

BEFORE THE BOARD OF OSTEOPATHIC MEDICAL EXAMINERS  
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

HAROLD K. MCFARLING, D.O.,  
Respondent.

CASE NO: BOME-O-07-09

SETTLEMENT AGREEMENT

WHEREAS, the Board of Osteopathic Medical Examiners (the "Board") has jurisdiction pursuant to the Board of Osteopathic Medicine and Surgery Act, NMSA 1978, Sections 61-10-1 through 61-10-22 the "Act"); and

WHEREAS, Harold K. McFarling, D.O. ("Respondent") is licensed pursuant to the Act; and

WHEREAS, the Board received two complaints alleging professional misconduct by Dr. McFarling and assigned Case No. BOME-O-07-09; and

WHEREAS, the Board voted to issue a Notice Of Contemplated Action ("NCA") on February 8, 2008; and

WHEREAS, on February 13, 2008 the Board referred the complaint to the Office of the New Mexico Attorney General for review, investigation and issuance of an NCA; and

WHEREAS, the Board served the NCA on June 22, 2009 and Dr. McFarling requested a hearing pursuant to NMSA 1978, § 61-1-4 (D) (3); and

WHEREAS, as the parties wish to resolve this matter in an amicable fashion without the need for a formal hearing before a Hearing Officer, it is agreed that Dr. McFarling shall comply with the following terms, conditions and limitations:

1. This Settlement Agreement ("Agreement") is subject to deliberation and approval by the Board. If the Board rejects the Agreement, this matter will be reset for hearing at a time, date and place to be determined by a Hearing Officer or Administrative Law Judge. In the event of a hearing, Dr. McFarling retains all rights and preserves all issues associated with that hearing, except as provided in this Agreement.
2. Dr. McFarling enters into this Agreement voluntarily. If the Board approves the Agreement, Dr. McFarling waives any and all rights to a full hearing before the Board pursuant to provisions of the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 to 61-1-33.
3. Dr. McFarling waives all rights to have this matter heard pursuant to NMSA 1978, §§ 61-1-3 (E), (F), (G), (H), (I), (J), (K), (L) and (M) and § 61-1-4. The waiver will allow the Board time to consider the agreement and contemplate its terms.

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4. As a means of amicably resolving this matter, Dr. McFarling agrees to the following:
- a) Dr. McFarling acknowledges the boards concern over the two complaints filed against him.
  - b) Dr. McFarling shall have a chaperone present for any and all examinations of female patients. Dr. McFarling shall not examine any female patient, whether clothed or unclothed, without a chaperone physically present in the room. Dr. McFarling shall have a chaperone present for all examinations of a female patient which involve physical contact between with the female patient. This will include contact by the use of a medical instrument such as a stethoscope. Dr. McFarling shall have a chaperone present whenever the door is closed during a visit by or an examination of a female patient. Examinations or visits which do not require such physical contact and during which the door to the examination room remains open, do not require the presence of a chaperone.
  - c) A log of all female patients will be kept by a designated employee of Dr. McFarling's. The log will contain the name or the chart number of the female patient and the chaperone.

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- d) An employment contract will be entered into between the designated employee and Dr. McFarling. The contract will specify that the designated employee will be immune from any reprisals, such as termination, demotion or decrease in pay based upon her assigned duties in maintaining a log.
- e) The log will be available for inspection at any time by a representative of the Board or an investigator of the New Mexico Regulation and Licensing Department.
- f) Dr. McFarling does not admit any violation of New Mexico State Statutes or Board rules and the Board does not find guilt. Dr. McFarling acknowledges issues with boundaries and that he has sought and will continue to seek counseling.
- g) Dr. McFarling shall report to the Board every six (6) months following the implementation of this agreement. Dr. McFarling shall make the log available to the Board and report to the Board on the issue of boundaries. The Board may amend this requirement upon request from Dr. McFarling or his attorney.
- h) Dr. McFarling shall be on probation for a period not less than three (3) years unless released sooner by the Board.
- i) Dr. McFarling will pay a fine of \$8,000.00. The fine will be pay-

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able to the Board within thirty (30) days of the Board's approval of this Agreement.

j) Further, Dr. McFarling understands this agreement is a matter of public record, the breach of which may be reportable to governmental agencies requiring notice of adverse action such as the National Practitioner's Data Bank ("NPDB"), the Health Integrity and Protection Data Bank ("HIPDB") and the Federation of State Medical Boards Disciplinary Data Bank ("FSMBDDDB.")

5. The Board of Osteopathic Medical Examiners shall dismiss this action subject to the terms and conditions of this Agreement. The terms of this Agreement shall remain in effect for a period of three (3) years from the date of approval of this Agreement and will terminate only after the three (3) year period or by a review and vote for termination by the Board.
6. Dr. McFarling shall comply with all federal, state and local laws and all professional guidelines as mandated by the Board and the American Osteopathic Association.
7. Dr. McFarling agrees that a breach of any term in this Agreement may result in the immediate and summary suspension of the license to practice Osteopathic Medicine, pending further investigation and a hearing

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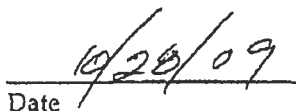
on the merits. Absent a full hearing, no such suspension will be imposed by the Board unless: 1) the facts or complaints alleging breach are provided to the Board by sworn testimony or in a sworn affidavit or complaint, the testimony or document is provided to Dr. McFarling so that he may present a timely written rebuttal and 3) the Disciplinary Committee reviews all information before it and determines that sufficient probable cause of a breach exists. A breach of any term of the Agreement shall constitute unprofessional conduct in a person licensed as an osteopathic physician as set forth in NMSA 1978, § 61-10-15 (G).

8. The president of the Board of Osteopathic Medical Examiners is authorized to sign this Settlement Agreement and Stipulation of Licensure on behalf of the Board.
9. Dr. McFarling has had the opportunity to review this agreement with legal counsel.

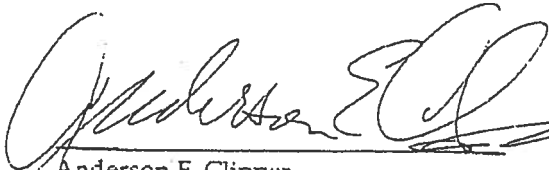
IT IS SO AGREED BY the New Mexico Board of Osteopathic Medical Examiners.



Tom Lindsey D. O., Chairman  
New Mexico Board of  
Osteopathic Medical Examiners

  
Date

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Anderson E. Clipper  
Assistant Attorney General  
Administrative Prosecutor

10/30/09  
Date

I agree to accept the terms and conditions set forth  
in this Settlement Agreement.

\_\_\_\_\_  
Harold K. McFarling, D.O.

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Sandoval, Esq.  
Attorney for Respondent


\_\_\_\_\_  
Date

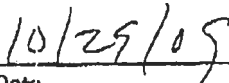
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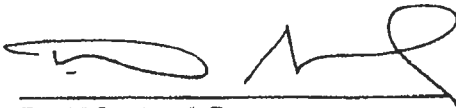
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Administrative Prosecutor

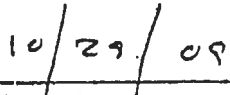
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Date

\_\_\_\_\_  
**I agree to accept the terms and conditions set forth  
in this Settlement Agreement.**

  
\_\_\_\_\_  
Harold K. McFarling, D.O.

  
\_\_\_\_\_  
Date:

  
\_\_\_\_\_  
David Sandoval, Esq.  
Attorney for Respondent

  
\_\_\_\_\_  
Date:



**BEFORE THE BOARD OF OSTEOPATHIC MEDICAL EXAMINERS  
FOR THE STATE OF NEW MEXICO**

**IN THE MATTER OF:**

**HAROLD K. MC FARLING, D.O.,  
License No. A-871-88  
Respondent.**

**BOME CASE # O-07-09**

**NOTICE OF CONTEMPLATED ACTION**

1. Harold K. Mc Farling, D.O., ("Respondent") has a license to practice medicine under the Osteopathic Medicine and Surgery Act, NMSA 1978 §61-10-1 through 61-10-22 and is subject to the jurisdiction of the New Mexico Board of Osteopathic Medical Examiners (the "Board.")

2. The Board has sufficient evidence, which if not rebutted or explained, will justify the Board in suspending or revoking or taking other action against the respondent's license pursuant to NMSA 1978 §§ 61-10-15 (G), 26-1-16; Title 16, Chapter 17, Part 6 and more specifically 16 NMAC 17.6.8 (A)(5), (B)(1), (3), (4), (5) and (6):

**Section 61-10-15. Refusal and revocation of license**

The Board may refuse to issue or suspend or revoke any license for any one or any combination of the following causes:

G. immoral, dishonorable or unprofessional conduct.

**16 NMAC 17.6.8 Revocation Or Refusal Of License:**

A. Causes for refusal or revocation of license. The board may either refuse to issue or may suspend or revoke any license for any one or more of the following causes, whether committed in the state of New Mexico or elsewhere:

(5) immoral, dishonorable or unprofessional conduct.

B. Dishonorable and unprofessional conduct shall include but shall not be limited to the following:

(1) willful violation of the code of ethics of the American Osteopathic Association;

(3) the commission of any act involving moral turpitude; moral turpitude includes any act contrary to justice, honesty, modesty or good morals;

(4) the performance of any act or omission which tends to degrade or place the physician and the osteopathic profession in bad public repute where the act or omission is contrary to the professional standards which an osteopathic physician and surgeon assumes;

(5) incompetency to act as an osteopathic physician and surgeon; failure to possess and or exercise the requisite degree of skill, learning, and care commonly possessed

by osteopathic physicians and surgeons in the state of New Mexico or the rendering of treatment to patients in a manner contrary to accepted rules;

- (6) the performance of any act or omission which tends to degrade or place the physician and the osteopathic profession in bad public repute where the act or omission is contrary to the professional standards which an osteopathic physician and surgeon assumes;

3. The general nature of the allegations are contained in complaints received by the Board on June 26, 2007 and November 26, 2007 and in a report from the San Juan Regional Medical Center dated November 28, 2007. Specifically, Dr. McFarling is accused of inappropriately touching a female patient while performing an examination.

4. The respondent must reply to the Board within twenty days after service of this notice in order to request a hearing. Failure to reply will result in the Board taking the contemplated action.

**Section 61-1-8. Rights of person entitled to hearing.**

A. A person entitled to be heard under the Uniform Licensing Act NMSA 1978 §§61-1-1 to 61-1-31 shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both;

to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to §61-1-4 NMSA 1978 shall contain a statement of these rights.

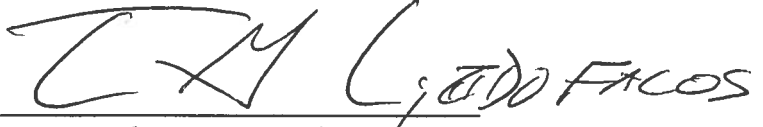
- B. Upon written request to another party, any party is entitled to:
- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
  - (2) inspect and copy any documents or items, which the other party will or may introduce in evidence at the hearing.

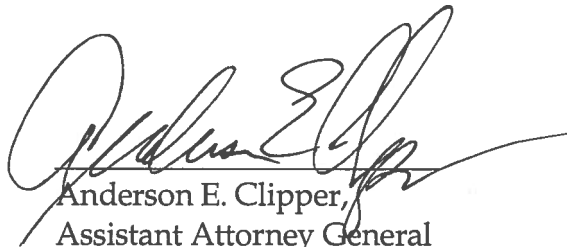
The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No request shall be made less than fifteen days before the hearing.

- C. Any party may take depositions after service of notice in ac-

cordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

Date: 11/14/08

  
Tom Lindsey, D. O., Chairman  
Osteopathic Medical Examiners Board

  
Anderson E. Clipper,  
Assistant Attorney General  
Administrative Prosecutor

7/24/08  
Date