

ORIGINAL

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

1
2 IN THE MATTER INVOLVING) CASE NO. MA1003037
3)
4 TODD RADIVAN, P.A.,)
License No. PA-C57.)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

DEC 08 2010

SETTLEMENT AGREEMENT & ORDER

FILED

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6 **I. PARTIES**

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8 This Settlement Agreement ("Agreement") is made by and between the Nevada State
9 Board of Osteopathic Medicine ("the Board") through their Counsel and Executive Director,
10 Dianna Hegeduis, Esq., Investigating Board Member ("IBM") Rota Rosaschi, M.P.A. ("IBM
11 Rosaschi"), and Todd Radivan, P.A. ("Mr. Radivan" or "Respondent") through his counsel,
12 Maria Nutile, Esq., (collectively referred to as "the Parties").

13 **II. RECITALS**

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

15 A. WHEREAS, the IBM has alleged that Respondent engaged in certain
16 conduct that resulted in criminal charges being filed against him in Clark County,
17 Nevada, on November 3, 2009 with the events occurring on or about September 7,
18 2009. The IBM believes all such criminal charges have since been resolved. In
19 renewing his license for the calendar year 2010, Respondent responded "no" to certain
20 questions regarding any investigations conducted of him by various entities and/or
21 charges filed, when in fact there had been an investigation and a criminal complaint
22 filed.

23 B. WHEREAS, the Parties understand that this Agreement will be signed by the
24 respective parties and will then be offered to the Board for the entire Board's approval
25 at the next Board meeting, with the recommendation of Board Counsel that this
26 Agreement be approved. The Agreement shall become effective the date it has been
27 approved by the Board.

28 C. WHEREAS NRS 633.511(16) states that the following may result in the filing
of a disciplinary action: "Failure by a licensee or applicant to report in writing, within 30
days, any criminal action taken or conviction obtained against the licensee or applicant,
other than a minor traffic violation, in this State or any other state or by the Federal
Government, a branch of the Armed Forces of the United States or any local or federal
jurisdiction of a foreign country." Discipline is discussed in NRS 633.651 and
Subsection (f) thereof allows the Board to find a licensee up to \$5,000 for each
violation of the provisions of NRS chapter 633.

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

1 disciplinary proceedings against the person if the regulatory body" either enters a final
2 order or enters into a settlement agreement.
3 E. WHEREAS, the parties have agreed to settle this matter, rather than
4 requiring the Board to file a formal disciplinary complaint regarding the failure to time
5 report the filing of the criminal complaint.
6 F. 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. The Agreement shall not become effective until it
10 has been approved by a majority of the Board and endorsed by a representative
11 member of the Board.
12 G. WHEREAS, the Respondent understands that the Board is free to accept or
13 reject this Agreement and, if rejected by the Board, a formal disciplinary complaint will
14 be filed and a hearing scheduled on the same. The Board members who review this
15 matter for approval of this Agreement may be the same members who ultimately hear
16 the disciplinary complaint if this Agreement is not approved by the Board. The
17 Respondent hereby agrees to waive any rights he might have to challenge the
18 impartiality of the Board to hear the disciplinary complaint, based on prior knowledge
19 obtained by the Board through consideration of this Agreement, if after review by the
20 Board, this Agreement is rejected. Furthermore, if the Board does not accept the
21 Agreement, it shall be regarded as null and void.
22 H. WHEREAS, Respondent acknowledges that the Board will retain jurisdiction
23 over this matter until all terms and conditions set forth in this Agreement and Order
24 have been met to the satisfaction of the Board.
25 I. WHEREAS, Respondent acknowledges that the Board had a reasonable
26 basis to believe that the statutes and/or regulations regulating the practice of
27 osteopathic medicine in the State of Nevada may have been violated.
28 J. WHEREAS, in order to resolve the matter prior to it becoming a disciplinary
proceeding and to save further costs and expenses, Respondent has elected to enter
into this Agreement to resolve this matter, and this matter only.
K. WHEREAS, Respondent acknowledges that once accepted by the Board,
this Agreement and all associated documentation become a matter of public record.
L. WHEREAS, Respondent 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
Respondent, nor have any promises been made other than those reflected in this
Agreement. Respondent freely and voluntarily entered into this agreement, motivated
only by a desire to resolve the issues addressed herein. Respondent has executed
this Agreement only after a careful reading of it and a full understanding of all its terms.
M. WHEREAS, Respondent 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, Respondent voluntarily waives these rights.
N. WHEREAS, this Agreement and Order shall be construed in accordance
with the laws of the State of Nevada.

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

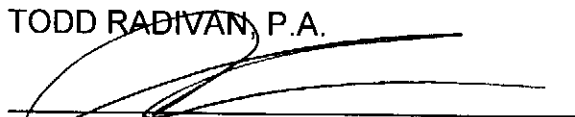
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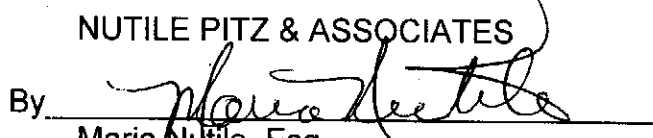
III. TERMS OF THE AGREEMENT

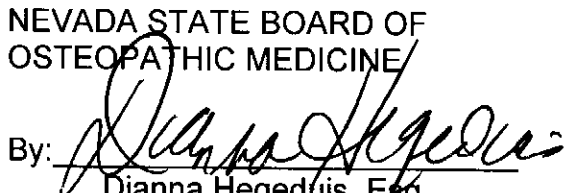
- A. Respondent acknowledges that violating NRS 633.511 may result in the filing of a disciplinary action. The parties have agreed to resolve this matter without the necessity of filing a formal disciplinary complaint by entering into this Agreement. In exchange for the Board not pursuing an administrative action and Respondent not pursuing subsequent reviews by the appropriate appellate Courts, the parties have agreed to resolve the current matter, and only this matter. Respondent will henceforth insure that all matters involving him 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 Mr. Radivan. **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 ISSUE.**
- B. Respondent agrees to pay the sum of One Hundred Fifty Dollars (\$150.00) as the fine imposed for having violated certain provisions of NRS and NAC chapters 633. This sum **includes** 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. Respondent shall pay this amount in full by December 31, 2010.
- C. Should the Respondent fail to satisfy and pay the indebtedness in a timely manner as discussed herein, Respondent 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 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 the laws of the State of Nevada.
- G. This Agreement consists of five (5) pages and embodies the entire agreement between the Board and the osteopathic Respondent. 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, Respondent 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,

1 may have had, or claim to have against any and all of the persons and entities named
2 in this paragraph arising out of, or by reason of, the investigation of the allegations
3 raised in this matter.

- 4 I. Respondent, for himself, his heirs, executors, administrators, successors and assigns,
5 hereby indemnifies and holds harmless the State of Nevada, the Nevada State Board
6 of Osteopathic Medicine, the Nevada Attorney General's office and each of their
7 members, agents and employees in their individual and representative capacities
8 against any and all claims, suits, demands, actions, debts, damages, costs, charges,
9 and expenses, including court costs and attorney's fees against any persons or entities
10 as well as all liability, losses, and damages of any nature whatsoever that the persons
11 and entities named in this paragraph shall have or may at any time sustain or suffer by
12 reason of this investigation, this disciplinary action, this Agreement or its
13 administration.
- 14 J. This document may be prepared in multiple counterparts. Each counterpart, whether it
15 be originally typed, a carbon, photocopy, facsimile or other type of copy, shall be
16 deemed an original hereof if executed by each of the Parties hereto.
- 17 K. Lastly, by executing this agreement, Respondent hereby expressly, knowingly, and
18 intentionally waives the 21-working days notice requirement pursuant to Nevada's
19 Open Meeting Law and acknowledges that this Agreement shall be on the agenda for
20 the Board's approval in the month of December, 2010 and shall be on the Board's
21 agenda in the month of January 2011 for the entry of an order of fulfillment.

13 TODD RADIVAN, P.A.

 14 _____
 15 Todd Radivan
 16 Physician Assistant, Lic. #PA-C57

NUTILE PITZ & ASSOCIATES

 By _____
 15 Maria Nutile, Esq.
 16 Attorney for Respondent

17 NEVADA STATE BOARD OF
 18 OSTEOPATHIC MEDICINE

 19 By: _____
 20 Dianna Hegeduis, Esq.
 21 Board Counsel / Executive
 22 Director

NEVADA STATE BOARD OF
 OSTEOPATHIC MEDICINE
 By: _____
 Rota Rosaschi, M.P.A., Investigative
 Board Member

22 **ORDER OF THE BOARD**

23 **IT IS SO ORDERED.**

24 **IT IS FURTHER ORDERED** that should Respondent fail to comply with any terms or
 25 conditions of this Agreement, Respondent will be in breach of this Agreement; and this
 26 Agreement will be null and void. The Board may take whatever action it deems appropriate,
 27 including but not limited to proceeding with disciplinary action against Respondent and his
 28

1 may have had, or claim to have against any and all of the persons and entities named
2 in this paragraph arising out of, or by reason of, the investigation of the allegations
3 raised in this matter.

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5 hereby indemnifies and holds harmless the State of Nevada, the Nevada State Board
6 of Osteopathic Medicine, the Nevada Attorney General's office and each of their
7 members, agents and employees in their individual and representative capacities
8 against any and all claims, suits, demands, actions, debts, damages, costs, charges,
9 and expenses, including court costs and attorney's fees against any persons or entities
10 as well as all liability, losses, and damages of any nature whatsoever that the persons
11 and entities named in this paragraph shall have or may at any time sustain or suffer by
12 reason of this investigation, this disciplinary action, this Agreement or its
13 administration.
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13 TODD RADIVAN, P.A.

NUTILE PITZ & ASSOCIATES

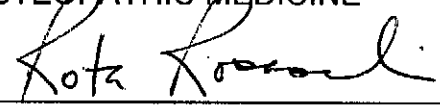
14 _____
15 Todd Radivan
16 Physician Assistant, Lic. #PA-C57

By _____
15 Maria Nutile, Esq.
16 Attorney for Respondent

17 NEVADA STATE BOARD OF
18 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

19 By: _____
20 Dianna Hegeduis, Esq.
21 Board Counsel / Executive
22 Director

By  _____
20 Rota Rosaschi, M.P.A., Investigative
21 Board Member

22 **ORDER OF THE BOARD**



23 **IT IS SO ORDERED.**

24 **IT IS FURTHER ORDERED** that should Respondent fail to comply with any terms or
25 conditions of this Agreement, Respondent will be in breach of this Agreement; and this
26 Agreement will be null and void. The Board may take whatever action it deems appropriate,
27 including but not limited to proceeding with disciplinary action against Respondent and his
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1 license to practice Osteopathic Medicine in the State of Nevada. Should this Agreement
2 become null and void by Respondent's failure to comply with terms or conditions of this
3 Agreement, the Board may not only pursue an administrative action against Respondent, but
4 the Board may also seek the maximum fees, fines, and costs.

5 DATED this 7th day of December, 2010.

6 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

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8 By: 
9  Daniel K. Curtis, D.O., President of the
10 Board

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147

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ORIGINAL

BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

IN THE MATTER INVOLVING)
TODD RADIVAN, P.A.,)
License No. PA-C57.)

NV STATE BOARD OF
OSTEOPATHIC MEDICINE

DEC 08 2010

FILED

WRITTEN NOTICE OF ENTRY OF ORDER APPROVING
SETTLEMENT AGREEMENT

PLEASE TAKE NOTICE that an order was entered regarding the Settlement Agreement in the above referenced matter and a copy of the same is attached hereto.

DATED THIS JA day of December, 2010.

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

By Dianna Hegeduis
Dianna Hegeduis, Executive Director –
Board Counsel

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

CERTIFICATE OF MAILING

I hereby certify that on the JA day of December, 2010, I served a copy of the foregoing notice, with attached Settlement Agreement/Order, upon the respective parties to this matter by depositing a true copy thereof in the U.S. mail, addressed to the physician assistant at his last known address on file with the Board, postage thereon prepaid, and to the following attorney:

Maria Nutile, Esq.
NUTILE PITZ & ASSOCIATES
1070 W. Horizon Ridge, Suite 210
Henderson, NV 89012

Maria Nutile
An employee of the NEVADA STATE BOARD
OF OSTEOPATHIC MEDICINE

Nevada State Board of Osteopathic Medicine
901 American Pacific Drive Unit 180 • Henderson, NV 89014
(702) 732-2147