature in this
4 statute, the Legislature intended to mandatorily require all osteopathic physicians to
5 report any of the four (4) events mentioned in the statute.

- 6 D. NRS 633.131(1) defines “unprofessional conduct” as including “willfully making a false
7 . . . statement . . . in applying for a license to practice osteopathic medicine or in
8 applying for renewal of a license to practice osteopathic medicine.” Pursuant to NRS
9 633.511(1), “unprofessional conduct” is a ground for initiating a formal disciplinary
10 proceeding; and such discipline may include public reprimands, the suspension or
11 revocation of the license to practice osteopathic medicine in the State of Nevada, and
12 an assessment of a fine not to exceed \$5,000 per violation.
- 13 E. WHEREAS, NRS 622.400(1) states that a “regulatory body [such as this Board] may
14 recover from a person reasonable attorney’s fees and costs that are incurred by the
15 regulatory body as part of its investigative, administrative and disciplinary proceedings
16 against the person if the regulatory body” either enters a final order or enters into a
17 settlement agreement.
- 18 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
19 Board to file a formal disciplinary complaint.
- 20 G. WHEREAS, the parties understand that this Agreement will be signed by the
21 respective parties and will then be offered to the Board for the entire Board’s approval
22 at the next Board meeting, with the recommendation of the Investigating Board
23 Member that this matter be settled. The Agreement shall not become effective until it
24 has been approved by a majority of the Board and endorsed by a representative
25 member of the Board.
- 26 H. WHEREAS, Dr. Hartstein understands that the Board is free to accept or reject this
27 Agreement and, if rejected by the Board, a formal disciplinary complaint may 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. Hartstein
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. Hartstein 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. Hartstein 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. Hartstein has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Hartstein 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).
- M. WHEREAS, Dr. Hartstein 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. Hartstein, nor have any

promises been made other than those reflected in this Agreement. Dr. Hartstein freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Hartstein has executed this Agreement only after a careful reading of it and a full understanding of all its terms.

N. WHEREAS, Dr. Hartstein 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. Hartstein voluntarily waives these rights.

O. 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

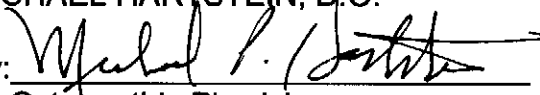
A. Dr. Hartstein acknowledges that the failure to report allegations are true, and each such act is a violation of NRS chapter 633 for which discipline is permissible under Nevada law. In exchange for the Board not pursuing an administrative action on the non-reporting allegations or the inaccurate renewal applications/unprofessional conduct allegations, and Dr. Hartstein not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matter, and only this matter. Dr. Hartstein 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. Hartstein. 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 SOLELY TO RESOLVE THE NON-REPORTING ISSUE.** The Board waives all other claims and/or allegations

B. Dr. Hartstein agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the fine imposed for having violated NRS chapter 633. 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 15 day of July, 2010, and a like payment being due on the 15 day of each month thereafter until said amount is paid in full. *pd full ck # 3888*

C. Should Dr. Hartstein fail to satisfy and pay the indebtedness of \$1,000.00 in a timely manner as discussed herein, Dr. Hartstein 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

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- 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. Hartstein, 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 in accordance with the laws of the State of Nevada.
 - G. This settlement agreement consists of five (5) 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.
 - H. In consideration for the execution of this Agreement, Dr. Hartstein hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada 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 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 herein, and other matters relating thereto.
 - I. Dr. Hartstein, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the State Board of Osteopathic Medicine, the 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.
 - 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.
 - K. LASTLY, by executing this agreement, 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 Sept, 2010 and that upon payment of the fine mentioned above, an order of fulfillment will be scheduled for approval by the Board in the month of Oct, 2010.

MICHAEL HARTSTEIN, D.O.
By: 
Osteopathic Physician
Dated: 29 July 10

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: _____
4 Paul Edwards, Esq.
Investigating Board Member

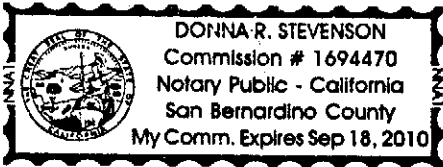
By _____
Dianna Hegeduis, Executive Director -
Board Counsel

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6 Dated: _____

Dated: _____

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8 **ACKNOWLEDGEMENT**

9 On this the 9th day of July, 2010, the said MICHAEL
10 HARTSTEIN, D.O., personally appeared before me, a notary public, and signed the above
document, freely and voluntarily, under no duress.



11 *Donna R. Stevenson*
12 _____
Notary Public

13
14 **ORDER OF THE BOARD**

15 **IT IS SO ORDERED.**

16 **IT IS FURTHER ORDERED** that should Dr. Hartstein fail to comply with any terms or
17 conditions of this Agreement, Dr. Hartstein will be in breach of this Agreement; and this
18 Agreement will be null and void. The Board may take whatever action it deems appropriate,
19 including but not limited to proceeding with the administrative action against Dr. Hartstein.
20 Should this Agreement become null and void by Dr. Hartstein's failure to comply with terms or
21 conditions of this Agreement, the Board may not only pursue an administrative action against
22 Dr. Hartstein, but the Board may also seek the maximum fees, fines, and costs.
23

24 DATED this _____ day of _____, 2010.

25
26 NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

27
28 BY: _____
Dr. Daniel K. Curtis, President of the Board

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

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: *Paul Edwards*
4 Paul Edwards, Esq.
Investigating Board Member

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

5 Dated: *8/3/10*

6 Dated: *8-26-10*

7
8 **ACKNOWLEDGEMENT**

9 On this the _____ day of _____, 2010, the said MICHAEL
10 HARTSTEIN, D.O., personally appeared before me, a notary public, and signed the above
11 document, freely and voluntarily, under no duress.

12 _____
13 Notary Public
14

15 **ORDER OF THE BOARD**

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18 conditions of this Agreement, Dr. Hartstein will be in breach of this Agreement; and this
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20 including but not limited to proceeding with the administrative action against Dr. Hartstein.
21 Should this Agreement become null and void by Dr. Hartstein's failure to comply with terms or
22 conditions of this Agreement, the Board may not only pursue an administrative action against
23 Dr. Hartstein, but the Board may also seek the maximum fees, fines, and costs.

24 DATED this *17th* day of *September*, 2010.

26 NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

27 BY: *Daniel K. Curtis*
28 Dr. Daniel K. Curtis, President of the Board

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)
MICHAEL HARTSTEIN, D.O., LIC. #604,)
Respondent.)

CASE NO. MA 1005005)
NEVADA STATE BOARD OF)
OSTEOPATHIC MEDICINE)

SEP 08 2010

FILED

WRITTEN NOTICE OF ENTRY OF ORDER APPROVING
SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE that an order was entered regarding the Settlement Agreement in the above-referenced matter and a copy of the same is attached hereto.

DATED THIS 8th day of September, 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 8th day of September, 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.

Mable Kenna
An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE

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