

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

2   IN A MATTER INVOLVING  
3   JAMES HEMSLEY, D.O., LIC. NO. 999,  
4   RESPONDENT.

Case No.: MA1002019  
                  **NV STATE BOARD OF  
                  OSTEOPATHIC MEDICINE**

Filed:  
                                  JUN 16 2010

6                                   **SETTLEMENT AGREEMENT AND ORDER**

**FILED**

7                   **I. PARTIES**

8                   This Settlement Agreement and Order ("Agreement and Order") is made by and  
9                   between Daniel K. Curtis, D.O., Investigative Board Member ("Dr. Curtis" or "Investigative  
10                  Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through  
11                  the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and James Hemsley, D.O.  
12                  ("Dr. Hemsley") and his attorney Edward Lemons, Esq. (collectively referred to as "the  
13                  Parties").  
14

15                  **II. RECITALS**

16                  As a preamble to this Agreement, the Parties agree to the following:

- 17                  A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain  
18                  information regarding litigation filed against Dr. Hemsley. The information was  
19                  ascertained as a result of the Board's staff due diligence in investigating its  
20                  applicants/licensees.
- 21                  B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:  
22                  (1) Re: patient "RM." Suit was filed on or about March 3, 2004; and the Board was not  
23                  timely notified of the same. Information about the commencement of this matter was,  
24                  however, duly noted in the appropriate renewal application. The matter settled on or  
25                  about May 7, 2007; and the Respondent provided the Board with information about the  
26                  settlement in his 2008 renewal application but not separately and within 45 days of the  
27                  settlement. (2) Re: patient "EPH." Suit was filed on or about April 11, 2003; the  
28                  Respondent did not timely notify the Board of the same or disclosed it in his 2004  
                      renewal application submitted in 2003. A settlement was achieved on April 27, 2005.  
                      Respondent did not timely notify the board of the same, but did properly disclose it in  
                      his renewal application for 2006. The IBM has alleged all such failures are violations  
                      of NRS chapter 633 as discussed hereinafter.
- C. NRS 633.527(1) states that a licensed "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

1 submitted to arbitration or mediation not later than 45 days after the claim is submitted  
2 to arbitration or mediation; (c) any settlement, award, judgment or other disposition or  
3 any action or claim described in paragraphs (a) or (b) not later than 45 days after the  
4 settlement, award, judgment or other disposition; and (d) any sanctions imposed  
5 against the osteopathic physician that are reportable to the National Practitioner Data  
6 Bank not later than 45 days after the sanctions are imposed. NRS 633.527(2) states  
7 that should the Board find "that an osteopathic physician has violated any provision of  
8 this section, **the Board may impose a fine of not more than \$5,000** against the  
9 osteopathic physician **for each violation, in addition to any other fines or penalties**  
10 **permitted by law.**" (Emphasis added.) This statute was added to the law in 2003. By  
11 the use of the word "shall" by the Nevada State Legislature in this statute, the  
12 Legislature intended to mandatorily require all osteopathic physicians to report any of  
13 the four (4) events mentioned in the statute.

- 14 D. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false  
15 . . . statement . . . in applying for a license to practice osteopathic medicine or in  
16 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS  
17 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary  
18 proceeding; and such discipline may include public reprimands, the suspension or  
19 revocation of the license to practice osteopathic medicine in the State of Nevada, and  
20 an assessment of a fine not to exceed \$5,000 per violation.
- 21 E. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a  
22 person reasonable attorney's fees and costs that are incurred by the regulatory body as  
23 part of its investigative, administrative and disciplinary proceedings against the person  
24 if the regulatory body" either enters a final order or enters into a settlement agreement.
- 25 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the  
26 Board to file a formal disciplinary complaint.
- 27 G. WHEREAS, the parties understand that this Agreement will be signed by the respective  
28 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. Hemsley understands that the Board is free to accept or reject this  
Agreement and, if rejected by the Board, a formal disciplinary complaint may 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. Hemsley  
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. Hemsley 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. Hemsley 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.

- 1 K. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding  
2 and to save further costs and expenses, Dr. Hemsley has elected to enter into this  
3 Agreement to resolve this matter, and this matter only.
- 4 L. WHEREAS, Dr. Hemsley acknowledges that once accepted by the Board, this  
5 Agreement and all associated documentation become a matter of public record (with  
6 the exception of medical information related to the patient).
- 7 M. WHEREAS, Dr. Hemsley has had the opportunity to obtain the advice from competent  
8 counsel of his choice concerning the terms and conditions of this Agreement and the  
9 execution thereof. No coercion has been exerted upon Dr. Hemsley, nor have any  
10 promises been made other than those reflected in this Agreement. Dr. Hemsley freely  
11 and voluntarily entered into this agreement, motivated only by a desire to resolve the  
12 issues addressed herein. Dr. Hemsley has executed this Agreement only after a  
13 careful reading of it and a full understanding of all its terms.
- 14 N. WHEREAS, Dr. Hemsley is fully aware of his rights to contest the charges pending  
15 against him. These rights include: representation by an attorney at his own expense,  
16 the right to a public hearing on any charges or allegations filed, the right to confront and  
17 cross-examine witnesses called to testify against him, the right to present evidence on  
18 his own behalf, the right to compulsory process to secure the attendance of such  
19 witnesses, the right to testify on his own behalf, the right to receive written findings of  
20 fact and conclusions of law supporting the decision on the merits of the complaint and  
21 the right to obtain judicial review of the Board's decision. Should the Board accept this  
22 Agreement, Dr. Hemsley voluntarily waives these rights.
- 23 O. WHEREAS, this Agreement and Order shall be construed in accordance with the laws  
24 of the State of Nevada.
- 25 P. WHEREAS, this Agreement and Order contains a complete description of the  
26 agreement between the parties and it supersedes any previous agreements between  
27 the parties. All material representations, understandings and promises of the parties  
28 are contained in this Agreement. Any modifications must be set forth in writing, signed  
by all the parties, and approved by the Board.

### 18 III. TERMS OF THE AGREEMENT

- 19 A. Dr. Hemsley acknowledges that the failure to report allegations are true, and each  
20 such act (failure to timely report and/or inaccurate information in renewal  
21 applications) is a violation of NRS chapter 633 for which discipline is permissible  
22 under Nevada law. In exchange for the Board not pursuing an administrative action  
23 on either the non-reporting allegations or the inaccurate information allegations, and  
24 Dr. Hemsley not pursuing subsequent reviews by the appropriate appellate Courts,  
25 the parties have agreed to resolve the current matter, and only this matter. Dr.  
26 Hemsley will henceforth insure that all lawsuits involving him will be timely and  
27 accurately reported to the Board, and the failure to do so may result in the Board  
28 bringing a disciplinary action against the osteopathic medical license issued by the  
Board to Dr. Hemsley. If any lawsuit is not reported to the Board, such will be in  
violation of this agreement as well as the applicable statutes. **ADDITIONALLY,  
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 SOLELY TO RESOLVE THE NON-  
REPORTING ISSUES, I.E., NOT FOR ANY ALLEGATIONS REGARDING  
UNPROFESSIONAL CONDUCT.**

- 1 B. Dr. Hemsley agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the  
2 fine imposed for having violated NRS 633.527(1) for the failure to timely report the  
3 settlement of the lawsuit. This sum **includes** all fees and costs incurred by the  
4 Board up to and including the approval of this settlement agreement by the Board at  
5 its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such amount  
6 shall be payable in monthly installments of \$250.00 each with the first payment  
7 being due on the 15<sup>th</sup> day of May, 2010, and a like payment  
8 being due on the 15<sup>th</sup> day of each month thereafter until said amount is paid in  
9 full.
- 10 C. Should Dr. Hemsley fail to satisfy and pay the indebtedness of \$1,000.00 in a timely  
11 manner as discussed herein, Dr. Hemsley understands and agrees that he will be  
12 considered in default of this Agreement, and this agreement will be null and void,  
13 with the Respondent receiving credit for payments made to date. The Board may  
14 take whatever action it deems appropriate, including but not limited to reducing the  
15 balance to judgment pursuant to NRS chapter 353C.
- 16 D. The Respondent, Dr. Hemsley, agrees to bear his own fees and costs, including the  
17 fees and expenses of his own attorney(s) if applicable.
- 18 E. This Agreement and Order shall inure to the benefit of and be binding upon each of  
19 the parties hereto and their respective heirs, personal representatives, assigns and  
20 successors in interest of each party.
- 21 F. This Agreement and Order shall be construed in accordance with the laws of the  
22 State of Nevada.
- 23 G. This settlement agreement consists of six (6) pages and embodies the entire  
24 agreement between the Board and the osteopathic physician. It may not be altered,  
25 amended or modified without the express consent of the parties, and any  
26 subsequent alteration, amendment, or modification shall be in writing and subject to  
27 approval by the Board.
- 28 H. In consideration for the execution of this Agreement, Dr. Hemsley hereby releases  
and forever discharges the State of Nevada, the Board of Osteopathic Medicine,  
and the Nevada State 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 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 in this matter, and other matters relating  
thereto.
- I. Dr. Hemsley, 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.

1 J. This document may be prepared in multiple counterparts. Each counterpart,  
2 whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,  
3 shall be deemed an original hereof if executed by each of the Parties hereto.  
4 K. LASTLY, by executing this agreement, Respondent Physician hereby expressly,  
5 knowingly, and intentionally waive the 21-working days notice requirement pursuant  
6 to Nevada's Open Meeting Laws and acknowledges that this Agreement shall be on  
7 the agenda for the Board's approval in the month of June,  
8 2010.

9 JAMES HEMSLEY, D.O.

LEMONS GRUNDY & EISENBERG

10 By: James Hemsley  
11 Osteopathic Physician

12 By: Edward J. Lemons  
13 Edward J. Lemons, Esq.

14 Dated: 4/23/10

15 Dated: April 26, 2010

16 NEVADA STATE BOARD OF  
17 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE

18 By: Daniel K. Curtis  
19 Daniel K. Curtis, D.O.  
20 Investigating Board Member

21 By: Dianna Hegeduis  
22 Dianna Hegeduis, Executive Director -  
23 Board Counsel

24 Dated: 6-10-10

25 Dated: 6-10-10

26 **ACKNOWLEDGEMENT**

27 On this the 23<sup>rd</sup> day of April, 2010, the said JAMES HEMSLEY,  
28 D.O., personally appeared before me, a notary public, and signed the above document, freely  
and voluntarily, under no duress.

Dana L. Thiesse  
Notary Public



DANA L. THIESSE  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 91-0106-2 - Expires June 5, 2010

**ORDER OF THE BOARD**

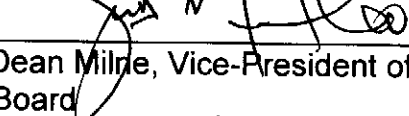
IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Hemsley fail to comply with any terms or  
conditions of this Agreement, Dr. Hemsley will be in breach of this Agreement; and this  
Agreement will be null and void. The Board may take whatever action it deems appropriate,

1 including but not limited to proceeding with the administrative action against Dr. Hemsley.  
2 Should this Agreement become null and void by Dr. Hemsley's failure to comply with terms or  
3 conditions of this Agreement, the Board may not only pursue an administrative action against  
4 Dr. Hemsley, but the Board may also seek the maximum fees, fines, and costs.

5 DATED this 15 day of June, 2010.

6 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

7  
8 BY:   
9 Dr. C. Dean Milne, Vice-President of the  
10 Board

FUR

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

2   IN A MATTER INVOLVING

3   JAMES HEMSLEY, D.O., LIC. NO. 999,

4   RESPONDENT.

Case No.: MA1002019

**NV STATE BOARD OF  
OSTEOPATHIC MEDICINE**

Filed:

JUN 16 2010

5  
6                   **WRITTEN NOTICE OF ENTRY OF SETTLEMENT AGREEMENT**  
7                   **& ORDER RE: SAME**

**FILED**

8                   PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has  
9  
10                  approved the settlement agreement in the above-referenced matter; and a copy of the  
11                  agreement with order is attached.

12                 DATED THIS 16 day of June, 2010.

13                                 NEVADA STATE BOARD OF  
14                                 OSTEOPATHIC MEDICINE

15                   By

  
16                                 Dianna Hegeduis, Executive Director –  
17                                 Board Counsel

18                                 901 American Pacific Dr., # 180  
19                                 Henderson, NV 89014

20   CERTIFICATE OF MAILING

21                  I hereby certify that on the 16 day of June, 2010, I served a copy of the foregoing  
22                  notice, with attached Settlement Agreement/Order, upon the respective parties to this matter  
23                  by depositing a true copy thereof in the U.S. mail, addressed to them at their last known  
24                  address on file with the Board, postage thereon prepaid.

25                                 

26                                 An employee of the NEVADA STATE BOARD  
27                                 OF OSTEOPATHIC MEDICINE