

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2
3 IN THE MATTER OF THE COMPLAINT
4 AGAINST
5 LARRY MENESTRINA, D.O.,
6 RESPONDENT.

**NV STATE BOARD OF
OSTEOPATHIC MEDICINE**
Case No.: MA0900048

OCT 05 2009

Filed:

FILED
Dianna Hegeduis
Executive Director

7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Daniel Curtis, D.O., Investigative Board Member ("Dr. Curtis" 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 Larry Menestrina, D.O. ("Dr.
13 Menestrina") (collectively referred to as "the Parties").

14 **II. RECITALS**

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

- 16
- 17 A. WHEREAS, the Board, through Investigative Board Member Curtis, ascertained certain
18 information regarding prior lawsuits filed against Dr. Menestrina. The information was
19 ascertained as a result of the Board's staff due diligence in investigating its
20 applicants/licensee.
- 21 B. WHEREAS, the Investigative Board Member alleged that Dr. Menestrina failed to
22 timely report the filing **and** subsequent resolution of lawsuits filed by two different
23 patients, i.e., T.C. and K.W. Additionally, the resolution information pertaining to the
24 T.C. lawsuit was not disclosed on the licensee's renewal application for 2009, which
25 application was submitted to the Board in 2008. The filing/service of the initial lawsuit
26 documents involving Patient K.W. was not referenced in the licensee's renewal
27 application for 2008. The renewal application for 2007, submitted in late 2006, is
28 vague, ambiguous, and does not provide the specificity required by the application's
 question, e.g., name the plaintiff.
- C. The failure to timely report the filing of the two lawsuits **and** the failure to timely report
 the settlement of the two cases are **EACH** a violation of NRS 633.527(1).
- D. 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

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

- 13 E. NRS 633.131(1) defines "unprofessional conduct" as including "willfully making a false
14 . . . statement . . . in applying for a license to practice osteopathic medicine or in
15 applying for renewal of a license to practice osteopathic medicine." Pursuant to NRS
16 633.511(1), "unprofessional conduct" is a ground for initiating a formal disciplinary
17 proceeding; and such discipline may include public reprimands, the suspension of the
18 license to practice osteopathic medicine in the State of Nevada, and even the
19 revocation of the license to practice osteopathic medicine in the State of Nevada.
- 20 F. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
21 person reasonable attorney's fees and costs that are incurred by the regulatory body
22 as part of its investigative, administrative and disciplinary proceedings against the
23 person if the regulatory body" either enters a final order or enters into a settlement
24 agreement.
- 25 G. WHEREAS, the parties have agreed to settle this matter, rather than requiring the
26 Board to file a formal disciplinary complaint regarding the failure to report and the
27 inaccurate/incomplete applications for renewal.
- 28 H. 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.
- I. WHEREAS, Dr. Menestrina 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. Menestrina
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.
- J. WHEREAS, Dr. Menestrina 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.
- K. WHEREAS, Dr. Menestrina 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 L. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary proceeding
2 and to save further costs and expenses, Dr. Menestrina has elected to enter into this
3 Agreement to resolve this matter, and this matter only.
- 4 M. WHEREAS, Dr. Menestrina 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 N. WHEREAS, Dr. Menestrina has had the opportunity to obtain the advice from
8 competent counsel of his choice concerning the terms and conditions of this
9 Agreement and the execution thereof. No coercion has been exerted upon Dr.
10 Menestrina, nor have any promises been made other than those reflected in this
11 Agreement. Dr. Menestrina freely and voluntarily entered into this agreement,
12 motivated only by a desire to resolve the issues addressed herein. Dr. Menestrina has
13 executed this Agreement only after a careful reading of it and a full understanding of all
14 its terms.
- 15 O. WHEREAS, Dr. Menestrina is fully aware of his rights to contest the charges pending
16 against him. These rights include: representation by an attorney at his own expense,
17 the right to a public hearing on any charges or allegations filed, the right to confront
18 and cross-examine witnesses called to testify against him, the right to present evidence
19 on his own behalf, the right to compulsory process to secure the attendance of such
20 witnesses, the right to testify on his own behalf, the right to receive written findings of
21 fact and conclusions of law supporting the decision on the merits of the complaint and
22 the right to obtain judicial review of the Board's decision. Should the Board accept this
23 Agreement, Dr. Menestrina voluntarily waives these rights.
- 24 P. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
25 of the State of Nevada.
- 26 Q. WHEREAS, this Agreement and Order contains a complete description of the
27 agreement between the parties and it supersedes any previous agreements between
28 the parties. All material representations, understandings and promises of the parties
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. Menestrina acknowledges that if the failure to report allegations pertaining to
20 the two different lawsuits and the inaccurate/incomplete information contained
21 within the renewal applications are true, then **each** such act would be a violation of
22 NRS chapter 633 and discipline would be permissible under Nevada law. In
23 exchange for the Board not pursuing an administrative action and Dr. Menestrina
24 not pursuing subsequent reviews by the appropriate appellate Courts, **the parties**
25 **have agreed to resolve the current matters, and only the matters herein**
26 **identified, without the necessity of filing a formal disciplinary complaint, to**
27 **save the parties time and expense. THE BOARD FURTHER**
28 **ACKNOWLEDGES, AND THE PARTIES AGREE, THAT A DISCIPLINARY**
ACTION WILL NOT BE FILED BY THE BOARD AND THAT THE BOARD HAS
NOT FOUND RESPONDENT GUILTY OF ANY STATUTORY VIOLATION; BUT
THAT THE PARTIES HAVE SIMPLY AGREED TO AN ADMINISTRATIVE FINE
BEING ASSESSED AS IF THERE WERE NON-REPORTING ISSUES. Dr.
Menestrina 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

1 by the Board to Dr. Menestrina. If any lawsuit is not reported to the Board, such will
2 be in violation of this agreement as well as the applicable statutes.

- 3 B. Dr. Menestrina agrees to pay the sum of Three Thousand Dollars (\$3,000.00) in
4 lieu of any disciplinary action being imposed for alleged violations of NRS
5 633.527(1) for the failure to timely report the filing/service of the two different
6 lawsuits **and** the failure to timely report the settlement of the two different cases,
7 **and** the filing of the inaccurate license renewal application. This sum **includes** all
8 fees and costs incurred by the Board up to and including the approval of this
9 settlement agreement by the Board at its next scheduled board meeting pursuant to
10 NAC 633.470(2)(b)(6). Such amount shall be payable in the amount of \$200.00 per
11 month beginning on the 1st day of October, 2009, and such amount shall continue
12 to be due thereafter on the 1st day of each month, until the full amount of Three
13 Thousand Dollars is paid.
- 14 C. Should Dr. Menestrina fail to satisfy and pay the indebtedness of \$3,000.00 in a
15 timely manner as discussed herein, Dr. Menestrina understands and agrees that he
16 will be considered in default of this Agreement, and this agreement will be null and
17 void, with the Respondent receiving credit for payments made to date. The Board
18 may take whatever action it deems appropriate, including but not limited to reducing
19 the balance to judgment pursuant to NRS chapter 353C.
- 20 D. The Respondent, Dr. Menestrina, agrees to bear his own fees and costs, including
21 the fees and expenses of his own attorney(s) if applicable.
- 22 E. This Agreement and Order shall inure to the benefit of and be binding upon each of
23 the parties hereto and their respective heirs, personal representatives, assigns and
24 successors in interest of each party.
- 25 F. This Agreement and Order shall be construed in accordance with the laws of the
26 State of Nevada.
- 27 G. This settlement agreement consists of six (6) pages and embodies the entire
28 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. Menestrina 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, including those
noted in the administrative complaint on file herein, and other matters relating
thereto.
- I. Dr. Menestrina, 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

1 whatsoever that the persons and entities named in this paragraph shall have or
2 may at any time sustain or suffer by reason of this investigation, this disciplinary
3 action, this settlement or its administration.

4 J. This document may be prepared in multiple counterparts. Each part, whether it be
5 originally typed, a carbon, photocopy, facsimile or other type of copy, shall be
6 deemed an original hereof if executed by each of the Parties hereto.

7 LARRY MENESTRINA, D.O.

8 L. Menestrina D.O.

9 Osteopathic Physician

10 Dated: 08/25/2009

11 NEVADA STATE BOARD OF
12 OSTEOPATHIC MEDICINE

13 BY: [Signature]

14 Daniel Curtis, D.O.,
15 Investigating Board Member-
16 Chairman of the Board

17 Dated: 8/26/09

18 NEVADA STATE BOARD OF
19 OSTEOPATHIC MEDICINE

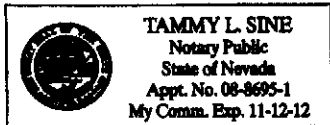
20 By: [Signature]

21 Dianna Hegeduis, Executive Director -
22 Board Counsel

23 Dated: 8 - 26 - 09

24 **ACKNOWLEDGEMENT**

25 On this the 25th day of August, 2009, the said LARRY MENESTRINA, D.O.,
26 personally appeared before me, a notary public, and signed the above document, freely and
27 voluntarily, under no duress.



28 Tammy L. Sine
Notary Public

ORDER OF THE BOARD

IT IS SO ORDERED.

IT IS FURTHER ORDERED that should Dr. Menestrina fail to comply with any terms or
conditions of this Agreement, Dr. Menestrina 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. Menestrina.
Should this Agreement become null and void by Dr. Menestrina's failure to comply with terms
or conditions of this Agreement, the Board may not only pursue an administrative action

1 against Dr. Menestrina, but the Board may also seek the maximum fees, fines, and costs.

2 DATED this 5 day of OCT, 2009.

3 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

4
5 BY: 
6 Dr. C. Dean Milne, Vice Chairman of the
7 Board