

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

3 IN A MATTER INVOLVING

4 KYONG KIM, D.O.,
5 License No. 1433,

6 **RESPONDENT.**

) Case No.: MA1010003

) **NV STATE BOARD OF**
) **OSTEOPATHIC MEDICINE**

) **APR 13 2011**

7 **SETTLEMENT AGREEMENT AND ORDER**

FILED

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between C. Dean Milne, D.O., Investigative Board Member ("Dr. Milne" or "Investigative Board
11 Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the
12 Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Kyong Kim, D.O. ("Dr. Kim")
13 (collectively referred to as "the 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. Kim. The information was ascertained
19 as a result of the Board's staff due diligence in investigating its applicants/licenseses.
20 B. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows:
21 (1) Re: patient "C.R. The Respondent failed to timely notify this Board of the
22 commencement of the litigation concerning this patient and the lawsuit's resolution.
23 Certain renewal applications did not contain information regarding the status of this
24 case. The IBM has alleged all such failures are violations of NRS chapter 633 as
25 discussed hereinafter.
26 C. WHEREAS, NRS 633.527(1) states that a licensed "osteopathic physician **shall report**
27 to the Board: (a) any action for malpractice against the osteopathic physician not later
28 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, **the Board may impose a fine of not more than \$5,000**

1 against the osteopathic physician **for each violation, in addition to any other fines**
2 **or penalties permitted by law.** (Emphasis added.) This statute was added to the
3 law in 2003. By the use of the word "shall" by the Nevada State Legislature in this
4 statute, the Legislature intended to mandatorily require all osteopathic physicians to
5 report any of the four (4) events mentioned in the statute.

- 6 D. WHEREAS, NRS 633.131(1) defines "unprofessional conduct" as including "willfully
7 making a false . . . statement . . . in applying for a license to practice osteopathic
8 medicine or in applying for renewal of a license to practice osteopathic medicine."
9 Pursuant to NRS 633.511(1), "unprofessional conduct" is a ground for initiating a formal
10 disciplinary proceeding; and such discipline may include public reprimands, the
11 suspension or revocation of the license to practice osteopathic medicine in the State of
12 Nevada, and an assessment of a fine not to exceed \$5,000 per violation.
- 13 E. WHEREAS, NRS 622.400(1) states that a "regulatory body [such as this Board] may
14 recover from a person reasonable attorney's fees and costs that are incurred by the
15 regulatory body as part of its investigative, administrative and disciplinary proceedings
16 against the person if the regulatory body" either enters a final order or enters into a
17 settlement agreement.
- 18 F. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
19 Board to file a formal disciplinary complaint.
- 20 G. WHEREAS, the parties understand that this Agreement will be signed by the respective
21 parties and will be offered to the Board for the Board's approval at the next Board
22 meeting, with the recommendation of the Investigating Board Member that this matter
23 be settled. The Agreement shall not become effective until it has been approved by a
24 majority of the Board and endorsed by a representative member of the Board.
- 25 H. WHEREAS, Dr. Kim understands that the Board is free to accept or reject this
26 Agreement and, if rejected by the Board, a formal disciplinary complaint may be filed
27 and a hearing scheduled on the same. The Board members who review this matter for
28 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. Kim 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. Kim 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. Kim 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. Kim has elected to enter into this
Agreement to resolve this matter, and this matter only.
- L. WHEREAS, Dr. Kim 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. Kim 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. Kim, nor have any promises
been made other than those reflected in this Agreement. Dr. Kim freely and voluntarily

1 entered into this agreement, motivated only by a desire to resolve the issues addressed
2 herein. Dr. Kim has executed this Agreement only after a careful reading of it and a full
3 understanding of all its terms.

- 4 N. WHEREAS, Dr. Kim is fully aware of his rights to contest the charges pending against
5 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-
7 examine witnesses called to testify against him, the right to present evidence on his
8 own behalf, the right to compulsory process to secure the attendance of such
9 witnesses, the right to testify on his own behalf, the right to receive written findings of
10 fact and conclusions of law supporting the decision on the merits of the complaint and
11 the right to obtain judicial review of the Board's decision. Should the Board accept this
12 Agreement, Dr. Kim voluntarily waives these rights.
- 13 O. WHEREAS, this Agreement and Order contains a complete description of the
14 agreement between the parties and it supersedes any previous agreements between
15 the parties. All material representations, understandings and promises of the parties
16 are contained in this Agreement. Any modifications must be set forth in writing, signed
17 by all the parties, and approved by the Board.

11 III. TERMS OF THE AGREEMENT

- 12 A. Dr. Kim acknowledges that if the failures to report allegations are true, then each
13 such act would be a violation of NRS chapter 633 for which discipline is permissible
14 under Nevada law. Dr. Kim further acknowledges that if non-reporting occurred
15 such was not an intentional act on his part but was merely an administration error.
16 In exchange for the Board not pursuing an administrative action, and Dr. Kim not
17 pursuing subsequent reviews by the appropriate appellate Courts, the parties have
18 agreed to resolve the current matter, and all issues related thereto.

19 **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND THE PARTIES DO
20 HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL NOT AND HAS NOT
21 BEEN FILED BY THE BOARD; NOR IS THIS SETTLEMENT AGREEMENT TO
22 BE CONSIDERED A DISCIPLINARY ACTION. THE PARTIES HAVE SIMPLY
23 AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED FOR THE NON-
24 REPORTING OCCURRENCES.**

- 25 B. Dr. Kim agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine
26 imposed for having violated NRS 633.527(1). This sum includes all fees and costs
27 incurred by the Board up to and including the approval of this agreement by the
28 Board at its next scheduled board meeting pursuant to NAC 633.470(2)(b)(6). Such
29 amount shall be payable as follows: The first payment of \$250.00 being due on the
30 15th day of _____, 2011, and the final payment of \$250.00 being due on
31 the 15th day of the following month, i.e., _____ 15, 2011.

*pd
full
ck #
1244
\$500*

- 32 C. Should Dr. Kim fail to satisfy and pay the indebtedness of \$500.00 in a timely
33 manner as discussed herein, Dr. Kim understands and agrees that he will be
34 considered in default of this Agreement, and this agreement will be null and void,
35 with the Respondent receiving credit for payments made to date. The Board may
36 take whatever action it deems appropriate, including but not limited to reducing the
37 balance to judgment pursuant to NRS chapter 353C.
- 38 D. The Respondent, Dr. Kim, 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.

- F. This Agreement and Order shall be construed in accordance with Nevada's laws.
- G. This agreement consists of five (5) 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 or modification shall be in writing and subject to approval by the Board.
- H. In consideration for the execution of this Agreement, Dr. Kim hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the Nevada Attorney General's Office (as Board counsel), 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. Kim, 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 or this settlement.
- 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.
- K. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and intentionally waive the 21-working days notice requirement pursuant to Nevada laws and acknowledges that this Agreement shall be on the agenda for the Board's approval in the month of APRIL, 2011 and the order of fulfillment on the Board's agenda for approval in the month of MAY, 2011. *JK*

KYONG KIM, D.O.

By: *[Signature]*
Osteopathic Physician

Dated: 3/8/11

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: *[Signature]*
C. Dean Milne, D.O.
Investigating Board Member

Dated: 4-13-11

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

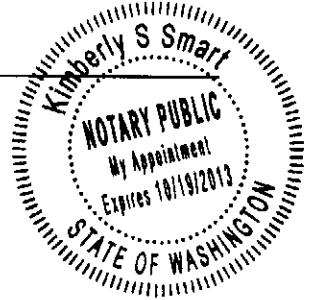
By: *[Signature]*
Dianna Hegeduis, Executive Director -
Board Counsel

Dated: 4-12-11

1
2 **ACKNOWLEDGEMENT**

3 On this the 14 day of March, 2011, the said KYONG KIM, D.O.,
4 personally appeared before me, a notary public, and signed the above document, freely and
5 voluntarily, under no duress.

6 Kimberly S Smart
7 Notary Public



8 **ORDER OF THE BOARD**

9 **IT IS SO ORDERED.**

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

17
18 DATED this 12th day of April, 2011.

19 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

20
21 BY: Dan Curtis
22 Dr. Daniel K. Curtis, President of the
23 Board
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2 **OSTEOPATHIC MEDICINE**

3 IN A MATTER INVOLVING)

4 KYONG KIM, D.O.,)
5 License No. 1433,)

6 RESPONDENT.)

Case No.: MA1010003

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

APR 13 2011

FILED

7 **WRITTEN NOTICE OF ENTRY OF SETTLEMENT**
8 **AGREEMENT & ORDER**

9 PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has
10 approved the settlement agreement entered into by Respondent, Kyong Kim, D.O., and the
11 Board; and a file-stamped copy of the same is attached hereto.
12

13 DATED THIS 13 day of April, 2011.

14 NEVADA STATE BOARD OF
15 OSTEOPATHIC MEDICINE

16 By 

17 Dianna Hegedus, Esq., Executive Director
18 901 American Pacific Dr., # 180
Henderson, NV 89014

19 **CERTIFICATE OF MAILING**

20 I hereby certify that on the 13 day of April, 2011, I served a copy of the above notice
21 with attached agreement/order upon the Respondent, addressed to him/her at the last known
address registered with the Board, postage thereon prepaid.

22 

23 An employee of the NEVADA STATE BOARD OF
24 OSTEOPATHIC MEDICINE