

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

<p>IN THE MATTER OF THE COMPLAINT AGAINST BABAK GHADISHAH, D.O., LIC. #1112, RESPONDENT.</p>	<p>OCT. 05 2008 Case No.: MA090883 FILED Filed: <i>Dianna Hegeduis</i> Executive Director</p>
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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER

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 "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board"), Board's Counsel-Executive Director, Dianna Hegeduis, Esq., and Babak Ghadishah, D.O. ("Dr. Ghadishah") (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 Investigative Board Member Curtis, ascertained certain information regarding a prior lawsuit filed against Dr. Ghadishah. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensees.
- B. WHEREAS, the Investigative Board Member alleged that Dr. Ghadishah failed to timely report the following: that the lawsuit filed by patient S.L. was settled and/or dismissed by the Court in September 2007, with formal written notice of entry of the order of dismissal being filed in November 2007. This dismissal information was not noted in the appropriate renewal application, i.e., the renewal application for 2008 filed with the Board in December 2007. It is alleged that the failure to report and the inaccurate information in the renewal application are violations of NRS chapter 633.
- C. NRS 633.527(1) states that an "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 of 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 imposed against the osteopathic physician that are reportable to the National Practitioner Data Bank not later than 45 days after the sanctions are imposed. NRS 633.527(2) states that should the Board find "that an osteopathic physician has violated any provision of this section, the **Board may impose a fine of not more than \$5,000** against the osteopathic physician **for each violation, in addition to any other fines or penalties permitted by law.**" (Emphasis added.) This statute was added to the law in 2003. By the use of the word "shall" by the Nevada State Legislature in this statute, the Legislature

- intended to mandatorily require all osteopathic physicians to report any of the four (4) events mentioned in the statute.
- D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false . . . statement . . . in applying for a license to practice osteopathic medicine or in applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary proceeding. Pursuant to NRS 633.651, the discipline may include public reprimands, the suspension of the license to practice osteopathic medicine in the State of Nevada, and even the revocation of the license to practice osteopathic medicine in the State of Nevada.
 - E. 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.
 - F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint.
 - G. 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.
 - H. WHEREAS, Dr. Ghadishah understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a formal disciplinary complaint will 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. Ghadishah 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.

- I. WHEREAS, Dr. Ghadishah 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. Ghadishah 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. Ghadishah has elected to enter into this Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Ghadishah 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. Ghadishah 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. Ghadishah, nor have any promises been made other than those reflected in this Agreement. Dr. Ghadishah freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Ghadishah has executed this Agreement only after a careful reading of it and a full understanding of all its terms.
- N. WHEREAS, Dr. Ghadishah 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. Ghadishah 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.

III. TERMS OF THE AGREEMENT

- A. Dr. Ghadishah acknowledges that if the failure to report allegations and the inaccurate-incomplete information contained within the renewal application were true, then such would be violations of NRS chapter 633 for which discipline is permissible under Nevada law. In exchange for the Board not pursuing a formal disciplinary action, and Dr. Ghadishah not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matters described herein, and only such matters. **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 FOR THE NON-REPORTING VIOLATION, I.E., NOT FOR ANY ALLEGATIONS REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE PHYSICIAN'S COMPETENCY.** Dr. Ghadishah 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. Ghadishah. If any lawsuit is not reported to the Board, such will be in violation of this agreement as well as the applicable statutes.

- B. Dr. Ghadishah agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine imposed regarding NRS 633.527(1) as mentioned in this agreement. This sum **includes** all fees and costs incurred by the Board up to and including the approval of this 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 time of the execution of this Settlement Agreement by Respondent Physician.
- C. Should Dr. Ghadishah fail to satisfy and pay the indebtedness of \$500.00 in a timely manner as discussed herein, Dr. Ghadishah 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. Ghadishah, 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. *TEN (10) P.H.*
- F. This document shall be construed in accordance with the laws 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.

- H. In consideration for the execution of this Agreement, Dr. Ghadishah 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 of Nevada 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 she 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 in this matter, including those noted in the administrative complaint on file herein, and other matters relating thereto.
- I. Dr. Ghadishah, 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 disciplinary action, this settlement or its administration.
- J. 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.

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K. LASTLY, by executing this agreement, BABAK GHADISHAH, D.O., 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 oct, 2009.

BABAK GHADISHAH, D.O.



Osteopathic Physician

Dated: 9/9/09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: 

Daniel Curtis, D.O., Chairman &
Investigating Board Member

Dated: 9/21/09

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By 

Dianna Hegeduis, Executive Director -
Board Counsel

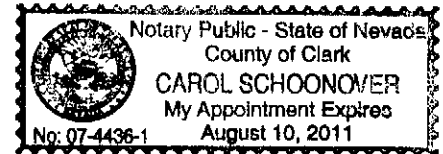
Dated: 9-15-09

ACKNOWLEDGEMENT

On this the 9 day of September, 2009, the said BABAK GHADISHAH, 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. Ghadishah fail to comply with any terms or conditions of this Agreement, Dr. Ghadishah 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. Ghadishah. Should this Agreement become null and void by Dr. Ghadishah's failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action

against Dr. Ghadishah, but the Board may also seek the maximum fees, fines, and costs.

DATED this 5th day of October, 2009.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

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