

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER INVOLVING

SON BUI, D.O.,
License No. 930

RESPONDENT.

Case No.: MA1001003

Filed: **NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

APR 07 2010

SETTLEMENT AGREEMENT AND ORDER

FILED

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 Son Bui, D.O. ("Dr. Bui") and his attorney David J. Mortensen, Esq. of the firm Alverson, Taylor, Mortensen & Sanders (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. Bui. 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 "SC." Suit was filed and served on Respondent on or about January 19, 2005; yet notification of the same was not provided to the Board until March 11, 2005. The matter settled on or about March 26, 2008, but the Board was not notified until June 2, 2008. The settlement of this lawsuit was not disclosed in Respondent's renewal application for 2009 submitted in October 2008.
 - (2) Re: Patient "T.S." The matter was settled, without the filing of a lawsuit, on or about January 16, 2009. Respondent failed to timely report the settlement of the matter, and Respondent also failed to properly respond to the questions in the renewal application for 2010, submitted in 2009. The IBM has alleged all such failures are violations of NRS chapter 633 as discussed hereinafter.

- 1 C. NRS 633.527(1) states that a licensed “osteopathic physician **shall report** to the
2 Board: (a) any action for malpractice against the osteopathic physician not later than 45
3 days after the osteopathic physician receives service of a summons and complaint for
4 the action; (b) any claim for malpractice against the osteopathic physician that is
5 submitted to arbitration or mediation not later than 45 days after the claim is submitted
6 to arbitration or mediation; (c) any settlement, award, judgment or other disposition or
7 any action or claim described in paragraphs (a) or (b) not later than 45 days after the
8 settlement, award, judgment or other disposition; and (d) any sanctions imposed
9 against the osteopathic physician that are reportable to the National Practitioner Data
10 Bank not later than 45 days after the sanctions are imposed. NRS 633.527(2) states
11 that should the Board find “that an osteopathic physician has violated any provision of
12 this section, **the Board may impose a fine of not more than \$5,000** against the
13 osteopathic physician **for each violation, in addition to any other fines or penalties**
14 **permitted by law.**” (Emphasis added.) This statute was added to the law in 2003. By
15 the use of the word “shall” by the Nevada State Legislature in this statute, the
16 Legislature intended to mandatorily require all osteopathic physicians to report any of
17 the four (4) events mentioned in the statute.
- 18 D. NRS 633.131(1) defines “unprofessional conduct” as including “willfully making a false
19 . . . statement . . . in applying for a license to practice osteopathic medicine or in
20 applying for renewal of a license to practice osteopathic medicine.” Pursuant to NRS
21 633.511(1), “unprofessional conduct” is a ground for initiating a formal disciplinary
22 proceeding; and such discipline may include public reprimands, the suspension or
23 revocation of the license to practice osteopathic medicine in the State of Nevada, and
24 an assessment of a fine not to exceed \$5,000 per violation.
- 25 E. NRS 622.400(1) states that a “regulatory body [such as this Board] may recover from a
26 person reasonable attorney’s fees and costs that are incurred by the regulatory body as
27 part of its investigative, administrative and disciplinary proceedings against the person
28 if the regulatory body” either enters a final order or enters into a settlement agreement.
- 29 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
30 Board to file a formal disciplinary complaint.
- 31 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
32 parties and will then be offered to the Board for the entire Board’s approval at the next
33 Board meeting, with the recommendation of the Investigating Board Member that this
34 matter be settled. The Agreement shall not become effective until it has been
35 approved by a majority of the Board and endorsed by a representative member of the
36 Board.
- 37 H. WHEREAS, Dr. Bui understands that the Board is free to accept or reject this
38 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
39 and a hearing scheduled on the same. The Board members who review this matter for
40 approval of this Agreement may be the same members who ultimately hear the
41 disciplinary complaint if this Agreement is not approved by the Board. Dr. Bui hereby
42 agrees to waive any rights he might have to challenge the impartiality of the Board to
43 hear the disciplinary complaint, based on prior knowledge obtained by the Board
44 through consideration of this Agreement, if after review by the Board, this Agreement is
45 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded
46 as null and void.

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- I. WHEREAS, Dr. Bui 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. Bui 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. Bui has elected to enter into this Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Bui 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. Bui 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. Bui, nor have any promises been made other than those reflected in this Agreement. Dr. Bui freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Bui has executed this Agreement only after a careful reading of it and a full understanding of all its terms.
- N. WHEREAS, Dr. Bui 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. Bui voluntarily waives these rights.
- O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws of the State of Nevada.
- P. 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.

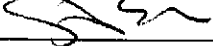
1 **III. TERMS OF THE AGREEMENT**

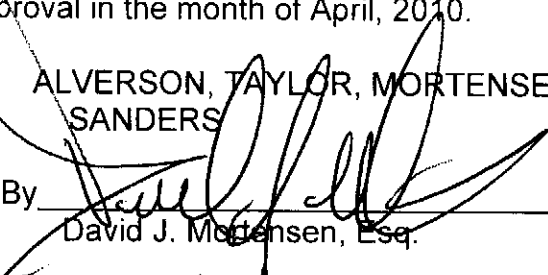
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- 3 A. Dr. Bui acknowledges that the failure to report allegations are true, and each such
- 4 act (failure to timely report and/or inaccurate information in renewal applications) is
- 5 a violation of NRS chapter 633 for which discipline is permissible under Nevada law.
- 6 In exchange for the Board not pursuing an administrative action on either the non-
- 7 reporting allegations or the inaccurate information allegations, and Dr. Bui not
- 8 pursuing subsequent reviews by the appropriate appellate Courts, the parties have
- 9 agreed to resolve the current matter, and only this matter. Dr. Bui will henceforth
- 10 insure that all lawsuits involving him will be timely and accurately reported to the
- 11 Board, and the failure to do so may result in the Board bringing a disciplinary action
- 12 against the osteopathic medical license issued by the Board to Dr. Bui. If any
- 13 lawsuit is not reported to the Board, such will be in violation of this agreement as
- 14 well as the applicable statutes. **ADDITIONALLY, THE BOARD**
- 15 **ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A**
- 16 **DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE**
- 17 **BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN**
- 18 **ADMINISTRATIVE FINE BEING ASSESSED SOLELY FOR THE NON-**
- 19 **REPORTING VIOLATION, I.E., NOT FOR ANY ALLEGATIONS REGARDING**
- 20 **UNPROFESSIONAL CONDUCT AND/OR REGARDING THE PHYSICIAN'S**
- 21 **COMPETENCY.**
- 22 B. Dr. Bui agrees to pay the sum of Seven Hundred, Fifty Dollars (\$750.00) as the fine
- 23 imposed for having violated NRS 633.527(1) for the failure to timely report the
- 24 settlement of the lawsuit. This sum **includes** all fees and costs incurred by the
- 25 Board up to and including the approval of this settlement agreement by the Board at
- 26 its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount
- 27 shall be payable at the time of the execution of this document.
- 28 C. Should Dr. Bui fail to satisfy and pay the indebtedness of \$750.00 in a timely
- manner as discussed herein, Dr. Bui 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.
- D. The Respondent, Dr. Bui, 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 six (6) 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.

- 1 H. In consideration for the execution of this Agreement, Dr. Bui hereby releases and
 2 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
 3 Nevada State Attorney General's Office (as counsel for the Board), and each of
 4 their representatives, investigators, and employees, in their individual and
 5 representative capacity (collectively the State of Nevada Agencies) from any and all
 6 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
 7 and demands whatsoever known or unknown, in law and in equity, that he may
 8 have had, now has, may have had, or claim to have against any and all of the
 9 persons and entities named in this paragraph arising out of, or by reason of, the
 10 investigation of the allegations raised in this matter, and other matters relating
 11 thereto.
- 12 I. Dr. Bui, for himself, his heirs, executors, administrators, successors and assigns,
 13 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
 14 Board of Osteopathic Medicine, the Nevada Attorney General's office and each of
 15 their members, agents and employees in their individual and representative
 16 capacities against any and all claims, suits, demands, actions, debts, damages,
 17 costs, charges, and expenses, including court costs and attorney's fees against any
 18 persons or entities as well as all liability, losses, and damages of any nature
 19 whatsoever that the persons and entities named in this paragraph shall have or may
 20 at any time sustain or suffer by reason of this investigation, this settlement or its
 21 administration.
- 22 J. This document may be prepared in multiple counterparts. Each counterpart,
 23 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
 24 shall be deemed an original hereof if executed by each of the Parties hereto.
- 25 K. LAS TLY, by executing this agreement, Respondent Physician hereby expressly,
 26 knowingly, and intentionally waive the 21-working days notice requirement pursuant
 27 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on
 28 the agenda for the Board's approval in the month of April, 2010.

SON BUI, D.O.

ALVERSON, TAYLOR, MORTENSEN &
SANDERS

19 By: 
 20 Osteopathic Physician

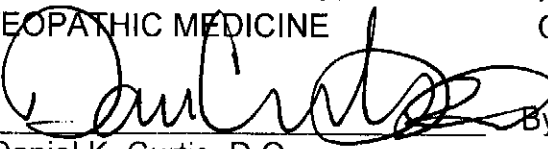
By: 
 David J. Mortensen, Esq.

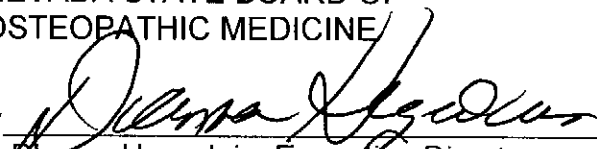
21 Dated: 3/16/2010

Dated: 3/16/2010

23 NEVADA STATE BOARD OF
 24 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE

25 BY: 
 26 Daniel K. Curtis, D.O.
 Investigating Board Member

By: 
 Dianna Hegeduis, Executive Director -
 Board Counsel

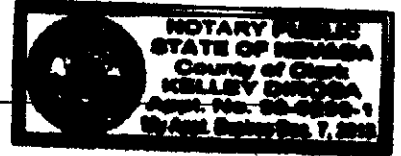
27 Dated: 3-25-2010

Dated: 3-25-2010

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2 **ACKNOWLEDGEMENT**

3 On this the 16th day of March, 2010, the said SON BUI, D.O.,
4 personally appeared before me, a notary public, and signed the above document, freely and
5 voluntarily, under no duress.

6 Kelley DiRosa
7 Notary Public



8 **ORDER OF THE BOARD**

9 **IT IS SO ORDERED.**

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

17 DATED this 16th day of April, 2010.

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19 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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