

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF) CASE NO. AD 1011003
)
GARY DeSHAZO, D.O.,)
Nevada License No. 380,)
Respondent.)

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

DEC 08 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, Dianna Hegeduis, Esq., and Gary DeShazo, D.O. ("Dr. DeShazo" or "Respondent") through his attorneys John Cotton, Esq. and Michael Navratil, Esq., of the John H. Cotton & Associates, Law Firm (collectively referred to as "the Parties").

II. JURISDICTION/RECITALS

As a preamble to this Agreement, the Parties agree to the following jurisdictional authorities and recital of the facts:

- A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain information regarding various issues concerning Dr. DeShazo, including but not limited to, an alleged overprescribing of opiates with regards to Patients A and B, failure to follow the established medical procedures for treating chronic pain Patients A & B, and improper medical records keeping.
- B. WHEREAS, Respondent is licensed in active status to practice osteopathic medicine in the state of Nevada; and at all times alleged herein, was so licensed by the Board of Osteopathic Medicine of the State of Nevada pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes. Respondent has practiced consistently within Clark County, Nevada.
- C. WHEREAS, NRS 633.511(1) provides that unprofessional conduct is a ground for the initiation of disciplinary proceedings by this Board.
- D. WHEREAS, NRS 633.131(1) defines "unprofessional conduct," in part, as follows:
 - (f) Engaging in any:
 - (1) Professional conduct which is intended to deceive or which the board by regulation has determined is unethical;

- 1 (2) Medical practice harmful to the public . . .
- 2 (k) Willful disobedience of the regulations of the State Board of
3 Health, the State Board of Pharmacy or the State Board of
4 Osteopathic Medicine . . .
- 5 (m) Failure of a licensee to maintain timely, legible, accurate and complete
6 medical records relating to the diagnosis, treatment and care of a
7 patient
- 8 E. WHEREAS, pursuant to NAC 633.350, a licensee engages in unethical conduct if
9 he engages in any conduct that the Board determines constitutes an unfitness to
10 practice osteopathic medicine; and pursuant to NAC 633.350, a licensee engages in
11 unethical conduct if he willfully makes and files false reports, records, or claims in
12 the licensee's osteopathic medicine practice, or if the licensee fails to generate or
13 create medical records relating to the diagnosis, treatment and care of a patient, or
14 if the licensee prescribes a controlled substance in a manner or in an amount that
15 the Board determines is excessive.
- 16 F. WHEREAS, NRS 633.511(5) provides that professional incompetence, malpractice,
17 and gross malpractice are grounds for the initiation of disciplinary proceedings
18 against an osteopathic physician by this Board.
- 19 G. WHEREAS, the term "gross malpractice" is defined in NRS 633.041 as malpractice
20 wherein the failure to exercise the requisite degree of care, diligence or skill
21 includes
- 22 Gross negligence;
 - 23 Willful disregard of established medical procedures; or
 - 24 Willful and consistent use of medical procedures, services or treatment
25 considered by osteopathic physicians in the community to be
26 inappropriate or unnecessary in the cases where used.
- 27 H. WHEREAS, NRS 633.111 defines professional incompetence as including the lack
28 of ability to safely and skillfully practice osteopathic medicine.
- I. WHEREAS, NRS 633.151 states that the "purpose of licensing osteopathic
physicians and physician assistants is to protect the public health and safety and
the general welfare of the people of [the State of Nevada]. Any license issued
pursuant to this chapter is a revocable privilege, and a holder of such a license does
not acquire thereby any vested right."
- J. WHEREAS, NRS 633.651 states, in part, as follows:
1. If the Board finds a person guilty in a disciplinary proceeding, it shall by
order take one or more of the following actions:
 - a. Place the person on probation for a specified period or until further
order of the Board.
 - b. Administer to the person a public reprimand.
 - c. Limit the practice of the person to, or by the exclusion of, one or
more specified branches of osteopathic medicine.
 - d. Suspend the license of the person to practice osteopathic medicine
for a specified period or until further order of the Board.
 - e. Revoke the license of the person to practice osteopathic medicine.
 - f. Impose a fine not to exceed \$5,000 for each violation.
 - g. Require supervision of the practice of the person.
 - h. Require the person to perform community service without
compensation.
 - i. Require the person to complete any training or educational
requirements specified by the Board.
 - j. Require the person to participate in a program to correct alcohol or

1 drug dependence or any other impairment.

2 The order of the Board may contain such other terms, provisions or conditions as
3 the Board deems proper and which are not inconsistent with law.

4 2. The Board shall not administer a private reprimand.

- 5 K. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board]
6 may recover from a person reasonable attorney's fees and costs that are incurred
7 by the regulatory body as part of its investigative, administrative and disciplinary
8 proceedings against the person if the regulatory body" either enters a final order or
9 enters into a settlement agreement.
- 10 L. WHEREAS, NRS 622.330(3) states that settlement agreements, such as the
11 present document, shall be considered a public document.
- 12 M. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
13 Board to initiate a formal disciplinary proceeding and/or conduct an administrative
14 hearing regarding Patients A and B.
- 15 N. WHEREAS, the parties understand that this Agreement will be signed by the
16 respective parties and will then be offered to the Board for the entire Board's
17 approval at the next Board meeting, with the recommendation of the Investigating
18 Board Member that this matter be settled pursuant to the terms contained herein.
19 The Agreement shall not become effective until it has been approved by a majority
20 of the Board and endorsed by a representative member of the Board.
- 21 O. WHEREAS, Dr. DeShazo understands that the Board is free to accept or reject this
22 Agreement and, if rejected by the Board, a formal disciplinary hearing will be
23 immediately scheduled. The Board members who review this matter for approval of
24 this Agreement may be the same members who ultimately hear the disciplinary
25 complaint if this Agreement is not approved by the Board. Dr. DeShazo hereby
26 agree to waive any rights he might have to challenge the impartiality of the Board to
27 hear the disciplinary complaint, based on prior knowledge obtained by the Board
28 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.
- P. WHEREAS, Dr. DeShazo 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.
- Q. WHEREAS, Dr. DeShazo acknowledges that the Board had a reasonable basis to
believe that the statutes and/or regulations regulating the practice of Osteopathic
Medicine in Nevada have been violated with respect to Patients A and B.
- R. WHEREAS, in order to resolve the matter prior to it proceeding to a formal
disciplinary hearing and to save further costs and expenses, Dr. DeShazo has
elected to enter into this Agreement to resolve this matter pertaining to Patients A
and B, and only this matter.
- S. WHEREAS, Dr. DeShazo 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 patients).
- T. WHEREAS, Dr. DeShazo 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.
DeShazo, nor have any promises been made other than those reflected in this
Agreement. Dr. DeShazo freely and voluntarily entered into this agreement,
motivated only by a desire to resolve the issues addressed herein. Dr. DeShazo
has executed this Agreement only after a careful reading of it and a full

1 understanding of all its terms.

- 2 U. WHEREAS, Dr. DeShazo is fully aware of his rights to contest the charges pending
3 against him. These rights include: representation by an attorney at his own
4 expense, the right to a public hearing on any charges or allegations filed, the right to
5 confront and cross-examine witnesses called to testify against him, the right to
6 present evidence on his own behalf, the right to compulsory process to secure the
7 attendance of such witnesses, the right to testify on his own behalf, the right to
8 receive written findings of fact and conclusions of law supporting the decision on the
9 merits of the complaint and the right to obtain judicial review of the Board's decision.
10 Should the Board accept this Agreement, Dr. DeShazo voluntarily waives these
11 rights.
- 12 V. WHEREAS, this Agreement and Order shall be construed in accordance with the
13 laws of the State of Nevada.
- 14 W. WHEREAS, this Agreement and Order contains a complete description of the
15 agreement between the parties and it supersedes any previous agreements
16 between the parties. All material representations, understandings and promises of
17 the parties are contained in this Agreement. Any modifications must be set forth in
18 writing, signed by all the parties, and approved by the Board.

19 **III. TERMS OF THE AGREEMENT**

- 20 A. Dr. DeShazo acknowledges that the Board has sufficient evidence to support
21 claims (1) that the medical records pertaining to patients A and B were
22 inadequate, incomplete, and/or inconsistent, (2) that he did not practice pain
23 management with Patients A and B according to the established medical
24 procedures and/or consistent with this medical community's standard and/or
25 such medical treatment may be deemed harmful to the public's health, safety,
26 and welfare; and (3) that Patients A and B may have received excessive
27 prescriptions for opiates. Each such act, if proven at an administrative hearing,
28 would be a violation of NRS chapter 633 for which discipline is permissible under
Nevada law.
- B. Dr. DeShazo is not admitting that the above-referenced claims have merit and,
in fact, is specifically pleading "no contest" to these claims to resolve this matter
thus avoiding further litigation and its associated costs and expenses.
- C. In exchange for the Board not pursuing an administrative action and formal
disciplinary hearing, and Dr. DeShazo not pursuing subsequent reviews by the
appropriate appellate Courts, the parties have agreed to resolve all aspects of
the current matters involving Patients A and B as described in this Agreement.
- D. The parties to this agreement understand and acknowledge that no formal
document with findings and conclusions regarding Dr. DeShazo's alleged
negligence, deviation from the standard of medical care for this community, or
other violations of Nevada law have been made by the Board or its Hearing
Officer in this matter. Furthermore, no evidence has been presented to the
Board by Dr. DeShazo contesting these matters, and neither the Board nor its
Hearing Officer has made an evaluation or assessment concerning any of Dr.
DeShazo's defenses to the claims mentioned in this agreement.
- E. Dr. DeShazo agrees to a suspension of his Nevada Osteopathic medicine
license (License No. 380) for a period of one month, i.e., beginning the 17th day
of January, 2011, and ending on the 16th day of February, 2011.

- 1 F. Dr. DeShazo agrees to cease treating chronic pain patients and that such
2 patients will be immediately referred to a pain management specialist. This
3 cessation will occur on or before the 1st day of February, 2011, thus allowing the
4 proper transfer of his patients' care. Dr. DeShazo will be able to treat acute pain
5 patients with opioid prescriptions if such course of treatment is for thirty (30)
6 days or less.
- 7 G. Dr. DeShazo agrees to take three classes in the areas of (1) medical records
8 keeping, (2) controlled substances, and (3) opiate prescribing/excessive
9 prescribing. Each of these classes shall not be less than 5 CME credits per
10 class or a total of 5 credits of CME in each area if one single class cannot be
11 obtained for 5 CME credits. This shall be accomplished by December 31, 2011;
12 and the 15 credits may be applied towards the mandatory CMEs required of all
13 osteopathic physicians. Dr. DeShazo shall provide proof to the Board, however,
14 that he has attended such classes within sixty (60) days after the completion of
15 each such class identified in this Agreement.
- 16 H. Dr. DeShazo agrees to a three (3) year probationary period to assure
17 compliance with this agreement. That probationary period shall commence after
18 the completion of the one-month suspension, i.e., the probation shall commence
19 on the 1st day of January, 2011 and shall terminate on the 31st day of December,
20 2013. During that probationary time, the Board shall conduct four (4) random
21 audits of Dr. DeShazo's practice per year, beginning the 1st day of March, 2011.
22 The random audits will consist of reviewing the medical records files of five (5)
23 patients as identified and/or selected by the Board's representatives. The Board
24 shall notify the John Cotton & Associates Law Firm of the date of each such
25 audit. Should the law firm of John Cotton & Associates no longer represent Dr.
26 DeShazo, Dr. DeShazo will be notified of the audit at his last known address and
27 phone number as contained within the records of the Board.
- 28 I. Dr. DeShazo agrees to pay the sum of Twenty Thousand Dollars (\$20,000.00)
as the fine imposed for having violated NRS and NAC chapters 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 at
the monthly rate of Eight Hundred, Thirty-three Dollars & thirty-three cents
(\$833.33) per month beginning on the 1st day of January, 2011, and shall
continue to be due on the first day of each month thereafter until paid in full, with
the last payment being in the amount of \$833.41.
- J. Dr. DeShazo understands that failure to comply with any portion of this
agreement, including the payment plan set forth above, may result in an
administrative action being filed and/or taken against the said Dr. Gary
DeShazo.
- K. The Respondent, Dr. DeShazo, agrees to bear his own fees and costs, including
the fees and expenses of his own attorney(s) if applicable.
- L. 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.
- M. This Agreement and Order shall be construed in accordance with the laws of the
State of Nevada.
- N. This settlement agreement consists of seven (7) 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.

O. In consideration for the execution of this Agreement, Dr. DeShazo hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the State Attorney General's Office (as counsel for the Board), and each of their representatives, members, agents, investigators, and/or 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 herein arising out of, or by reason of, the investigation of the allegations raised in this matter, and other matters relating thereto.

P. Dr. DeShazo, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada State Board of Osteopathic Medicine, the Nevada 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.

Q. 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.

R. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and intentionally waives 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 December, 2010.

DATED this 17th day of November, 2010.

GARY DeSHAZO, D.O.

JOHN H. COTTON & ASSOCIATES, LAW FIRM

By [Signature]
Respondent
Nevada Osteopathic Lic. # 380

By [Signature]
John H. Cotton, Esq., Attorney for Dr. DeShazo
Michael Navratil, Esq., Attorney for Dr. DeShazo

and

DATED this 21st day of NOVEMBER, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

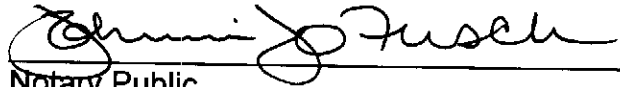
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

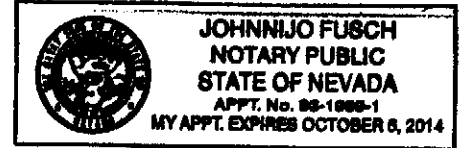
By [Signature]
Daniel K. Curtis, D.O.
President of the Board

By [Signature]
Dianna Hegeduis, #5616
Board Counsel

ACKNOWLEDGEMENT

On this the 17th day of November, 2010, the said Gary DeShazo, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, under no duress.


Notary Public



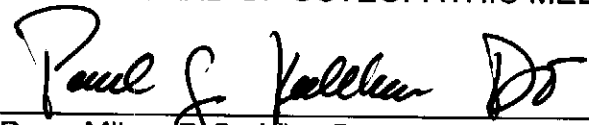
ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. DeShazo fail to comply with any terms or conditions of this Agreement, Dr. DeShazo 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 the commencement and prosecution of an administrative action against Dr. DeShazo and/or reducing any amounts due and owing to judgment for purposes of collection. Should this Agreement become null and void by Dr. DeShazo's failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Dr. DeShazo, but the Board may also seek the maximum fees, fines, and costs for the investigation and prosecution of the underlying case as well as the maximum fees, fines, and costs for the failure to comply with this Agreement and Order.

DATED this 7th day of December, 2011.

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

BY: 
FOR C. Dean Milne, D.O., Vice President of the Board

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF)
GARY DeSHAZO, D.O.,)
Nevada License No. 380,)
Respondent.)

CASE NO. AD 1011003

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

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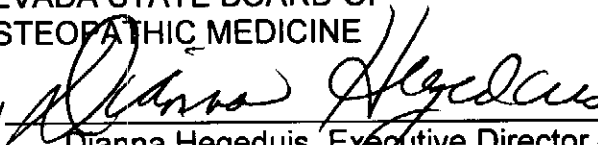
**WRITTEN NOTICE OF ENTRY OF ORDER APPROVING
SETTLEMENT AGREEMENT**

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 December, 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 8th day of December, 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, namely:

Michael Navratil, Esq.
JOHN COTTON &
ASSOCIATES LAW FIRM
2300 W. Sahara Ave., # 420
Las Vegas, NV 89102
Attorneys for Respondent



An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE