

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
 2
 3 IN THE MATTER OF THE COMPLAINT)
 4 AGAINST)
 5 DAVID GOTHELF, D.O., Lic. #479,)
 6 RESPONDENT.)

Case No.: MA1001006

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

MAY 05 2010

SETTLEMENT AGREEMENT AND ORDER

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Rota Rosaschi, Investigative Board Member ("Ms. Rosaschi" 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 David Gothelf, D.O. ("Dr. Gothelf") (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 Rosaschi, ascertained certain information regarding litigation against Dr. Gothelf. The information was ascertained as a result of the Board's staff due diligence in investigating its applicants/licensee.
- B. WHEREAS, the Investigative Board Member alleged that Dr. Gothelf failed to timely report the filing of a lawsuit filed regarding a patient ("B.A."), and such failure is a violation of NRS 633.527. The Investigative Board Member also alleges that the Respondent answered "no" on his renewal application for 2010, submitted in October 2009, that he had not been involved in litigation, and such is an inaccurate response.
- 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 or 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,

Nevada State Board of Osteopathic Medicine
 2500 E. Flamingo Ave., Suite D • Las Vegas, NV 89119-5270
 (702) 522-0147

1 the Board may impose a fine of not more than \$5,000 against the osteopathic
2 physician **for each violation, in addition to any other fines or penalties permitted**
3 **by law.** (Emphasis added.) This statute was added to the law in 2003. By the use of
4 the word "shall" by the Nevada State Legislature in this statute, the Legislature
5 intended to mandatorily require all osteopathic physicians to report any of the four (4)
6 events mentioned in the statute.

- 7
8 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
9 . . . statement . . . in applying for a license to practice osteopathic medicine or in
10 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
11 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
12 proceeding; and pursuant to NRS 633.651, such discipline may include public
13 reprimands, the suspension of the license to practice osteopathic medicine in the State
14 of Nevada, and even the revocation of the license to practice osteopathic medicine in
15 the State of Nevada.
- 16 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
17 person reasonable attorney's fees and costs that are incurred by the regulatory body
18 as part of its investigative, administrative and disciplinary proceedings against the
19 person if the regulatory body" either enters a final order or enters into a settlement.
- 20 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
21 Board to file a formal disciplinary complaint.
- 22 G. WHEREAS, the parties understand that this Agreement will be signed by the
23 respective parties and will then be offered to the Board for the entire Board's approval
24 at the next Board meeting, with the recommendation of the Investigating Board
25 Member that this matter be settled. The Agreement shall not become effective until it
26 has been approved by a majority of the Board and endorsed by a representative
27 member of the Board.
- 28 H. WHEREAS, Dr. Gothelf 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. Gothelf
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. Gothelf 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. Gothelf 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. Gothelf has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Gothelf 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. Gothelf 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. Gothelf, nor have any
2 promises been made other than those reflected in this Agreement. Dr. Gothelf freely
3 and voluntarily entered into this agreement, motivated only by a desire to resolve the
4 issues addressed herein. Dr. Gothelf has executed this Agreement only after a careful
5 reading of it and a full understanding of all its terms.

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

22 III. TERMS OF THE AGREEMENT

- 23 A. Dr. Gothelf acknowledges that the failure to report allegations are true, and each
24 such act (failure to timely report the lawsuit) is a violation of NRS chapter 633 and
25 discipline is permissible. In exchange for the Board not pursuing an administrative
26 action and Dr. Gothelf not pursuing subsequent reviews by the appropriate
27 appellate Courts, the parties have agreed to resolve the current matter, and only
28 this matter. Dr. Gothelf will henceforth insure that all lawsuits involving himself 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. Gothelf. If any lawsuit is not reported to the Board, such
will be in violation of this agreement as well as the applicable statutes.
- 29 B. **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND THE PARTIES DO
HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL NOT AND HAS NOT
BEEN FILED BY THE BOARD AS TO THE ISSUES HEREIN; AND THAT THE
PARTIES HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING
ASSESSED SOLELY FOR THE NON-REPORTING VIOLATION, I.E., THE
BOARD IS NOT ALLEGING UNPROFESSIONAL CONDUCT OR ANYTHING
NEGATIVE REGARDING THE PHYSICIAN'S COMPETENCY.**
- 30 C. Dr. Gothelf agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
imposed for having violated NRS 633.527(1) for the failure to timely report the
settlement of the case. 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 time of the execution of this agreement.
- 31 D. Should Dr. Gothelf fail to satisfy and pay the indebtedness of \$500.00 in a timely
manner as discussed herein, Dr. Gothelf understands and agrees that he will be
considered in default of this Agreement, and this agreement will be null and void,

- 1 with the Respondent receiving credit for payments made to date. The Board may
 2 take whatever action it deems appropriate, including but not limited to reducing the
 3 balance to judgment pursuant to NRS chapter 353C.
- 4 E. The Respondent, Dr. Gothelf, agrees to bear his own fees and costs, including the
 5 fees and expenses of his own attorney(s) if applicable.
- 6 F. This Agreement and Order shall inure to the benefit of and be binding upon each of
 7 the parties hereto and their respective heirs, personal representatives, assigns and
 8 successors in interest of each party.
- 9 G. This Agreement and Order shall be construed in accordance with the laws of the
 10 State of Nevada.
- 11 H. This settlement agreement consists of five (5) pages and embodies the entire
 12 agreement between the Board and the osteopathic physician. It may not be
 13 altered, amended or modified without the express consent of the parties, and any
 14 subsequent alteration, amendment, or modification shall be in writing and subject to
 15 approval by the Board.
- 16 I. In consideration for the execution of this Agreement, Dr. Gothelf hereby releases
 17 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
 18 and the Nevada State Attorney General's Office (the Board's counsel), and each of
 19 their representatives, investigators, and employees, in their individual and
 20 representative capacity (collectively the State of Nevada Agencies) from any and all
 21 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
 22 and demands whatsoever known or unknown, in law and in equity, that he may
 23 have had, now has, may have had, or claim to have against any and all of the
 24 persons and entities named in this paragraph arising out of, or by reason of, the
 25 investigation of the allegations raised in this matter, including those noted in the
 26 administrative complaint on file herein, and other matters relating thereto.
- 27 J. Dr. Gothelf, for himself, his heirs, executors, administrators, successors and
 28 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.
- K. 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.
- L. LASTLY, by executing this agreement, Respondent 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 Board's agenda for the month of May, 2010.

DAVID GOTHELF, D.O.

David Gothelf, D.O.

Osteopathic Physician

State of Nevada
 County of Clark

This instrument was acknowledged
 before me on 25 of March, 2010
 by Claudia M. Romero

Dated: 3/25/2010

Claudia M. Romero



Notary Public

1 NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

2 BY: Rota Rosaschi
3 Rota Rosaschi
4 Investigating Board Member
Dated: 3/26/10

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By Dianna Hegeduis
Dianna Hegeduis, Executive Director -
Board Counsel
Dated: 4-19-2010

5
6 **ACKNOWLEDGEMENT**

7 On this the _____ day of _____, 2010, the said DAVID GOTHELF, D.O.,
8 personally appeared before me, a notary public, and signed the above document, freely and
9 voluntarily, under no duress.

10 _____
11 Notary Public

12 **ORDER OF THE BOARD**

13 **IT IS SO ORDERED.**

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

22
23 DATED this _____ day of _____, 2010.

24 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

25
26 BY: _____
27 Dr. Daniel Curtis, Chairman/President of the
28 Board

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

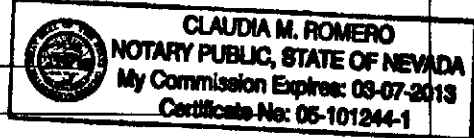
3 BY: _____
4 Rota Rosaschi
Investigating Board Member
Dated: _____

By _____
Dianna Hegeduis, Executive Director -
Board Counsel
Dated: _____

5
6 **ACKNOWLEDGEMENT**

7 On this the 25 day of March, 2010, the said DAVID GOTHELF, D.O.,
8 personally appeared before me, a notary public, and signed the above document, freely and
voluntarily, under no duress.

9 
10 _____
11 Notary Public



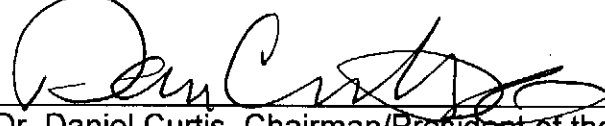
12
13 **ORDER OF THE BOARD**

14 **IT IS SO ORDERED.**

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

22 DATED this 4th day of May, 2010.

24 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

25 BY: 
26 _____
27 Dr. Daniel Curtis, Chairman/President of the
28 Board