

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT

) Case No.: AD1006002

) Case No.: AD1009004

AGAINST

MILES FINE, D.O.,

RESPONDENT.

NV STATE BOARD OF OSTEOPATHIC MEDICINE

FEB 02 2011

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Daniel Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "IBM") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Counsel, Dianna Hegeduis, Esq., and Miles B. Fine, D.O. ("Dr. Fine") through his attorneys of record, John H. Cotton, Esq., and Paul Hoffman, Esq. of John H. Cotton & Associates, Ltd. (collectively referred to as "the Parties").

II. JURISDICTION / 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 the alleged medical care rendered to various patients by Dr. Fine. The information was ascertained as a result of the IBM's and Board's staff due diligence in its statutorily-mandated investigation of its applicants/licenseses and complaints filed with the Board.

B. WHEREAS, the "IBM" has alleged as follows in the formal administrative complaints on file with the Board (i.e., public records): (1) Re: patient "M.D." Among the allegations raised by the IBM are the allegations that Dr. Fine performed unwarranted surgeries, billed for performing "complete" bilateral mastoidectomies when such procedures had not been performed, deviated from the standard of care during the treatment of this patient, and provided the Board with an incomplete copy of the medical records on this patient. (2) Re: patient "J.G." Among the allegations raised by the IBM are the allegations that Dr. Fine performed unwarranted surgeries, billed for procedures not performed during a second surgery, failed to provide a complete copy of the medical records on this patient to the Board, and deviated from the standard of care during the treatment of this patient. The IBM has alleged these are all violations of NRS and NAC chapters 633, including but not limited to the laws pertaining to unprofessional conduct, unethical conduct, malpractice, and professional incompetency, as discussed more fully hereinafter.

C. WHEREAS, NRS 633.511(1) provides that unprofessional conduct is a ground for the initiation of disciplinary proceedings by this Board.

Nevada State Board of Osteopathic Medicine  
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1 D. WHEREAS, NRS 633.131(1) defines "unprofessional conduct," in part, as follows:

2 (f) Engaging in any:

3 (1) Professional conduct which is intended to deceive or  
4 which the board by regulation has determined is unethical;

5 (2) Medical practice harmful to the public or any conduct  
6 detrimental to the public health, safety or morals which does  
7 not constitute gross or repeated malpractice or professional  
8 incompetence. . . .

9 (m) Failure of a licensee to maintain timely, legible, accurate  
10 and complete medical records relating to the diagnosis,  
11 treatment and care of a patient . . .

12 (o) Making or filing a report which the licensee knows to be  
13 false.

14 E. WHEREAS, and pursuant to NAC 633.350, a licensee engages in unethical  
15 conduct if he engages in any conduct that the Board determines constitutes an unfitness to  
16 practice osteopathic medicine; and pursuant to NAC 633.350, a licensee engages in  
17 unethical conduct if he willfully makes and files false reports, records, or claims in the  
18 licensee's osteopathic medicine practice.

19 F. WHEREAS, NRS 633.511(5) provides that professional incompetence, malpractice,  
20 and gross malpractice are grounds for the initiation of disciplinary proceedings against an  
21 osteopathic physician by this Board.

22 G. WHEREAS, "gross malpractice" is defined in NRS 633.041 as follows: "Gross  
23 malpractice" means malpractice where the failure to exercise the requisite degree of care,  
24 diligence or skill consists of:

25 1. Performing surgery upon or otherwise ministering to a patient while the  
26 osteopathic physician is under the influence of alcohol or any controlled  
27 substance

28 2. Gross negligence;

3 3. Willful disregard of established medical procedures; or

4 4. Willful and consistent use of medical procedures, services or treatment  
5 considered by osteopathic physicians in the community to be  
6 inappropriate or unnecessary in the cases where used.

7 H. WHEREAS, NRS 633.111 defines professional incompetence as including the lack  
8 of ability to safely and skillfully practice osteopathic medicine.

9 I. WHEREAS, and pursuant to NAC 633.370, if a medical competency examination  
10 determines that a licensee is not competent to practice osteopathic medicine with reasonable  
11 skill and safety to patients, the Board will consider that determination to constitute a rebuttal  
12 presumption of profession incompetence with regard to the licensee.

13 J. WHEREAS, NRS 633.151 states that the "purpose of licensing osteopathic  
14 physicians and physician assistants is to protect the public health and safety and the general  
15 welfare of the people of [the State of Nevada]. Any license issued pursuant to this chapter is  
16 a revocable privilege, and a holder of such a license does not acquire thereby any vested  
17 right."

18 K. WHEREAS, NRS 633.651 states, in part, as follows:

19 1. If the Board finds a person guilty in a disciplinary proceeding, it shall by  
20 order take one or more of the following actions:

21 a. Place the person on probation for a specified period or until further  
22 order of the Board.

23 b. Administer to the person a public reprimand.

24 c. Limit the practice of the person to, or by the exclusion of, one or more

1 specified branches of osteopathic medicine.

2 d. Suspend the license of the person to practice osteopathic medicine  
for a specified period or until further order of the Board.

3 e. Revoke the license of the person to practice osteopathic medicine.

4 f. Impose a fine not to exceed \$5,000 for each violation,

5 g. Require supervision of the practice of the person,

6 h. Require the person to perform community service without  
compensation,

7 i. Require the person to complete any training or educational  
requirements specified by the Board,

8 j. Require the person to participate in a program to correct alcohol or  
drug dependence or any other impairment

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

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

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

12 M. WHEREAS, the parties have agreed to settle this matter rather than continuing with  
the prosecution of the two administrative cases mentioned herein.

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

14 O. WHEREAS, Dr. Fine understands that the Board is free to accept or reject this  
Agreement and, if rejected by the Board, the administrative hearings on the disciplinary  
complaints will be rescheduled and the matters prosecuted fully and completely. The Board  
members who review this matter for approval of this Agreement may be the same members  
who ultimately hear the disciplinary complaints if this Agreement is not approved by the  
Board. Dr. Fine 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.

15 P. WHEREAS, Dr. Fine 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.

16 Q. WHEREAS, Dr. Fine 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.

17 R. WHEREAS, in order to resolve the pending matters and to save further costs and  
expenses, the parties have elected to enter into this Agreement.

18 S. WHEREAS, Dr. Fine 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 any patient).

19 T. WHEREAS, Dr. Fine has had the opportunity to obtain the advice from competent  
counsel of his choice concerning the terms and conditions of this Agreement and the

1 execution thereof. No coercion has been exerted upon Dr. Fine, nor have any promises been  
2 made other than those reflected in this Agreement. Dr. Fine freely and voluntarily entered into  
3 this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Fine  
has executed this Agreement only after a careful reading of it and a full understanding of all  
its terms.

4 U. WHEREAS, Dr. Fine is fully aware of his rights to contest the charges pending  
5 against him. These rights include: representation by an attorney at his own expense, the right  
6 to a public hearing on any charges or allegations filed, the right to confront and cross-examine  
7 witnesses called to testify against him, the right to present evidence on his own behalf, the  
8 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. Fine voluntarily waives these  
rights.

9 V. WHEREAS, this Agreement and Order contains a complete description of the  
10 agreement between the parties and it supersedes any previous agreements between the  
11 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.

### 12 **III. TERMS OF THE AGREEMENT**

- 13 A. Dr. Fine admits that the billing/CPT code used in the alleged "complete" bilateral  
14 mastoidectomies on patient "M.D." was incorrect and/or misleading. More  
15 specifically, the operative report prepared by Dr. Fine indicates that both left and  
16 right mastoidectomies were carried out "superficially" yet the code utilized was for  
one "complete" mastoidectomy.
- 17 B. Dr. Fine acknowledges that performing turbinectomies in all cases may not be  
18 appropriate in a dry climate, such as found in the Clark County, Nevada area. Dr.  
19 Fine agrees, upon the execution of this Agreement, to not perform turbinectomies  
20 without first assuring that there is substantial supporting documentation within the  
21 patients' medical records warranting such procedures, and that such  
22 documentation should be able to withstand the scrutiny and approval of the  
23 procedure by another Otolaryngologist if that other Otolaryngologist is asked to  
24 review those medical records. Submucosal resections are permissible.
- 25 C. Dr. Fine acknowledges that physicians are required to maintain and retain complete  
26 and accurate medical records on all patients. Pursuant to NRS chapter 629, Dr.  
27 Fine agrees to provide the Board with photocopies of the complete medical records  
28 on patients when requested to do so at any time after the execution of this  
Agreement.
- D. Dr. Fine agrees to a three (3) month suspension of his Nevada State Osteopathic  
medicine license based upon the allegations above, commencing on the 1<sup>st</sup> day of  
March, 2011 and concluding on the 31<sup>st</sup> day of May, 2011 at which point his  
license will be reinstated subject to the conditions below. In exchange for the three  
(3) month suspension, the Board will dismiss the two pending formal disciplinary  
actions filed by the Board against Dr. Fine. Additionally, in exchange for the three  
(3) month suspension, the Board will not pursue any investigations, and/or  
prosecution of potential billing or malpractice claims, including but not limited to any  
NAC or NRS 633 based claims, arising prior to the effective date of this Agreement.

- 1 E. Dr. Fine agrees, that during the three (3) month suspension, he will attend a two-  
2 day ethics class sponsored by either PBI Ethics, PACE, or other similarly  
3 recognized entities, as well as attend a class on creating/maintaining medical  
4 records. All costs associated with attendance at these classes shall be the sole  
5 responsibility of Dr. Fine; and the continuing medical education ("CME") credits  
6 received for attending these classes shall apply towards the yearly mandatory  
7 CMEs required of osteopathic physicians.
- 8 F. The parties agree that the terms and conditions of their Settlement Agreement  
9 dated April 7, 2009 have been satisfied, and an Order of Fulfillment of that  
10 Agreement and Order will be entered by the Board following approval of this  
11 Agreement.
- 12 G. Dr. Fine agrees that immediately upon the cessation of the suspension, his Nevada  
13 State Osteopathic medicine license will be active but placed on "probation" for a  
14 period of eighteen (18) months, beginning on the 1<sup>st</sup> day of June , 2011 and ending  
15 on the 1<sup>st</sup> day of December , 2012.
- 16 H. Dr. Fine agrees, during this eighteen (18) months of probation, the Board will  
17 receive a monthly list of all patients having surgery with/by him, including patient  
18 identification, the date and location of surgery and the diagnosis/reason for the  
19 surgery. Once the procedure-surgery has been completed, Dr. Fine will provide the  
20 Board with a copy of his operative report on each such patient as well as his billing-  
21 superbilling records on each such patient. Dr. Fine shall commence providing this  
22 report to the Board on the tenth (10<sup>th</sup>) day of July , 2011, i.e., the tenth (10<sup>th</sup>) day  
23 of the second (2<sup>nd</sup>) month of his probation and will terminate on the tenth (10<sup>th</sup>) day  
24 of November , 2012. Should Dr. Fine relocate outside the State of Nevada, this  
25 requirement will be stayed/deferred. Should Dr. Fine return to practice in the State  
26 of Nevada at any time thereafter, this reporting requirement will resume as a  
27 relicensing requirement and for the duration of the remaining time on the 18-month  
28 long probationary period.
- I. Dr. Fine agrees, during this eighteen-month long probationary period, the Board  
retains the right to conduct an office visit and further retains the statutory right to  
receive photocopies of complete medical records and billing records on certain  
patients with a certificate from his records' custodian. These medical records will  
be reviewed by the IBM assigned to his matter or another Board member to assure  
compliance with this Agreement. The Board shall provide Dr. Fine or his counsel  
with 24-hour notice of the date of its inspection.
- J. Dr. Fine agrees that a proctor assisting in his surgeries may be cost-prohibitive. In  
exchange for a requirement of a proctor, Dr. Fine agrees that one-fifth (1/5<sup>th</sup>) of the  
surgeries he performs during the 18-months of probation may be reviewed by at  
least one Otolaryngologist and/or one certified medical biller to assure compliance  
with the standard of medical care for this community and that the proper billing  
codes are being utilized. This 1/5<sup>th</sup> figure will be calculated on a monthly basis from  
the report due to the Board as described in Paragraph "H" above. The reviewing  
physician and/or certified medical biller may require additional information from Dr.  
Fine; and Dr. Fine agrees to cooperate fully with these individuals and provide all  
requested information in a timely fashion. All fees and costs associated with these  
reviews shall be the sole responsibility of Dr. Fine. The IBM assigned to this matter  
or his successor shall determine whether a lesser percentage of cases should be  
reviewed, commencing after the ninth month of the probationary period.
- K. The Board agrees that at its next regularly scheduled Board meeting, immediately  
following the expiration of the 18-month probationary period, if all terms and

1 conditions of this Agreement have been fulfilled including the reimbursement to the  
2 Board of all fees, fines, and costs, a full and active Nevada State Osteopathic  
3 medicine license will be restored to Dr. Fine and an Order of Fulfillment will be  
4 entered by the Board.

- 5 L. Dr. Fine agrees to pay the sum of Fifty Thousand Dollars (\$50,000.00) as the fines  
6 and fees imposed for having violated NRS and NAC chapters 633. This sum  
7 **includes** all fees and costs incurred by the Board up to and including the approval  
8 of this settlement agreement by the Board at its next scheduled board meeting  
9 pursuant to NAC 633.470(2)(b)(6).
- 10 M. Dr. Fine agrees that the sum of \$50,000 shall be payable as follows: the sum of  
11 Four Thousand Dollars (\$4,000) is due on or before the 20<sup>th</sup> day of March , 2011,  
12 and a like payment shall be due on the 20<sup>th</sup> day of each month thereafter, until the  
13 full amount of \$50,000.00 is paid in full.
- 14 N. Should Dr. Fine fail to satisfy and pay this indebtedness to the Board in a timely  
15 manner as discussed herein, or fails to comply with any of the other terms and  
16 condition of this Agreement, Dr. Fine understands and agrees that he will be  
17 considered in default of this Agreement. The Board may take whatever action it  
18 deems appropriate, including but not limited to reducing the balance to judgment  
19 pursuant to NRS chapter 353C and/or the continuation of the prosecution of the  
20 disciplinary cases against Dr. Fine.
- 21 O. The Respondent, Dr. Fine, agrees to bear his own fees and costs, including the  
22 fees and expenses of his own attorney(s) if applicable.
- 23 P. This Agreement and Order shall inure to the benefit of and be binding upon each of  
24 the parties hereto and their respective heirs, personal representatives, assigns, and  
25 successors in interest of each party.
- 26 Q. This Agreement and Order shall be construed in accordance with the laws of the  
27 State of Nevada.
- 28 R. This settlement agreement consists of eight (8) 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.
- S. In consideration for the execution of this Agreement, Dr. Fine hereby releases and  
forever discharges the State of Nevada, the Board of Osteopathic Medicine, and  
the Nevada Attorney General's Office (as counsel for the Board), and each of their  
representatives, investigators, and 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 in this paragraph arising out of, or by reason of, the investigation of the  
allegations raised herein, and other matters relating thereto.
- T. Dr. Fine, for himself, his heirs, executors, administrators, successors and assigns,  
hereby indemnifies and holds harmless the State of Nevada, the State Board of  
Osteopathic Medicine, the 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.

- U. 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.
- V. 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 February, 2011.

MILES B. FINE, D.O.

JOHN H. COTTON & ASSOCIATES, LTD.

By: *Miles Fine*  
 Osteopathic Physician  
 License # 686  
 Respondent

By: *J. H. Cotton*  
 John H. Cotton, Esq.  
 Paul Hoffman, Esq.  
 Attorneys for Respondent

Dated: 1-14-11

Dated: 01/14/2011

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

BY: *Daniel Curtis*  
 Daniel Curtis, D.O.  
 Investigating Board Member

By: *Dianna Hegeduis*  
 Dianna Hegeduis, ESQ.  
 Board Counsel

Dated: 1/24/11

Dated: 1-24-11

**ACKNOWLEDGEMENT**

On this the 14<sup>th</sup> day of January, 2011, the said MILES B. FINE, D.O., personally appeared before me, a notary public, and signed the above document, freely and voluntarily, for the purposes therein mentioned.



NOTARY PUBLIC  
**T. PINCOMBE-BRYSON**  
 STATE OF NEVADA - COUNTY OF CLARK  
 MY APPOINTMENT EXP. AUGUST 21, 2014  
 No. 02-77157-1

*T. Pincombe-Bryson*  
 Notary Public

**ORDER OF THE BOARD**

**IT IS SO ORDERED.**

**IT IS FURTHER ORDERED** that should Dr. Fine fail to comply with any terms or conditions of this Agreement, Dr. Fine 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 actions against Dr. Fine as well as continue with any investigation, if any such confidential investigations are underway as well as seek the maximum fees, fines, and costs allowable under such circumstances. Should the Investigative Board Member assigned to this matter feel a summary suspension is warranted due to Dr. Fine's violating the terms and conditions of this Agreement, the Board's staff shall immediately proceed with such a summary suspension procedure.

**IT IS FURTHER ORDERED** that should Dr. Fine fail to comply with terms or conditions specified in this Agreement regarding the repayment of fees, fines, and costs, the Board may reduce the monies due and owing hereunder to Judgment pursuant to NRS chapter 353C as well as seek the maximum fees, fines, and costs allowable under such circumstances.

DATED this 1st day of February, 2011.

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

BY: Paul J. Kalekas, Dr.  
Dr. Paul Kalekas, Secretary-Treasurer of the Board

