

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING

AYAD AGHA, D.O., Lic. # 1462

Respondent.

CASE NO. MA 1004009

NV STATE BOARD OF OSTEOPATHIC MEDICINE

AUG 04 2010

FILED

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" 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 Ayad Agha, D.O. ("Dr. Agha") (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. Agha. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licenses.
- B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
 - (1) Re: patient "T.C." Suit was filed against the physician in Arizona in September 2009 and is believed to be still pending. The IBM has alleged that the physician did not timely report the commencement of the lawsuit to the Board, i.e., within 45 days of either event. Additionally, the physician responded "no" to the questions about medical malpractice cases in the 2010 renewal application, submitted in December 2009; and the proper response should have been "yes" because of the "T.C." 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 \$5,000 against the osteopathic physician for each violation, in addition to any other fines or

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1 **fin** **es** **o** **r** **pen** **al** **t** **i** **e** **s** **p** **e** **r** **m** **i** **t** **t** **e** **d** **by** **l** **a** **w** **.** (Emphasis added.) This statute was added to
2 the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this
3 statute, the Legislature intended to mandatorily require all osteopathic physicians to
4 report any of the four (4) events mentioned in the statute.

5 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
6 . . . statement . . . in applying for a license to practice osteopathic medicine or in applying
7 for renewal of a license to practice osteopathic medicine." Pursuant to NRS 633.511(1)
8 "unprofessional conduct" is a ground for initiating a formal disciplinary proceeding; and
9 such discipline may include public reprimands, the suspension or revocation of the
10 license to practice osteopathic medicine in the State of Nevada, and an assessment of
11 a fine not to exceed \$5,000 per violation.

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

17 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board
18 to file a formal disciplinary complaint.

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

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

L. WHEREAS, Dr. Agha 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. Agha 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. Agha, nor have any
promises been made other than those reflected in this Agreement. Dr. Agha freely and

- 1 voluntarily entered into this agreement, motivated only by a desire to resolve the issues
2 addressed herein. Dr. Agha has executed this Agreement only after a careful reading of
3 it and a full understanding of all its terms.
- 4 N. WHEREAS, Dr. Agha is fully aware of his rights to contest the charges pending against
5 him. These rights include: representation by an attorney at his own expense, the right to
6 a public hearing on any charges or allegations filed, the right to confront and cross-
7 examine witnesses called to testify against him, the right to present evidence on his own
8 behalf, the right to compulsory process to secure the attendance of such witnesses, the
9 right to testify on his own behalf, the right to receive written findings of fact and
10 conclusions of law supporting the decision on the merits of the complaint and the right to
11 obtain judicial review of the Board's decision. Should the Board accept this Agreement,
12 Dr. Agha voluntarily waives these rights.
- 13 O. WHEREAS, this Agreement and Order contains a complete description of the
14 agreement between the parties and it supersedes any previous agreements between
15 the parties. All material representations, understandings and promises of the parties are
16 contained in this Agreement. Any modifications must be set forth in writing, signed by
17 all the parties, and approved by the Board.

18 III. TERMS OF THE AGREEMENT

- 19 A. Dr. Agha acknowledges that the failure to report allegations are true, and each such
20 act is a violation of NRS chapter 633 for which discipline is permissible under
21 Nevada law. In exchange for the Board not pursuing an administrative action on the
22 non-reporting allegations or the inaccurate renewal application allegation, and Dr.
23 Agha not pursuing subsequent reviews by the appropriate appellate Courts, the
24 parties have agreed to resolve the current matter, and only this matter. Dr. Agha will
25 henceforth insure that all lawsuits involving him will be timely and accurately reported
26 to the Board, and the failure to do so may result in the Board bringing a disciplinary
27 action against the osteopathic medical license issued by the Board to Dr. Agha. If
28 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. ALL OTHER
ALLEGATIONS HAVE BEEN WAIVED BY THE BOARD.**
- B. Dr. Agha agrees to pay the sum of Seven Hundred, Fifty Dollars (\$750.00) 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 _____ day of _____
2010, and continuing thereafter until paid in full. *pd full ck 1163*
- C. Should Dr. Agha fail to satisfy and pay the indebtedness of \$750.00 in a timely
manner as discussed herein, Dr. Agha 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.

- 1 D. The Respondent, Dr. Agha, agrees to bear his own fees and costs, including the
2 fees and expenses of his own attorney(s) if applicable.
3 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
4 the parties hereto and their respective heirs, personal representatives, assigns and
5 successors in interest of each party.
6 F. This Agreement and Order shall be construed in accordance with the laws of the
7 State of Nevada.
8 G. This settlement agreement consists of five (5) pages and embodies the entire
9 agreement between the Board and the osteopathic physician. It may not be altered,
10 amended or modified without the express consent of the parties, and any
11 subsequent alteration, amendment, or modification shall be in writing and subject to
12 approval by the Board.
13 H. In consideration for the execution of this Agreement, Dr. Agha hereby releases and
14 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
15 Attorney General's Office, and each of their representatives, investigators, and
16 employees, in their individual and representative capacity (collectively the State of
17 Nevada Agencies) from any and all manner of actions, causes of actions, suits,
18 debts, judgments, executions, claims, and demands whatsoever known or unknown,
19 in law and in equity, that he may have had, now has, may have had, or claim to have
20 against any and all of the persons and entities named in this paragraph arising out
21 of, or by reason of, the investigation of the allegations raised in this matter, and other
22 matters relating thereto.
23 I. Dr. Agha, for himself, his heirs, executors, administrators, successors and assigns,
24 hereby indemnifies and holds harmless the State of Nevada, the State Board of
25 Osteopathic Medicine, the Attorney General's office and each of their members,
26 agents and employees in their individual and representative capacities against any
27 and all claims, suits, demands, actions, debts, damages, costs, charges, and
28 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 Aug, 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 Sept, 2010.

AYAD AGHA, D.O.

By: 

Osteopathic Physician

AYAD AGHA

Dated: 7-16-10

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: [Signature]
4 Daniel K. Curtis, D.O.
Investigating Board Member

By [Signature]
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: 8-3-10

Dated: 7-21-2010

7 **ACKNOWLEDGEMENT**

8 On this the 16 day of July, 2010, the said AYAD AGHA, D.O.,
9 personally appeared before me, a notary public, and signed the above document, freely and
10 voluntarily, under no duress.



11 [Signature]
12 Notary Public

14 **ORDER OF THE BOARD**

15 **IT IS SO ORDERED.**

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

24 DATED this 3rd day of August, 2010.

25 NEVADA STATE BOARD OF
26 OSTEOPATHIC MEDICINE

27 BY: [Signature]
28 Dr. C. Dean Milne, Vice-President of the Board

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AUG 04 2010

WRITTEN NOTICE OF ENTRY OF ORDER

FILED

PLEASE TAKE NOTICE that an order, approving the settlement agreement in this matter, was entered by the Board; and a file-stamped copy of the same is attached hereto.

DATED THIS 4th day of August, 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 4th day of August, 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 Komo

An employee of the NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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