

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

2 IN A MATTER INVOLVING)

) CASE NO. MA 1004015

3 DALE F. ANDRES, D.O., LIC. #1014)

4 Respondent.)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

5 **SETTLEMENT AGREEMENT AND ORDER**

AUG 04 2010

FILED

6 **I. PARTIES**

7 This Settlement Agreement and Order ("Agreement and Order") is made by and
8 between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative
9 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through
10 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Dale Andres, D.O. ("Dr.
11 Andres") (collectively referred to as "the Parties").

12 **II. RECITALS**

13 As a preamble to this Agreement, the Parties agree to the following:

- 14 A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain
- 15 information regarding litigation filed against Dr. Andres. The information was
- 16 ascertained as a result of the Board's staff due diligence in investigating its
- 17 applicants/licensees.
- 18 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
- 19 (1) Re: patient "T.K." Suit was filed in Iowa, stemming from medical services rendered
- 20 in 2005. Physician diligently reported the settlement of the matter in a timely fashion in
- 21 May 2010. Unfortunately, the Physician failed to notify this Board within 45 days after
- 22 service/filing of the medical malpractice suit. Additionally, physician responded "no" to
- 23 the question on the renewal application(s) subsequent to the service/filing of the
- 24 medical malpractice suit regarding the existence of medical malpractice cases, and the
- 25 IBM alleges that the correct response should have been "yes." The IBM has alleged
- 26 such acts violate NRS chapter 633 as discussed hereinafter.
- 27 C. WHEREAS, the Physician appears to have alleged that he was unaware of the 45-day
- 28 reporting requirement.
- D. 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

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

- 10 E. WHEREAS, NRS 633.131(1) defines "unprofessional conduct" as including "willfully
11 making a false . . . statement . . . in applying for a license to practice osteopathic
12 medicine or in applying for renewal of a license to practice osteopathic medicine."
13 F. WHEREAS, and pursuant to NRS 633.511(1), "unprofessional conduct" is a ground for
14 initiating a formal disciplinary proceeding; and such discipline may include public
15 reprimands, the suspension or revocation of the license to practice osteopathic
16 medicine in the State of Nevada, and a fine not to exceed \$5,000 per violation.
17 G. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
18 recover from a person reasonable attorney's fees and costs that are incurred by the
19 regulatory body as part of its investigative, administrative and disciplinary proceedings
20 against the person if the regulatory body" either enters a final order or enters into a
21 settlement agreement.
22 H. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
23 Board to file a formal disciplinary complaint.
24 I. WHEREAS, the parties understand that this Agreement will be signed by the
25 respective parties and will then be offered to the Board for the entire Board's approval
26 at the next Board meeting, with the recommendation of the Investigating Board
27 Member that this matter be settled. The Agreement shall not become effective until it
28 has been approved by a majority of the Board and endorsed by a representative
member of the Board.
J. WHEREAS, Dr. Andres 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. Andres
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.
K. WHEREAS, Dr. Andres 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.
L. WHEREAS, Dr. Andres 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.
M. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
and to save further costs and expenses, Dr. Andres has elected to enter into this
Agreement to resolve this matter, and this matter only.
N. WHEREAS, Dr. Andres acknowledges that once accepted by the Board, this
Agreement and all associated documentation become a matter of public record (with

- 1 the exception of medical information related to the patient).
- 2 O. WHEREAS, Dr. Andres has had the opportunity to obtain the advice from competent
- 3 counsel of his choice concerning the terms and conditions of this Agreement and the
- 4 execution thereof. No coercion has been exerted upon Dr. Andres, nor have any
- 5 promises been made other than those reflected in this Agreement. Dr. Andres freely
- 6 and voluntarily entered into this agreement, motivated only by a desire to resolve the
- 7 issues addressed herein. Dr. Andres has executed this Agreement only after a careful
- 8 reading of it and a full understanding of all its terms.
- 9 P. WHEREAS, Dr. Andres is fully aware of his rights to contest the charges pending
- 10 against him. These rights include: representation by an attorney at his own expense,
- 11 the right to a public hearing on any charges or allegations filed, the right to confront
- 12 and cross-examine witnesses called to testify against him, the right to present evidence
- 13 on his own behalf, the right to compulsory process to secure the attendance of such
- 14 witnesses, the right to testify on his own behalf, the right to receive written findings of
- 15 fact and conclusions of law supporting the decision on the merits of the complaint and
- 16 the right to obtain judicial review of the Board's decision. Should the Board accept this
- 17 Agreement, Dr. Andres voluntarily waives these rights.
- 18 Q. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
- 19 of the State of Nevada.
- 20 R. WHEREAS, this Agreement and Order contains a complete description of the
- 21 agreement between the parties and it supersedes any previous agreements between
- 22 the parties. All material representations, understandings and promises of the parties
- 23 are contained in this Agreement. Any modifications must be set forth in writing, signed
- 24 by all the parties, and approved by the Board.

25 III. TERMS OF THE AGREEMENT

- 26 A. Dr. Andres acknowledges that the failure to report allegations are true but
- 27 inadvertent, and each such act (failure to timely report) are violations of NRS
- 28 chapter 633 for which discipline is permissible under Nevada law. In exchange for
- the Board not pursuing an administrative action on either the non-reporting
- allegations or the inaccurate renewal application(s) regarding patient "T.K.," and Dr.
- Andres not pursuing subsequent reviews by the appropriate appellate Courts, the
- parties have agreed to resolve all aspects of the current matter involving patient
- "T.K.," and only this matter. Dr. Andres 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. Andres. 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 any claims or
- allegations with respect to the alleged inaccurate/incorrect renewal application(s).
- B. Dr. Andres agrees to pay the sum of Five Hundred Dollars (\$500.00) 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

pd full


1 633.470(2)(b)(6). Such amount shall be payable at the time of the execution of this
2 agreement.

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

DALE F. ANDRES, D.O.

BRICK GENTRY LAW OFFICES

By: 
Osteopathic Physician

By: 
Paul Drey, Esq.
Attorney for Physician

Dated: 4/14/10

Dated: 6/16/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

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

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

Dated: 6.21.10

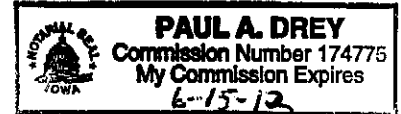
Dated: 7-21-10

ACKNOWLEDGEMENT

On this the 16th day of June, 2010, the said DALE ANDRES,
D.O., personally appeared before me, a notary public, and signed the above document, freely
and voluntarily, under no duress.

[Signature]
Notary Public JA-

ORDER OF THE BOARD



IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Andres fail to comply with any terms or
conditions of this Agreement, Dr. Andres will be in breach of this Agreement; and this
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. Andres.
Should this Agreement become null and void by Dr. Andres's failure to comply with terms or
conditions of this Agreement, the Board may not only pursue an administrative action against
Dr. Andres, but the Board may also seek the maximum fees, fines, and costs.

DATED this 30th day of August, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

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

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) CASE NO. MA 1004015

DALE F. ANDRES, D.O., LIC. #1014)

Respondent.)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

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

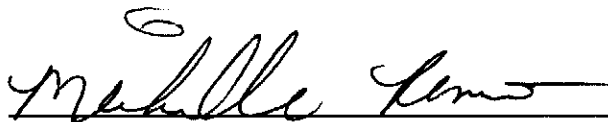
Dianna Hegeduis, Executive Director
Board Counsel

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. A copy was also sent to:

Paul Drey, Esq.
Brick Gentry Law Offices
6701 Westown Parkway, Suite 100
West Des Moines, Iowa 50266
Attorneys for Respondent



An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE