

NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

In the Matter involving)
SALVATORE LoBELLO, License)
No. 196,)
Respondent.)

CASE NO. AD1012001

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**

MAR 09 2011

FILED

SETTLEMENT AGREEMENT AND ORDER

I. PARTIES

This Settlement Agreement and Order ("Agreement and Order") is made by and between C. Dean Milne, D.O., Investigative Board Member ("Dr. Milne" or "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through the Board's Counsel, Dianna Hegeduis, Esq., and Salvatore LoBello, D.O. ("Dr. LoBello" or "Respondent") through his attorney Thomas Pitaro, Esq. (collectively referred to as "the Parties").

II. JURISDICTION/RECITALS

As a preamble to this Agreement, the Parties agree to the following jurisdictional authorities and recital of the facts:

- A. WHEREAS, the Board, through the Investigative Board Member, ascertained certain information regarding various issues concerning Dr. LoBello, including but not limited to, the alleged writing and/or calling in prescriptions when the said Dr. LoBello does not have the proper registrations as required by Nevada law.
- B. WHEREAS, Respondent is licensed in active status to practice osteopathic medicine in the state of Nevada; and at all times alleged herein, was so licensed by the Board of Osteopathic Medicine of the State of Nevada pursuant to the provisions of Chapter 633 of the Nevada Revised Statutes. Respondent has practiced consistently within Clark County, Nevada.
- C. WHEREAS, NRS 633.511(1) provides that unprofessional conduct is a ground for the initiation of disciplinary proceedings by this Board.
- D. WHEREAS, NRS 633.131(1) defines "unprofessional conduct," in part, as follows:
 - (f) Engaging in any:
 - (1) Professional conduct which is intended to deceive or which the board by regulation has determined is unethical;
 - (2) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not constitute gross or repeated malpractice or professional incompetence.
 - (g) Administering, dispensing or prescribing any controlled

1 substance or any dangerous drug as defined in chapter 454
2 of NRS, otherwise than in the course of legitimate

3 (k) Willful disobedience of the regulations of the State Board of
4 Health, the State Board of Pharmacy or the State Board of
5 Osteopathic Medicine

6 (q) Failure of a licensee to make medical records of a patient available for
7 inspection and copying as provided by NRS 629.061. . . .

8 E. WHEREAS, pursuant to NAC 633.350, a licensee engages in unethical conduct if he
9 engages in any conduct that the Board determines constitutes an unfitness to practice
10 osteopathic medicine; and pursuant to NAC 633.350, a licensee engages in unethical
11 conduct if the licensee fails to generate or create medical records relating to the
12 diagnosis, treatment and care of a patient.

13 F. WHEREAS, NRS 633.625 states that a licensee must provide the Board with
14 fingerprints once a disciplinary action has been filed; and failure to do so constitutes
15 an additional ground for discipline.

16 G. WHEREAS, NRS 633.111 defines professional incompetence as including the lack of
17 ability to safely and skillfully practice osteopathic medicine.

18 H. WHEREAS, NRS 633.151 states that the "purpose of licensing osteopathic physicians
19 and physician assistants is to protect the public health and safety and the general
20 welfare of the people of [the State of Nevada]. Any license issued pursuant to this
21 chapter is a revocable privilege, and a holder of such a license does not acquire
22 thereby any vested right."

23 I. WHEREAS, NRS 633.651 states, in part, as follows:

24 1. If the Board finds a person guilty in a disciplinary proceeding, it shall by
25 order take one or more of the following actions:

26 a. Place the person on probation for a specified period or until further
27 order of the Board.

28 b. Administer to the person a public reprimand.

c. Limit the practice of the person to, or by the exclusion of, one or more
specified branches of osteopathic medicine.

d. Suspend the license of the person to practice osteopathic medicine
for a specified period or until further order of the Board.

e. Revoke the license of the person to practice osteopathic medicine.

f. Impose a fine not to exceed \$5,000 for each violation.

g. Require supervision of the practice of the person.

h. Require the person to perform community service without
compensation.

i. Require the person to complete any training or educational
requirements specified by the Board.

j. Require the person to participate in a program to correct alcohol or
drug dependence or any other impairment.

The order of the Board may contain such other terms, provisions or conditions as the
Board deems proper and which are not inconsistent with law.

2. The Board shall not administer a private reprimand.

J. 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.

- 1 K. WHEREAS, NRS 622.330(3) states that settlement agreements, such as the present
2 document, shall be considered a public document.
- 3 L. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
4 Board to continue with formal disciplinary proceedings and/or conduct an
5 administrative hearing regarding the complaint and amended complaint on file herein.
- 6 M. WHEREAS, the parties understand that this Agreement will be signed by the
7 respective parties and will then be offered to the Board for the entire Board's approval
8 at the next Board meeting, with the recommendation of the Investigating Board
9 Member that this matter be settled pursuant to the terms contained herein. The
10 Agreement shall not become effective until it has been approved by a majority of the
11 Board and endorsed by a representative member of the Board.
- 12 N. WHEREAS, Dr. LoBello understands that the Board is free to accept or reject this
13 Agreement and, if rejected by the Board, a formal disciplinary hearing will be
14 immediately scheduled. The Board members who review this matter for approval of
15 this Agreement may be the same members who ultimately hear the disciplinary
16 complaint if this Agreement is not approved by the Board. Dr. LoBello hereby agree to
17 waive any rights he might have to challenge the impartiality of the Board to hear the
18 disciplinary complaint, based on prior knowledge obtained by the Board through
19 consideration of this Agreement, if after review by the Board, this Agreement is
20 rejected. Furthermore, if the Board does not accept the Agreement, it shall be
21 regarded as null and void.
- 22 O. WHEREAS, Dr. LoBello acknowledges that the Board will retain jurisdiction over this
23 matter until all terms and conditions set forth in this Agreement and Order have been
24 met to the satisfaction of the Board.
- 25 P. WHEREAS, Dr. LoBello acknowledges that the Board had a reasonable basis to
26 believe that the statutes and/or regulations regulating the practice of Osteopathic
27 Medicine in Nevada have been violated as outlined in the complaint and amended
28 complaint on file herein.
- Q. WHEREAS, in order to resolve the matter prior to it proceeding to a formal disciplinary
hearing and to save further costs and expenses, Dr. LoBello has elected to enter into
this Agreement to resolve this matter, and only this matter.
- R. WHEREAS, Dr. LoBello 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 patients).
- S. WHEREAS, Dr. LoBello 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. LoBello, nor have any
promises been made other than those reflected in this Agreement. Dr. LoBello freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. LoBello has executed this Agreement only after a
careful reading of it and a full understanding of all its terms.
- T. WHEREAS, Dr. LoBello 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. LoBello voluntarily waives these rights.

- 1 U. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
of the State of Nevada.
- 2 V. WHEREAS, this Agreement and Order contains a complete description of the
3 agreement between the parties and it supersedes any previous agreements between
4 the parties. All material representations, understandings and promises of the parties
are contained in this Agreement. Any modifications must be set forth in writing,
5 signed by all the parties, and approved by the Board.

6 **III. TERMS OF THE AGREEMENT**

- 7 A. Dr. LoBello acknowledges that the Board has sufficient evidence to support its
8 claims that prescriptions were written and/or called into pharmacies by him or on
9 his behalf during the time that he, Dr. LoBello, did not have registrations with the
10 Federal Drug Enforcement Agency and the Nevada State Board of Pharmacy. Dr.
11 LoBello further acknowledges that he did not provide medical records to the Board
when requested to do so nor did he, Dr. LoBello, provide the Board with
12 fingerprints as alleged in the amended complaint on file herein. Each such act, if
13 proven at an administrative hearing, would be a violation of NRS chapter 633
and/or NAC chapter 633 for which discipline is permissible under Nevada law.
- 14 B. In exchange for the Board not pursuing its administrative action and formal
15 disciplinary hearing, and Dr. LoBello not pursuing subsequent reviews by the
16 appropriate appellate Courts, the parties have agreed to resolve all aspects of the
17 current matters as described in this Agreement.
- 18 C. Dr. LoBello agrees to immediately cease writing and/or calling into pharmacies
19 prescriptions for family members, friends, and/or patients as Dr. LoBello now
20 understands that without registrations from the Nevada State Board of Pharmacy
and the Federal Drug Enforcement Agency, the issuance of prescriptions violates
21 Nevada laws.
- 22 D. Dr. LoBello agrees that should the Board request photocopies of medical records
23 pertaining to his patients, he (Dr. LoBello) will immediately provide such medical
24 records to the Board; and further, Dr. LoBello agrees to fully and completely
25 cooperate with the Board in the future and will immediately respond to the Board
when requested to do so.
- 26 E. Dr. LoBello agrees to pay the sum of Two Thousand Dollars (\$2,000.00) as the
27 fine imposed for having violated NRS and NAC chapters 633. This sum **includes**
28 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 monthly rate of
Five Hundred Dollars (\$500.00) per month beginning on the 1st day of April, 2011,
and shall continue to be due on the first day of each month thereafter until paid in
full.
- F. Dr. LoBello understands that failure to comply with any portion of this agreement,
including the payment plan set forth above, may result in an administrative action
being filed and/or taken against the said Dr. LoBello.
- G. The Respondent, Dr. LoBello, agrees to bear his own fees and costs, including the
fees and expenses of his own attorney(s) if applicable.
- H. 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.

- 1 I. This Agreement and Order shall be construed in accordance with the laws of the State of Nevada.
- 2 J. This settlement agreement consists of six (6) pages and embodies the entire agreement between the Board and the osteopathic physician. It may not be
- 3 altered, amended or modified without the express consent of the parties, and any
- 4 subsequent alteration, amendment, or modification shall be in writing and subject to approval by the Board.
- 5 K. In consideration for the execution of this Agreement, Dr. LoBello hereby releases and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
- 6 and the State Attorney General's Office (as counsel for the Board), and each of their representatives, members, agents, investigators, and/or employees, in their
- 7 individual and representative capacity (collectively the State Agencies) from any and all manner of actions, causes of actions, suits, debts, judgments, executions,
- 8 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
- 9 persons and entities named herein arising out of, or by reason of, the investigation of the allegations raised in this matter, and other matters relating thereto.
- 10 L. Dr. LoBello, for himself, his heirs, executors, administrators, successors and assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
- 11 State Board of Osteopathic Medicine, the Nevada Attorney General's office and each of their members, agents and employees in their individual and
- 12 representative capacities against any and all claims, suits, demands, actions, debts, damages, costs, charges, and expenses, including court costs and
- 13 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
- 14 paragraph shall have or may at any time sustain or suffer by reason of this investigation, this settlement or its administration.
- 15 M. This document may be prepared in multiple counterparts. Each counterpart, whether it be originally typed, a carbon, photocopy, facsimile or other type of copy,
- 16 shall be deemed an original hereof if executed by each of the Parties hereto.
- 17 N. LASTLY, by executing this agreement, Physician hereby expressly, knowingly, and intentionally waives the 21-working days notice requirement pursuant to Nevada's
- 18 Open Meeting Laws and acknowledges that this Agreement shall be on the agenda for the Board's approval in the month of March, 2011 and that an order for
- 19 fulfillment shall be on the Board's agenda for approval in the month of ~~August~~, April
- 20 2011, when all fines/fees/costs should have been paid in full by Respondent.

21 SALVATORE LoBELLO, D.O.

THOMAS PITARO LAW FIRM

22
23 By Dr. SE LoBello
24 Respondent
25 Nevada Osteopathic Lic. # 196

By [Signature]
Thomas Pitaro, Esq., Attorney for Dr. LoBello
Nevada Bar # 1332

26 DATED: 2-28-11

Dated: 2-28-11

27 And

28
.....

1 NEVADA STATE BOARD OF
2 OSEOPATHIC MEDICINE

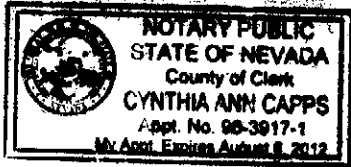
NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 By: C. Dean Milne
4 C. Dean Milne, D.O.
Investigative Board Member
Dated: 3-8-11

By: Dianna Hegeduis
Dianna Hegeduis, #5616
Board Counsel
Dated: 3-4-11

5 **ACKNOWLEDGEMENT**

6 On this the 28 day of February, 2011, the said Salvatore
7 LoBello, D.O., personally appeared before me, a notary public, and signed the above
8 document, freely and voluntarily, under no duress.



9 Cynthia Ann Capps
10 Notary Public

11 **ORDER OF THE BOARD**

12 **IT IS SO ORDERED.**

13 **IT IS FURTHER ORDERED** that should Dr. LoBello fail to comply with any terms or
14 conditions of this Agreement, Dr. LoBello will be in breach of this Agreement; and this
15 Agreement will be null and void. The Board may take whatever action it deems appropriate,
16 including but not limited to the commencement and prosecution of an administrative action
17 against Dr. LoBello and/or reducing any amounts due and owing to judgment for purposes of
18 collection. Should this Agreement become null and void by Dr. LoBello's failure to comply
19 with terms or conditions of this Agreement, the Board may not only pursue an administrative
20 action against Dr. LoBello, but the Board may also seek the maximum fees, fines, and costs
21 for the investigation and prosecution of the underlying case as well as the maximum fees,
22 fines, and costs for the failure to comply with this Agreement and Order.

23 DATED this 8th day of March, 2011.

24 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

25
26
27 BY: Daniel K. Curtis
28 Daniel K. Curtis, D.O., President of the
Board

1 **NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

2 In the Matter involving
3 SALVATORE LoBELLO, License
4 No. 196,

) CASE NO. AD1012001 NV STATE BOARD OF
OSTEOPATHIC MEDICINE

Respondent.

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5 WRITTEN NOTICE OF ENTRY OF ORDER

6
7 PLEASE TAKE NOTICE that an order, approving the settlement agreement in this
8 matter, was entered by the Board; and a file-stamped copy of the same is attached hereto.

9 DATED THIS 9th day of March, 2011.

10 NEVADA STATE BOARD OF
11 OSTEOPATHIC MEDICINE

12 By 

Dianna Hegeduis, Executive Director
Board Counsel

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

13 CERTIFICATE OF MAILING

14
15 I hereby certify that on the 9th day of March, 2011, I served a copy of the foregoing
16 notice, with attached Settlement Agreement/Order, upon the respective parties to this matter
17 by depositing a true copy thereof in the U.S. mail, addressed to them at their last known
18 address on file with the Board, postage thereon prepaid. A copy was also sent to:

19
20 Thomas Pitaro, Esq.
21 330 So. Third St., # 860
22 Las Vegas, NV 89101
23 Attorneys for Respondent

24 

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

Nevada State Board of Osteopathic Medicine
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