

1 **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**
2 IN THE MATTER OF THE COMPLAINT)
3 AGAINST)
4 PATRICIA SIMMS, D.O., LIC. #334,)
5 RESPONDENT.)

NV STATE BOARD OF OSTEOPATHIC MEDICINE
Case No.: MA0910003
JAN 06 2010
Filed: **FILED**
Executive Director

6
7 **SETTLEMENT AGREEMENT AND ORDER**

8 **I. PARTIES**

9 This Settlement Agreement and Order ("Agreement and Order") is made by and
10 between Rota Rosaschi, M.P.A., Investigative Board Member ("Ms. Rosaschi" or
11 "Investigative Board Member") for the Nevada State Board of Osteopathic Medicine ("the
12 Board") through the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Patricia
13 Simms, D.O. ("Dr. Simms") (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 the Investigative Board Member, ascertained certain
18 information regarding a prior lawsuit filed against Dr. Simms. The information was
19 ascertained as a result of the Board's staff due diligence in investigating its
20 applicants/licenseses as well as from information received directly from Dr. Simms.
- 21 B. WHEREAS, the Investigative Board Member alleged that Dr. Simms failed to timely
22 report the filing of a lawsuit against her and the dismissal thereof by both the District
23 Court and the Supreme Court, regarding a patient with the initials of "MLM," and such
24 failures are violations of NRS 633.527. The matter involving patient "AV" was
25 apparently timely reported via a renewal application.
- 26 C. NRS 633.527(1) states that a licensed "osteopathic physician **shall report** to the
27 Board: (a) any action for malpractice against the osteopathic physician **not later than**
28 **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. NRS 622.400(1) states that a "regulatory body [such as this Board] may recover from a
7 person reasonable attorney's fees and costs that are incurred by the regulatory body as
8 part of its investigative, administrative and disciplinary proceedings against the person
9 if the regulatory body" either enters a final order or enters into a settlement agreement.

10 E. WHEREAS, the parties have agreed to informally settle this matter, rather than
11 requiring the Board to file a formal disciplinary complaint.

12 F. WHEREAS, the parties understand that this Agreement will be signed by the respective
13 parties and will then be offered to the Board for the entire Board's approval at the next
14 Board meeting, with the recommendation of the Investigating Board Member that this
15 matter be settled. The Agreement shall not become effective until it has been
16 approved by a majority of the Board and endorsed by a representative member of the
17 Board.

18 G. WHEREAS, Dr. Simms understands that the Board is free to accept or reject this
19 Agreement and, if rejected by the Board, a formal disciplinary complaint will be filed
20 and a hearing scheduled on the same. The Board members who review this matter for
21 approval of this Agreement may be the same members who ultimately hear the
22 disciplinary complaint if this Agreement is not approved by the Board. Dr. Simms
23 hereby agrees to waive any rights she might have to challenge the impartiality of the
24 Board to hear the disciplinary complaint, based on prior knowledge obtained by the
25 Board through consideration of this Agreement, if after review by the Board, this
26 Agreement is rejected. Furthermore, if the Board does not accept the Agreement, it
27 shall be regarded as null and void.

28 H. WHEREAS, Dr. Simms 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. Simms 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. Simms has elected to enter into this
Agreement to resolve this matter, and only the matters identified herein.

K. WHEREAS, Dr. Simms 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).

L. WHEREAS, Dr. Simms has had the opportunity to obtain the advice from competent
counsel of her choice concerning the terms and conditions of this Agreement and the
execution thereof. No coercion has been exerted upon Dr. Simms, nor have any
promises been made other than those reflected in this Agreement. Dr. Simms freely
and voluntarily entered into this agreement, motivated only by a desire to resolve the
issues addressed herein. Dr. Simms has executed this Agreement only after a careful
reading of it and a full understanding of all its terms.

M. WHEREAS, Dr. Simms is fully aware of her rights to contest the charges pending
against her. These rights include: representation by an attorney at her 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 her, the right to present evidence on

1 her own behalf, the right to compulsory process to secure the attendance of such
2 witnesses, the right to testify on her own behalf, the right to receive written findings of
3 fact and conclusions of law supporting the decision on the merits of the complaint and
4 the right to obtain judicial review of the Board's decision. Should the Board accept this
5 Agreement, Dr. Simms voluntarily waives these rights.

6 N. WHEREAS, this Agreement and Order shall be construed in accordance with the laws
7 of the State of Nevada.

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

13 **III. TERMS OF THE AGREEMENT**

14 A. Dr. Simms acknowledges that if the failures to timely report allegations are true and
15 such failures to timely report would be violations of NRS chapter 633 and discipline
16 would be permissible under Nevada law. In exchange for the Board not pursuing an
17 administrative action against Dr. Simms for the untimely reporting, and Dr. Simms
18 not pursuing subsequent reviews by the appropriate appellate Courts, the parties
19 have agreed to resolve the current matter, and only this matter. Dr. Simms will
20 henceforth insure that all lawsuits involving her will be timely and accurately
21 reported to the Board, and the failure to do so may result in the Board bringing a
22 disciplinary action against the osteopathic medical license issued by the Board to
23 Dr. Simms. If any lawsuit is not reported to the Board, such will be in violation of
24 this agreement as well as the applicable statutes. **ADDITIONALLY, THE BOARD
25 ACKNOWLEDGES, AND THE PARTIES DO HEREBY AGREE, THAT A
26 DISCIPLINARY ACTION WILL NOT AND HAS NOT BEEN FILED BY THE
27 BOARD; AND THAT THE PARTIES HAVE SIMPLY AGREED TO AN
28 ADMINISTRATIVE FINE BEING ASSESSED FOR THE NON-REPORTING
VIOLATION, I.E., NOT FOR ANY ALLEGATIONS REGARDING
UNPROFESSIONAL CONDUCT AND/OR REGARDING THE PHYSICIAN'S
COMPETENCY.**

B. Dr. Simms agrees to pay the sum of One Thousand Dollars (\$1,000.00) as the fine
imposed for having violated NRS 633.527(1) for the failures to timely report
allegations. 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 pursuant to NAC 633.470(2)(b)(6). Such amount shall be
payable in full upon execution of this agreement.

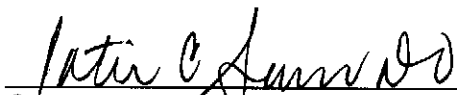
C. Should Dr. Simms fail to satisfy and pay the indebtedness of \$1,000.00 in a timely
manner as discussed herein, Dr. Simms understands and agrees that she will be
considered in default of this Agreement, and this agreement will be null and void,
with the Respondent receiving credit for payments made 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. Simms, agrees to bear her own fees and costs, including the
fees and expenses of her 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.

- 1 F. This Agreement and Order shall be construed in accordance with the laws of the
2 State of Nevada.
3 G. This settlement agreement consists of five (5) pages and embodies the entire
4 agreement between the Board and the osteopathic physician. It may not be altered,
5 amended or modified without the express consent of the parties, and any
6 subsequent alteration, amendment, or modification shall be in writing and subject to
7 approval by the Board.
8 H. In consideration for the execution of this Agreement, Dr. Simms hereby releases
9 and forever discharges the State of Nevada, the Board of Osteopathic Medicine,
10 and the Nevada State Attorney General's Office (as counsel for the Board), and
11 each of their representatives, investigators, and employees, in their individual and
12 representative capacity (collectively the State of Nevada Agencies) from any and all
13 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
14 and demands whatsoever known or unknown, in law and in equity, that she may
15 have had, now has, may have had, or claim to have against any and all of the
16 persons and entities named in this paragraph arising out of, or by reason of, the
17 investigation of the allegations raised in this matter, and other matters relating
18 thereto.
19 I. Dr. Simms, for herself, her heirs, executors, administrators, successors and
20 assigns, hereby indemnifies and holds harmless the State of Nevada, the Nevada
21 State Board of Osteopathic Medicine, the Nevada Attorney General's office and
22 each of their members, agents and employees in their individual and representative
23 capacities against any and all claims, suits, demands, actions, debts, damages,
24 costs, charges, and expenses, including court costs and attorney's fees against any
25 persons or entities as well as all liability, losses, and damages of any nature
26 whatsoever that the persons and entities named in this paragraph shall have or may
27 at any time sustain or suffer by reason of this investigation, this settlement, or its
28 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, Respondent 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 JANUARY, 2010.

PATRICIA SIMMS, D.O.


Osteopathic Physician

Dated: Nov 14, 2009

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: _____
4 Rota Rosaschi, M.P.A.
Investigating Board Member

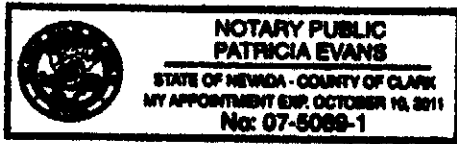
By *Dianna Hegehuis*
5 Dianna Hegehuis, Executive Director -
6 Board Counsel

7 Dated: _____

Dated: 1-5-2010

8 **ACKNOWLEDGEMENT**

9 On this the 14th day of December, 2009, the said PATRICIA SIMMS,
10 D.O., personally appeared before me, a notary public, and signed the above document, freely
11 and voluntarily, and under no duress.



12 *Patricia Evans*
Notary Public

13 **ORDER OF THE BOARD**

14 **IT IS SO ORDERED.**

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

22 DATED this 5th day of January, 2010.

23 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

24 BY: *Daniel K. Curtis*
25 Dr. Daniel K. Curtis, Chairman/President of the
26 Board
27
28

1 NEVADA STATE BOARD OF
2 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF
OSTEOPATHIC MEDICINE

3 BY: *Rota Rosaschi*
4 Rota Rosaschi, M.P.A.
Investigating Board Member

By _____
Dianna Hegeduis, Executive Director -
Board Counsel

5 Dated: 12/29/09

Dated: _____

6
7 **ACKNOWLEDGEMENT**

8 On this the _____ day of _____, 20____, the said PATRICIA SIMMS,
9 D.O., personally appeared before me, a notary public, and signed the above document, freely
10 and voluntarily, and under no duress.

11 _____
Notary Public

12
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22 Dr. Simms, but the Board may also seek the maximum fees, fines, and costs.

23
24 DATED this 5th day of January, 2010.

25 NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE

26 BY: *Dan Curtis*
27 Dr. Daniel K. Curtis, Chairman/President of the
28 Board