

1                   **BEFORE THE NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**  
2 **IN THE MATTER OF THE COMPLAINT**  
3 **AGAINST**  
4 **MING WEI WU, D.O., LIC. #1229**  
5                   **RESPONDENT.**

**RECEIVED**  
Case No.:  
**MA0911004** FEB 03 2010  
Filed: *[Signature]*  
NEVADA STATE BOARD OF  
OSTEOPATHIC MEDICINE  
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, MPA, Investigative Board Member ("Ms. Rosaschi" or "Investigative  
11 Board Member") for the Nevada State Board of Osteopathic Medicine ("the Board") through  
12 the Board's Counsel/Executive Director, Dianna Hegeduis, Esq., and Ming Wei Wu, D.O. ("Dr.  
13 Wu") by and through his counsel, Daniel Curriden, Esq. (collectively referred to as "the  
14 Parties").

15  
16                   **II. RECITALS**

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

- 18                   A. WHEREAS, the Board, through the Investigative Board Member ("IBM"), ascertained  
19 certain information regarding a settlement of a lawsuit in June, 2009. The information  
20 was ascertained as a result of the Board's staff due diligence in investigating its  
21 applicants/licenseses as well as from information received directly from Dr. Wu.
- 22                   B. WHEREAS, the Investigative Board Member alleged that Dr. Wu failed to notify the  
23 Board of the settlement and/or disposition of the medical malpractice case filed by  
24 patient "J.O." Such a failure is a violation of NRS 633.527.
- 25                   C. NRS 633.527(1) states that a licensed "osteopathic physician shall report to the  
26 Board: (a) any action for malpractice against the osteopathic physician not later than  
27 45 days after the osteopathic physician receives service of a summons and  
28 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. Wu 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. Wu hereby  
23 agrees to waive any rights he might have to challenge the impartiality of the Board to  
24 hear the disciplinary complaint, based on prior knowledge obtained by the Board  
25 through consideration of this Agreement, if after review by the Board, this Agreement is  
26 rejected. Furthermore, if the Board does not accept the Agreement, it shall be regarded  
27 as null and void.

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

K. WHEREAS, Dr. Wu 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. Wu 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. Wu, nor have any promises  
been made other than those reflected in this Agreement. Dr. Wu freely and voluntarily  
entered into this agreement, motivated only by a desire to resolve the issues addressed  
herein. Dr. Wu has executed this Agreement only after a careful reading of it and a full  
understanding of all its terms.

M. WHEREAS, Dr. Wu 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

1 own behalf, the right to compulsory process to secure the attendance of such  
2 witnesses, the right to testify on his 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. Wu 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. Wu acknowledges that the failure to timely report allegation is true. Such failure  
15 is a violation of NRS chapter 633 and discipline is permissible under Nevada law. In  
16 exchange for the Board not pursuing an administrative action against Dr. Wu for the  
17 untimely reporting, and Dr. Wu not pursuing subsequent reviews by the appropriate  
18 appellate Courts, the parties have agreed to resolve the current matter, and only  
19 this matter. **ADDITIONALLY, THE BOARD ACKNOWLEDGES, AND THE  
20 PARTIES DO HEREBY AGREE, THAT A DISCIPLINARY ACTION WILL NOT  
21 AND HAS NOT BEEN FILED BY THE BOARD; AND THAT THE PARTIES HAVE  
22 SIMPLY AGREED TO AN ADMINISTRATIVE FINE BEING ASSESSED FOR THE  
23 NON-REPORTING VIOLATION, I.E., NOT FOR ANY ALLEGATIONS  
24 REGARDING UNPROFESSIONAL CONDUCT AND/OR REGARDING THE  
25 PHYSICIAN'S COMPETENCY.**

26 B. Dr. Wu agrees to pay the sum of Five Hundred Dollars (\$500.00) as the fine  
27 imposed for having violated NRS 633.527(1) for the failure to timely report the  
28 disposition of the medical malpractice case. 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 the amount of \$250.00 per  
month beginning on the \_\_\_\_ day of \_\_\_\_\_, 2010, and such amount shall  
continue to be due thereafter on the \_\_\_\_ day of each month, until the full amount  
of Five Hundred Dollars is paid.

29 C. Should Dr. Wu fail to satisfy and pay the indebtedness of \$500.00 in a timely  
30 manner as discussed herein, Dr. Wu understands and agrees that he will be  
31 considered in default of this Agreement, and this agreement will be null and void,  
32 with the Respondent receiving credit for payments made to date. The Board may  
33 take whatever action it deems appropriate, including but not limited to reducing the  
34 balance to judgment pursuant to NRS chapter 353C.


35 D. The Respondent, Dr. Wu, agrees to bear his own fees and costs, including the fees  
36 and expenses of his own attorney(s) if applicable.

37 E. This Agreement and Order shall inure to the benefit of and be binding upon each of  
38 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.

- 1 G. This settlement agreement consists of five (5) pages and embodies the entire
- 2 agreement between the Board and the osteopathic physician. It may not be altered,
- 3 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
- 5 approval by the Board.
- 6 H. In consideration for the execution of this Agreement, Dr. Wu hereby releases and
- 7 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the
- 8 Nevada State Attorney General's Office (as counsel for the Board), and each of
- 9 their representatives, investigators, and employees, in their individual and
- 10 representative capacity (collectively the State of Nevada Agencies) from any and all
- 11 manner of actions, causes of actions, suits, debts, judgments, executions, claims,
- 12 and demands whatsoever known or unknown, in law and in equity, that he may
- 13 have had, now has, may have had, or claim to have against any and all of the
- 14 persons and entities named in this paragraph arising out of, or by reason of, the
- 15 investigation of the allegations raised in this matter, the settlement thereof, and
- 16 other matters relating thereto.
- 17 I. Dr. Wu, for himself, his heirs, executors, administrators, successors and assigns,
- 18 hereby indemnifies and holds harmless the State of Nevada, the Nevada State
- 19 Board of Osteopathic Medicine, the Nevada Attorney General's office and each of
- 20 their members, agents and employees in their individual and representative
- 21 capacities against any and all claims, suits, demands, actions, debts, damages,
- 22 costs, charges, and expenses, including court costs and attorney's fees against any
- 23 persons or entities as well as all liability, losses, and damages of any nature
- 24 whatsoever that the persons and entities named in this paragraph shall have or may
- 25 at any time sustain or suffer by reason of this investigation, this settlement, or its
- 26 administration.
- 27 J. This document may be prepared in multiple counterparts. Each counterpart,
- 28 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. *OK*

20 MING WEI WU, D.O.

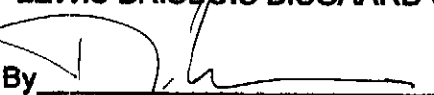
21 

---

22 Osteopathic Physician

23 Dated: 1/6/10

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By 

---

Daniel Curriden, Esq., # 3502

Dated: 1/07/09

24 NEVADA STATE BOARD OF

25 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF

OSTEOPATHIC MEDICINE

26 BY: \_\_\_\_\_

27 Rota Rosaschi, MPA,

Investigating Board Member

28 Dated: \_\_\_\_\_

By \_\_\_\_\_

Dianna Hegeduis, Executive Director -

Board Counsel

Dated: \_\_\_\_\_

- 1 G. This settlement agreement consists of five (5) pages and embodies the entire  
 2 agreement between the Board and the osteopathic physician. It may not be altered,  
 3 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  
 5 approval by the Board.
- 6 H. In consideration for the execution of this Agreement, Dr. Wu hereby releases and  
 7 forever discharges the State of Nevada, the Board of Osteopathic Medicine, and the  
 8 Nevada State Attorney General's Office (as counsel for the Board), and each of  
 9 their representatives, investigators, and employees, in their individual and  
 10 representative capacity (collectively the State of Nevada Agencies) from any and all  
 11 manner of actions, causes of actions, suits, debts, judgments, executions, claims,  
 12 and demands whatsoever known or unknown, in law and in equity, that he may  
 13 have had, now has, may have had, or claim to have against any and all of the  
 14 persons and entities named in this paragraph arising out of, or by reason of, the  
 15 investigation of the allegations raised in this matter, the settlement thereof, and  
 16 other matters relating thereto.
- 17 I. Dr. Wu, for himself, his heirs, executors, administrators, successors and assigns,  
 18 hereby indemnifies and holds harmless the State of Nevada, the Nevada State  
 19 Board of Osteopathic Medicine, the Nevada Attorney General's office and each of  
 20 their members, agents and employees in their individual and representative  
 21 capacities against any and all claims, suits, demands, actions, debts, damages,  
 22 costs, charges, and expenses, including court costs and attorney's fees against any  
 23 persons or entities as well as all liability, losses, and damages of any nature  
 24 whatsoever that the persons and entities named in this paragraph shall have or may  
 25 at any time sustain or suffer by reason of this investigation, this settlement, or its  
 26 administration.
- 27 J. This document may be prepared in multiple counterparts. Each counterpart,  
 28 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 \_\_\_\_\_ 2010.

20 MING WEI WU, D.O.

LEWIS BRISBOIS BISGAARD & SMITH, LLP

21 \_\_\_\_\_  
 22 Osteopathic Physician

By \_\_\_\_\_

Daniel Curriden, Esq., # 3502

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

24 NEVADA STATE BOARD OF  
 25 OSTEOPATHIC MEDICINE

NEVADA STATE BOARD OF  
 OSTEOPATHIC MEDICINE

26 BY: Rota Rosaschi

By Dianna Hegeduis

Rota Rosaschi, MPA,  
 Investigating Board Member

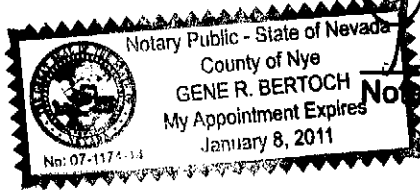
Dianna Hegeduis, Executive Director -  
 Board Counsel

Dated: 1/8/10

Dated: 1-20-2010

**ACKNOWLEDGEMENT**

1  
2 On this the 6<sup>th</sup> day of January, 2010, the said MING WEI WU, D.O.,  
3 personally appeared before me, a notary public, and signed the above document, freely and  
4 voluntarily, and under no duress.



*Gene R. Bertoch*  
Notary Public

**ORDER OF THE BOARD**

9  
10 **IT IS SO ORDERED.**

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

18  
19 DATED this 2<sup>nd</sup> day of February 2010.

20 **NEVADA STATE BOARD OF OSTEOPATHIC MEDICINE**

21  
22 BY: *Daniel K. Curtis*  
23 Dr. Daniel K. Curtis, Chairman/President of the  
24 Board  
25  
26  
27  
28