

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

JUN 29 2011

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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IN THE MATTER OF:)	
PHIL YUAN- CHUNG CHEN, D.O.)	Case Nos. AD1102001 & AD 1102002
License No. 871,)	
)	SETTLEMENT AGREEMENT AND
Respondent.)	ORDER

The Nevada State Board of Osteopathic Medicine (the Board), by and through its investigating board member James Anthony, D.O. and its counsel Louis Ling hereby enters into this settlement agreement with Phil Chen, D.O. (License No. 871), represented by David Mortensen of the law firm of Alverson, Taylor, Mortensen & Sanders. Pursuant to chapter 233B and chapter 633 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), it is hereby stipulated and agreed, by and between the parties in the above-entitled matter, that this matter shall be fully and finally settled and resolved upon terms and conditions set out herein.

ACKNOWLEDGMENTS

This settlement agreement and order is made and based upon the following acknowledgments by the parties:

1. Dr. Chen is aware of, understands, and has been advised of the effect of this settlement agreement, which he has carefully read and fully acknowledged. Dr. Chen consulted with and was represented by competent counsel of his choice, namely Mr. Mortensen and the law firm of Alverson, Taylor, Mortensen, and Sanders.
2. Dr. Chen has freely and voluntarily entered into the settlement agreement, and he is 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 formally 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 testify on his own behalf, the right to obtain any other type of formal judicial review of this matter, and any other rights which may be accorded to him pursuant the provisions of Chapters 233B, 622, 622A, and 633 of the NRS and the NAC. Dr. Chen is voluntarily waiving all these rights in exchange for the Board's acceptance of this settlement agreement.

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2 3. Should the settlement agreement be rejected by the Board, it is agreed that presentation to and
3 consideration by the Board of such proposed settlement agreement or other documents or matters
4 pertaining to the consideration of this settlement agreement shall not unfairly or illegally prejudice the
5 Board or any of its members from further participation, consideration, adjudication, or resolution of
6 these proceedings and that no Board member shall be disqualified or challenged for bias.

7 4. Dr. Chen for himself, his executors, administrators, successors, and assigns hereby releases and
8 forever discharges and holds harmless the State of Nevada, the Nevada Board of Osteopathic Medicine
9 and each of their members, agents, investigators and employees in their individual and representative
10 capacities, from any and all manner of actions, causes of action, suit, debts, judgments, executions, claims
11 and demands whatsoever, known and unknown, in law or equity, that Licensee ever had, now has, may
12 have or claim to have against any or all of the persons or entities named in this paragraph arising out of
13 or by reason of this investigation, this disciplinary action, this settlement agreement or its administration.

14 5. In consideration for the execution of the settlement agreement, Dr. Chen hereby releases and
15 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada Attorney
16 General's Office (as counsel for the Board), and each of their representatives, investigators, and
17 employees, in their individual and representative capacity from any and all manner of actions, causes of
18 actions, suits, debts, judgments, executions, claims and demands whatsoever, known or unknown, in law
19 and in equity, that he may have had, now has, or claim to have against any and all of the persons and
20 entities named in this paragraph arising out of or by reason of the investigation of the allegations raised
21 herein and other matters relating thereto.

22 6. Dr. Chen acknowledges that the settlement agreement shall only become effective after both
23 the Board and he have duly executed it.

24 7. Dr. Chen enters into this settlement agreement voluntarily after being fully advised of his
25 rights and as to the consequences of this settlement agreement. This settlement agreement embodies the
26 entire agreement reached between the Board and Dr. Chen. It may not be altered, amended, or modified
27 without the express consent of the parties.
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2 8. Dr. Chen acknowledges that the conduct described in the two Complaints in this matter, if
3 proven at a hearing before the Board, would constitute violations of the Nevada Osteopathic Medicine
4 Practice Act (NRS & NAC 633). In particular, Dr. Chen acknowledges that he has been charged with
5 unethical conduct (NRS 633.131(g) and NAC 633.350), improper care and treatment related to
6 recordkeeping (NRS 629.061(g)), unprofessional conduct (NRS 633.511), and malpractice (NRS
7 633.511) related to his pain management treatment and care, and especially related to his prescriptions of
8 various controlled substances, for two patients who, it is alleged, suffered harm as a result of Dr. Chen's
9 treatment, care, and prescribing of controlled substances.

10 9. The Board acknowledges that Dr. Chen is not admitting that the Board's claims have merit
11 and, in fact, that he is pleading "no contest" to these claims to resolve this matter, thus avoiding the costs
12 of hearing and potential subsequent litigation. Dr. Chen asserts that if this matter were to proceed to
13 hearing, he has evidence, witnesses, expert witnesses, and defenses to the facts alleged by the Board, but
14 for the purposes of resolving this matter and for no other purposes, Dr. Chen waives the presentation of
15 evidence, witnesses, expert witnesses, and defenses in order to effectuate this settlement agreement.

16 10. Both parties acknowledge that it is in the best interests of each to resolve this matter without
17 a full hearing on the merits because of the cost and risk involved for each party. Additionally, in
18 exchange for the execution of this settlement agreement, the Board will not pursue any investigations or
19 prosecution of any complaints or claims that are or may be in the Board's possession arising prior to the
20 effective date of this settlement agreement. Nothing in this settlement agreement and order precludes
21 Dr. Chen from unilaterally seeking an amendment to, alteration of, or rescission of all or part of this
22 settlement agreement or the Board's order in relation hereto.

23 11. Both parties acknowledge that the Board has jurisdiction to consider and ratify this
24 settlement agreement and order because Dr. Chen is an osteopathic physician licensed by the Board. Dr.
25 Chen expressly, knowingly, and intentionally waives the 21-day notice requirement contained in the
26 Nevada Open Meeting Law and acknowledges that this settlement agreement and order may be presented
27 to the Board for its consideration and potential ratification at the Board's meeting on June 28, 2011.
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1 STIPULATED ADJUDICATION

2 Based upon the above acknowledgments of the parties and their mutual agreement, the parties
3 stipulate and agree that the following terms of discipline should be imposed by the Board in this matter:

4 1. Dr. Chen's license (License No. 871) shall be suspended for a period of 90 days commencing
5 July 15 2011 and ending October 15, 2011.

6 2. Dr. Chen shall pay the sum of \$65,000.00 as a combined fine and payment of the Board's fees
7 and costs for the investigation and prosecution of this matter. Dr. Chen shall make an initial payment in
8 the amount of \$5,000.00 to be received on or before October 15, 2011. Thereafter, Dr. Chen shall pay
9 \$300.00 per month, to be received by the last day of each month beginning November 30, 2011, unless
10 and until his terms of repayment are otherwise modified as is set out in the terms of Dr. Chen's
11 probation that follow.

12 3. Dr. Chen agrees that he shall not seek a registration to dispense prescription drugs from the
13 Nevada State Board of Pharmacy and that he will not ever dispense prescription drugs from his practice
14 as long as he practices medicine in Nevada. This paragraph does not prevent Dr. Chen from providing
15 drug samples to his patients at no cost to the patients.

16 4. At the conclusion of the suspension of Dr. Chen's license, Dr. Chen's license shall be on
17 probation for a period of three years commencing on October 15, 2011. The terms and conditions of
18 probation shall be as follows:

19 (a) Dr. Chen shall maintain his license on either active or inactive status throughout the term of
20 probation.

21 (b) Dr. Chen shall comply with all laws related to the practice of osteopathic medicine, whether
22 state or federal, whether statutory or regulatory, and whether contained in NRS and NAC chapters 633,
23 453, 454, 585, and 639.

24 (c) Dr. Chen shall not prescribe or administer controlled substances, and may not apply for such
25 privileges from the federal Drug Enforcement Agency or the Nevada Board of Pharmacy, unless and until
26 he has satisfied the following conditions:

27 (i) Dr. Chen shall take and successfully complete 30 units of continuing medical
28 education related to pain management, addictionology, and the proper prescribing and use of

1 controlled substances. Dr. Chen shall provide information regarding the courses he intends to
2 take to satisfy this term of probation to the Board's Investigating Board Member (hereinafter
3 IBM, and presently Dr. Anthony) in advance of taking the course, and the IBM shall notify Dr.
4 Chen of approval or disapproval of such proposed courses within five days of such notification.
5 The 30 units of continuing medical education taken under this paragraph shall be in addition to
6 the units of continuing medical education needed by Dr. Chen for renewal of his license.

7 (ii) Upon completion of the continuing medical education in paragraph 4(a), Dr. Chen
8 may apply for and obtain a registration number with the federal Drug Enforcement Agency and
9 the Nevada Board of Pharmacy. Upon obtaining those registrations, Dr. Chen may prescribe the
10 following four controlled substances for patients for the following purposes: (1) carisoprodol
11 (Soma) for muscle relaxation and spasms; (2) pregabalin (Lyrica) for neuropathic pain related to
12 fibromyalgia or diabetes treatment; (3) testosterone for hormonal deficiency; and (4) clonazepam
13 (Klonopin) for anxiety. The Board will monitor Dr. Chen's prescribing of controlled substances
14 through reasonable random audit of his records and/or through review of his prescriber's profile
15 with the Nevada Prescription Controlled Substances Abuse Prevention Task Force (hereinafter
16 the Task Force).

17 (d) After the passage of at least 90 days of operating his practice subject to the conditions
18 contained in paragraph 4(c)(ii) above, if Dr. Chen desires to prescribe controlled substances for his
19 patients for purposes of the treatment of chronic pain, Dr. Chen shall notify the IBM of his desire and
20 intent to prescribe and administer controlled substances for this purpose. Dr. Chen and the IBM shall
21 confer thereafter regarding the types of treatments for which Dr. Chen would prescribe controlled
22 substances, and after conferring regarding Dr. Chen's plans and if the IBM is satisfied that allowing Dr.
23 Chen to prescribe controlled substances for such purposes is in the best interests of the public and
24 patients of Nevada, then Dr. Chen shall be allowed the privilege of treating patients for chronic pain
25 subject to the following terms and conditions:

26 (i) The IBM shall identify a medical doctor who is board certified in and practices pain
27 management who shall serve as a practice monitor for Dr. Chen. The practice monitor's duties
28 and obligations may include:

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2 (A) Reviewing Dr. Chen's patient files related to his pain management of patients
3 with pain-related conditions or issues;

4 (B) Conferring with Dr. Chen regarding Dr. Chen's treatment plans and patient
5 files regarding the patients that Dr. Chen is treating for pain-related conditions or issues,
6 including discussing various treatments, modalities, and therapies that may work in
7 substitution for, supplementary to, or complementary with controlled substances with the
8 goal of best managing each patient's pain with the minimum necessary controlled
9 substances;

10 (C) Writing quarterly reports to the Board detailing Dr. Chen's pain management
11 practice, his compliance with Nevada and federal law, his conformance with the prevailing
12 standards of practice of pain management, his progress, and any other information that
13 the practice monitor may deem necessary for the Board to know for the protection of Dr.
14 Chen's patients and the public of Nevada;

15 (D) Such other duties as the Board may require of the practice monitor to assure
16 that Dr. Chen's practice of pain management conforms to the applicable laws and
17 professional standards of care.

18 (ii) Dr. Chen shall be responsible for the reasonable charges by the practice monitor for
19 the services necessary to comply with the terms and conditions of this Order.

20 (iii) Dr. Chen, the IBM, and the practice monitor shall confer to reasonably agree upon a
21 plan to be presented to the Board, which plan shall contain at least the following elements:

22 (A) The number and types of pain management patients Dr. Chen shall be allowed
23 to treat;

24 (B) The types of controlled substances that Dr. Chen will be permitted to prescribe
25 and administer for his pain management patients, which may include controlled
26 substances in all schedules;

27 (C) Limitations, if any, on the quantity of controlled substances that Dr. Chen
28 might prescribe for his pain management patients;

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2 (D) The amount of additional monthly payment Dr. Chen shall make in relation
3 to paragraph 2 of the Stipulated Adjudication section of this agreement; and

4 (E) Such other reasonable similar conditions that will assure that Dr. Chen may
5 treat patients for chronic pain in such a way and manner as to conform to Nevada and
6 federal law and the prevailing standards of practice of pain management.

7 (iv) Dr. Chen, the IBM, and the practice monitor shall present the plan to the Board at its
8 next regularly scheduled meeting. If the Board is satisfied that allowing Dr. Chen to prescribe and
9 administer controlled substances for the treatment and management of chronic pain is in the best
10 interest of the public and patients of Nevada, the Board will approve the plan and grant Dr. Chen
11 the privilege of prescribing and administering controlled substances under such circumstances
12 and conditions as are set out in the plan. The Board may, if it deems appropriate, seek
13 modifications or additions to the plan.

14 (e) At any time after the passage of at least 90 days of operating his practice subject to the
15 conditions contained in paragraph 4(d)(iv) above, Dr. Chen may seek to modify the terms of his plan by
16 discussing his proposed modifications with the IBM and the practice monitor. If Dr. Chen, the IBM,
17 and the practice monitor agree on the changes to the terms of his plan, Dr. Chen, the IBM, and the
18 practice monitor may present the changes to the plan to the Board at its next available regular meeting. If
19 the Board is satisfied that proposed changes in the plan are in the best interest of the public and patients
20 of Nevada, the Board will approve the changes to the plan. The Board may, if it deems appropriate, seek
21 modifications or additions to the plan.

22 (f) Dr. Chen shall allow the IBM and the practice monitor to enter his practice at any time during
23 the practice's normal operating hours, including any room or area therein, to inspect the practice and
24 review any or all of his patient and practice records as the IBM or the practice monitor deem reasonably
25 necessary.

26 (g) Regardless of all other terms and conditions of probation contained herein, Dr. Chen's
27 probation will not terminate until all of the money ordered in paragraph 2 of the Stipulated Adjudication
28 section of this agreement has been paid in full.

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5. Dr. Chen shall meet with the Board or its representatives upon reasonable request and shall reasonably cooperate with such representatives in their supervision, monitoring, investigation, or auditing to assure compliance with the terms and conditions of this order.

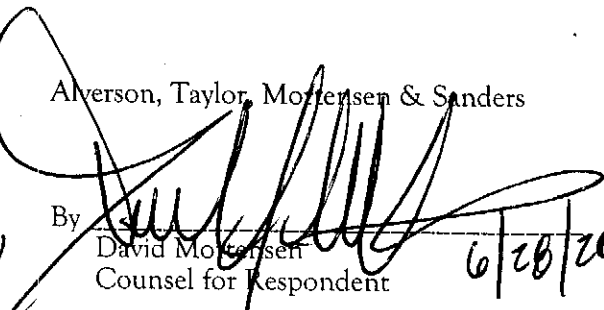
6. In the event Dr. Chen fails to materially comply with any term of this settlement agreement and order, Dr. Chen agrees his license to practice osteopathic medicine in the State of Nevada may be automatically suspended without any action of the Board other than the issuance of an Order of Suspension by the Executive Director. Upon complying with the term, Dr. Chen's license will be automatically reinstated, assuming all other provisions of the settlement agreement and order are in compliance. Dr. Chen shall be responsible for any costs or attorney's fees incurred in the event the Board prevails in seeking injunctive relief to prevent Dr. Chen from practicing osteopathic medicine during any period Dr. Chen's license is automatically suspended. Additionally, Dr. Chen's failure to comply with any term or condition of this settlement agreement may result in further discipline by the Board, up to and potentially including revocation of his license. The Board's staff may take any and all actions it deems necessary to collect any sums ordered that remain unpaid. If the Board's staff is required to pursue judicial action to effect such collections, it shall be entitled to recover its attorney's fees and costs incurred in pursuing such judicial action in the event that it prevails in any such judicial action.

Signed this 28 day of June, 2011.

Respondent Phil Yuan-Chung Chen, D.O.

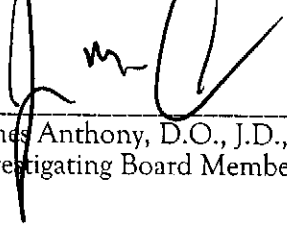
Alverson, Taylor, Mortensen & Sanders

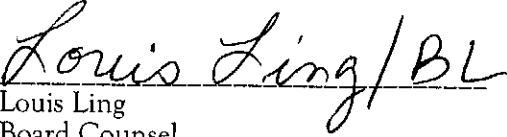
By 
Phil Chen, D.O., Respondent 6/28/2011

By 
David Mortensen
Counsel for Respondent 6/28/2011

Nevada Board of Osteopathic Medicine

Louis Ling, Esq.

By 
James Anthony, D.O., J.D., M.B.A.
Investigating Board Member

By 
Louis Ling
Board Counsel

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ORDER

WHEREAS, on June 28, 2011, the Nevada State Board of Osteopathic Medicine approved and adopted the terms and conditions set forth in the Agreed Settlement and Order with Phil Yuan-Chung Chen, ~~D.O.~~ IT IS SO ORDERED.

D.O. ~~now~~ for P.C. PL for the Osteopathic Board
SIGNED AND EFFECTIVE this 28 day of June, 2011.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE



Daniel Curtis, D.O., Chairman

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

2 IN THE MATTER OF THE COMPLAINT

) Case No.: AD1102001 & AD1102002

3 AGAINST

4 Phil Chen, D.O.,

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

5 RESPONDENT.

JUN 29 2011

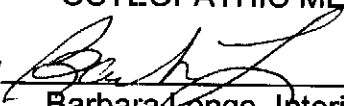
6 **WRITTEN NOTICE OF ENTRY OF ORDER**
7 **APPROVING SETTLEMENT AGREEMENT** **FILED**

8 **PLEASE TAKE NOTICE** that on the 29th day of June, 2011 the Nevada State Board of
9 Osteopathic Medicine entered an order approving the Settlement Agreement between the
10 Respondent, Phil Chen, D.O., and Enforcement Department of the Board. A file-stamped copy
11 of the settlement agreement with order is attached.

12 DATED THIS 29th day of June, 2011.

14 NEVADA STATE BOARD OF
15 OSTEOPATHIC MEDICINE

16 By


17 Barbara Longo, Interim Executive Director
18 901 American Pacific Dr., #180
19 Henderson, NV 89014

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on the 29th day of June, 2011, I served a copy of the ABOVE
22 Notice with attachment upon the parties to this matter, via U.S. Postal Service, postage
23 thereon prepaid, addressed as follows:

24 Phil Chen, D.O.
25 219 North Pecos Road
26 Henderson, NV 89074

27 David Mortensen
28 7401 West Charleston Blvd
Las Vegas, NV 89117-1401
Attorneys for Respondent


An employee of the Nevada State Board of
Osteopathic Medicine