

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN A MATTER INVOLVING)

) CASE NO. AD1101001

BRIAN LEMPER, D.O., LIC. #971)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

Respondent.)

SETTLEMENT AGREEMENT AND ORDER

AUG 10 2011

FILED

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between Richard Almaguer, D.O., Investigative Board Member ("Dr. Almaguer" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Interim Executive Director, Barbara Longo, and Brian Lemper, D.O. ("Dr. Lemper"), through his counsel, Jack Chen Min Juan, Esq. (collectively referred to as "the Parties").

II. RECITALS

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

- A. WHEREAS, the Investigative Board Member ("IBM") has alleged as follows: Dr. Lemper was investigated by the Office of the Inspector General of the Department of Health and Human Services in May 2010. The IBM has alleged that the physician did not timely report the commencement of that investigation to the Board within 45 days of the event in violation of (1c) NRS 633.527. The IBM has further alleged that Dr. Lemper did not report the investigation on his 2011 renewal application in violation of (1c) NRS 633.131.
- B. WHEREAS, 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 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 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

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statute, the Legislature intended to mandatorily require all osteopathic physicians to report any of the four (4) events mentioned in the statute.

- C. 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; and such discipline may include public reprimands, the suspension or revocation of the license to practice osteopathic medicine in the State of Nevada, and an assessment of a fine not to exceed \$5,000 per violation.
- D. 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.
- E. WHEREAS, the parties have agreed to settle this matter, rather than requiring the Board to file a formal disciplinary complaint and/or prove their allegations.
- F. 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.
- G. WHEREAS, Dr. Lemper understands that the Board is free to accept or reject this Agreement and, if rejected by the Board, a disciplinary complaint may be filed and a hearing scheduled. 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. Lemper 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.
- H. WHEREAS, Dr. Lemper 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.
- I. WHEREAS, Dr. Lemper 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.
- J. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding and to save further costs and expenses, Dr. Lemper has elected to enter into this Agreement to resolve this matter, and this matter only.
- K. WHEREAS, Dr. Lemper 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).
- L. WHEREAS, Dr. Lemper 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. Lemper, nor have any promises been made other than those reflected in this Agreement. Dr. Lemper freely and voluntarily entered into this agreement, motivated only by a desire to resolve the issues addressed herein. Dr. Lemper has executed this Agreement only after a careful reading of it and a full understanding of all its terms.

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

15 **III. TERMS OF THE AGREEMENT**


- 16 A. Dr. Lemper acknowledges that the failure to report allegations are true, and each such
17 act is a violation of NRS chapter 633 for which discipline is permissible under Nevada
18 law. In exchange for the Board not pursuing an administrative action on the non-
19 reporting allegations or the inaccurate renewal applications/unprofessional conduct
20 allegations, and Dr. Lemper not pursuing subsequent reviews by the appropriate
21 appellate Courts, the parties have agreed to resolve the current matter, and only this
22 matter. Dr. Lemper will henceforth insure that all lawsuits involving him will be timely
23 and accurately reported to the Board, and the failure to do so may result in the Board
24 bringing a disciplinary action against the osteopathic medical license issued by the
25 Board to Dr. Lemper. If any lawsuit is not reported to the Board, such will be in
26 violation of this agreement as well as the applicable statutes. **ADDITIONALLY, THE
27 BOARD ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A
28 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 ISSUE.** The
Board waives all other claims and/or allegations regarding any alleged inaccurate
renewal applications.
- 20 B. Dr. Lemper agrees to pay the sum of One Thousand Dollars and no cents (\$1000.00)
21 as the fine imposed for having violated NRS chapter 633. This sum **includes** all fees
22 and costs incurred by the Board up to and including the approval of this settlement
23 agreement by the Board at its next scheduled board meeting pursuant to NAC
24 633.470(2)(b)(6). Such amount shall be payable as follows: The first payment of
25 \$500.00 being due on the first day of August 2011 and the final payment of \$500.00
26 being due on the first day of September, 2011. *Pd in full ck 3217*
- 27 C. Should Dr. Lemper fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
28 manner as discussed herein, Dr. Lemper 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. Lemper, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s) if applicable.


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- 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 the laws of the State of Nevada.
- G. This settlement 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, amendment, or modification shall be in writing and subject to approval by the Board.
- H. In consideration for the execution of this Agreement, Dr. Lemper 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.
- I. Dr. Lemper, 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.
- 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's Open Meeting Laws and acknowledges that this Agreement shall be on the agenda for the Board's approval in the month of August 2011, and that upon payment of the fine mentioned above, an order of fulfillment will be scheduled for approval by the Board in the month of September, 2011.

BRIAN LEMPER, D.O.

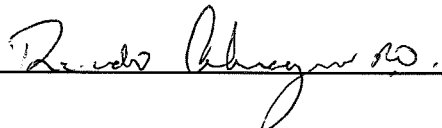
MARQUIS & AURBACH

By: 
Osteopathic Physician
Dated: 7/27/11

By: 
Jack Chen Min Juan, Esq., Bar # 6367
Dated:

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By: 

By: 

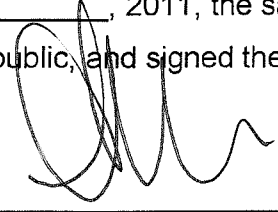
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Richard Almaguer, Esq.
Investigating Board Member
Dated: 8.9.11

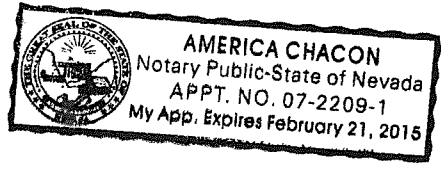
Barbara Longo, Interim Executive Director
Dated: 8.9.11

ACKNOWLEDGEMENT

On this the 27 day of JULY, 2011, the said BRIAN LEMPER,
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.

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IT IS FURTHER ORDERED that should Dr. Lemper fail to comply with any terms or conditions of this Agreement, Dr. Lemper 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. Lemper. Should this Agreement become null and void by Dr. Lemper's failure to comply with terms or conditions of this Agreement, the Board may not only pursue an administrative action against Dr. Lemper, but the Board may also seek the maximum fees, fines, and costs.

DATED this 9 day of August, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

BY: Paul J. Kallala, DO
Dr. _____, President of the Board

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BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER OF THE COMPLAINT
AGAINST
Brian Lemper, D.O., LIC. #971
RESPONDENT.

) Case No.: AD1101001
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NV STATE BOARD OF
OSTEOPATHIC MEDICINE

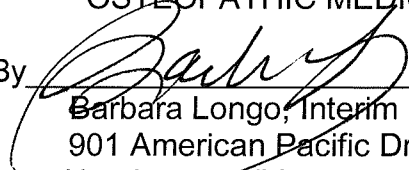
AUG 10 2011

WRITTEN NOTICE OF ENTRY OF ORDER
APPROVING SETTLEMENT AGREEMENT **FILED**

PLEASE TAKE NOTICE that the Nevada State Board of Osteopathic Medicine has approving the Settlement Agreement entered into by Respondent, Brian Lemper, D.O., and the Board; and a file-stamped copy of the same is attached hereto.

DATED THIS 10th day of August, 2011.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By 
Barbara Longo, Interim Executive Director
901 American Pacific Dr., #180
Henderson, NV 89014

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2011, I served a copy of the ABOVE Notice with attachment upon the parties to this matter, via U.S. Postal Service, postage thereon prepaid, addressed as follows:

Brian Lemper, D.O.
9811 W. Charleston Blvd. St. 2389
Las Vegas, NV 89117

Jack Juan, Esq.
Marquis & Aurbach Attorneys at Law
10001 Park Run Drive
Las Vegas, NV 89145
Attorneys for Respondent



An employee of the Nevada State Board of
Osteopathic Medicine