

**STATE OF FLORIDA  
BOARD OF CHIROPRACTIC MEDICINE**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NO. 2011-10582**

**DAVID EVAN YACHTER, D.C.**

**RESPONDENT,**

**SETTLEMENT AGREEMENT**

RESPONDENT, DAVID EVAN YACHTER, D.C., referred to as the "Respondent," and the Department of Health, referred to as "Department" stipulate and agree to the following Settlement Agreement and to the entry of a Final Order of the Board of Chiropractic Medicine, referred to as "Board," incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is a state agency charged with regulating the practice of chiropractic medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 460, Florida Statutes.

**STIPULATED FACTS**

1. At all times material hereto, Respondent was a licensed chiropractic physician within the State of Florida, having been issued license number CH 6780 on or about June 23, 1994.
2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 460, Florida Statutes, and the rules adopted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit "A".
3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint for purposes of these proceedings only.

**STIPULATED CONCLUSIONS OF LAW**

1. Respondent admits that in his capacity as a chiropractic physician, he is subject to the provisions of Chapters 456 and 460, Florida Statutes, and the jurisdiction of the Department and the Board.
2. Respondent admits that the facts alleged in the Administrative Complaint, if proven, would constitute violations of Chapter 460, Florida Statutes, as alleged in the Administrative Complaint.

3. Respondent agrees that the Stipulated Disposition in this case is fair, appropriate and acceptable to Respondent.

**STIPULATED DISPOSITION**

1. **Letter of Concern** – The Board of Chiropractic Medicine shall issue a letter of concern to the Respondent.
2. **Fine** - The Board of Chiropractic Medicine shall impose an administrative fine of **six thousand, dollars and no cents (\$6,000.00)** against the license of Respondent, to be paid by Respondent to the Department of Health, Compliance Management Unit, Bin C76, Post Office Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within two (2) years of the issuance of the Final Order accepting this Settlement Agreement, with payments to be made by Respondent in twenty-four (24) equal monthly payments of two hundred, fifty dollars and no cents (\$250.00). All fines shall be paid by certified funds or money order. The Board office does not have the authority to change the terms of payment of any fine imposed by the Board.

**RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE FINE IS HIS LEGAL OBLIGATION AND RESPONSIBILITY**

**AND RESPONDENT AGREES TO CEASE PRACTICING IF THE FINE IS NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN FORTY-FIVE (45) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF HER FIRST FINE PAYMENT HAS BEEN RECEIVED, AND WITHIN FIFTEEN (15) DAYS OF EACH MONTHLY FINE PAYMENT THEREAFTER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION FROM THE BOARD OF CHIROPRACTIC MEDICINE COMPLIANCE OFFICER, RESPONDENT AGREES TO CEASE PRACTICING UNTIL SUCH TIME AS WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD OF CHIROPRACTIC MEDICINE COMPLIANCE OFFICER.**

3. **Reimbursement Of Costs** - Pursuant to Section 456.072, Florida Statutes, Respondent agrees to pay the Department for any and all costs incurred in the investigation and prosecution of this case. Such costs exclude the costs of obtaining supervision or monitoring of the practice, the cost of quality assurance reviews, and the Board's administrative cost directly associated with Respondent's probation, if any. **The current**

**estimate of the Department's costs in this case is five thousand, two hundred, thirty-three dollars and thirty-one cents (\$5,233.31), but this amount will increase prior to the Board meeting where this Settlement Agreement is presented.** All costs shall be paid by certified funds or money order. Respondent will pay costs to the Department of Health, Compliance Management Unit, Bin C76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within two (2) years of the issuance of the Final Order accepting this Settlement Agreement, with cost payments being made by the Respondent in twenty-four (24) equal monthly payments of 1/24th the actual costs presented at the time of the Board meeting accepting this Settlement Agreement. Any post-Board costs, such as the costs associated with probation, are not included in this Settlement Agreement.

**RESPONDENT ACKNOWLEDGES THAT THE TIMELY PAYMENT OF THE COSTS IS HIS LEGAL OBLIGATION AND RESPONSIBILITY AND RESPONDENT AGREES TO CEASE PRACTICING IF THE COSTS ARE NOT PAID AS AGREED TO IN THIS SETTLEMENT AGREEMENT, SPECIFICALLY: IF WITHIN FORTY-FIVE (45) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT**

**RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF HER FIRST COST PAYMENT HAS BEEN RECEIVED, AND WITHIN FIFTEEN (15) DAYS OF EACH MONTHLY COST PAYMENT THEREAFTER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION FROM THE BOARD OF CHIROPRACTIC MEDICINE COMPLIANCE OFFICER, RESPONDENT AGREES TO CEASE PRACTICING UNTIL SUCH TIME AS WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD OF CHIROPRACTIC MEDICINE COMPLIANCE OFFICER.**

4. 4. **Count Three Dismissed**: As a result of this Settlement Agreement, the parties have agreed that the following count and/or violations alleged in the Administrative Complaint filed with the Agency Clerk on or about March 30, 2012, are hereby dismissed:

a. **Count Three** – Section 460.413(1)(r), Florida Statutes (2008).

5. **Probation** - Respondent's license to practice Chiropractic Medicine shall be placed on probation for a period of two (2) years. The purpose of probation is not to prevent Respondent from practicing chiropractic medicine. Rather, probation is a supervised educational experience designed by the Board to make Respondent aware of certain obligations to Respondent's patients and

the profession; and to ensure Respondent's continued compliance with the high standards of the profession through interaction with another chiropractic physician with appropriate expertise.

A) **Restrictions During Probation** – To the above end, during the period of probation, Respondent shall comply with the following obligations and requirements:

1) **Supervision** - Respondent shall be responsible to provide records to a Board-appointed chiropractic monitoring physician, hereinafter referred to as the "Monitor", whose responsibilities are set by the Board's Compliance Chair. The Respondent shall allow the Monitor access to Respondent's medical practice records, billing records, calendar, patient logs or other documents necessary for the Monitor to supervise Respondent as detailed below. It is expressly understood that Respondent will implement any changes to his practice suggested by Respondent's Monitor, and the failure to do so constitutes a violation of this Settlement Agreement that may result in disciplinary action. At any time after the Respondent has successfully completed the first year of probation the Respondent, with the advice, consent and support of his Monitor, may petition the Board for the early termination of the Respondent's Probation.

B) **Responsibilities of the Monitor**- During the first month of probation, the Monitor shall review a minimum of ten (10) files, or one hundred percent (100%), which ever is less, of Respondent's active patient records for the purpose of ascertaining, among other things, whether proper care and treatment is being provided, whether there are any signs of treatment over-utilization or overutilization of pre-payment plans, whether treatments are being documented correctly for medical necessity, and to determine if the Respondent is maintaining proper patient, billing and trust accounting records. Thereafter, for the next five (5) months of Respondent's probation, the Monitor shall go to Respondent's office once every other month, and shall select the patient files and records to be reviewed including Respondent's calendar and patient log, and associated billing and trust accounting records. If Respondent successfully completes the first six (6) months of probation, the Monitor shall only be required to review a minimum of five (5) patient files, or one hundred percent (100%), which ever is less, every quarter for the duration of probation.

C) **Monitoring Reports** - The Monitor shall also submit reports Quarterly, in affidavit form which shall include:



- 1) A brief statement of why Respondent is on a Monitoring Agreement;
- 2) A description of Respondent's practice (type and composition);
- 3) A statement addressing Respondent's compliance with the terms of the Monitoring Agreement;
- 4) A brief description of the Monitor's relationship with Respondent;
- 5) A statement advising the Board of any problems which have arisen; and,
- 6) A summary of the dates the Monitor went to Respondent's office, the number of records reviewed, and the overall quality of the records reviewed, and the dates Respondent contacted the Monitor as referenced above.

More detailed information regarding the content of the monitoring report will be provided to the Monitor by the Board's compliance officer or the Department's compliance unit. The Monitor will be expected to utilize the forms and comply with the guidelines contained in these materials.

D) **Obligation to Report Violations** - The Monitor is required to report immediately to the Board any violations by Respondent of Chapters 456 or 460, Florida Statutes, and the rules promulgated there under.

E) **Appearances** - Respondent's Monitor shall appear before the Board at such times as directed by the Board. It shall be Respondent's responsibility to give adequate notice to the Monitor to appear as requested or directed. If the approved Monitor inexcusably fails to appear as requested or directed by the Board due to lack of notice by the Respondent, Respondent shall immediately cease practicing chiropractic medicine until such time as the approved Monitor, or alternate Monitor, appears before the Board, unless such failure is beyond the control of the Monitor or the Respondent, as determined, in the sole discretion of the Board.

F) **Other Obligations/Requirements of Monitoring Agreement** - During the period of the Monitoring Agreement, Respondent shall comply with the following obligations and requirements:

- 1) During the period of probation Respondent agrees that, upon notification to Respondent to appear at the next Board of Chiropractic Medicine meeting and be heard, upon a finding by the Board that Respondent failed to comply with any of the terms of

this Settlement Agreement, the Board may SUSPEND Respondent's license to practice Chiropractic Medicine until Respondent demonstrates to the Board that Respondent is in compliance with the terms of Monitoring Agreement. Notwithstanding the foregoing, Respondent shall have the opportunity to provide evidence to the Board to rebut any allegation of non-compliance and the Board shall provide reasonable notice of its concerns in advance of any meeting to allow the Respondent an opportunity to respond.

2) Respondent shall appear before the Board of Chiropractic Medicine at the last meeting of the board preceding scheduled termination of the probation, and at such other times as requested by the board. The Board staff shall notice Respondent of the date, time and place of the Board meeting at which Respondent's appearance is required. Inexcusable failure of Respondent to appear as requested or directed shall be considered a violation of the terms of this Settlement Agreement, and shall subject Respondent to disciplinary action, unless Respondent's appearance is excused in advance by the Board Chairman or the failure to appear is beyond Respondent's control.

3) In the event that the Board or the Disciplinary Compliance Chairman determines that that the Monitor's reports are unacceptable, the Board shall have the authority to extend Respondent's probationary term indefinitely. This authority is in addition to the Board's authority to suspend Respondent's license, or file new charges, based on non-compliance with this Settlement Agreement.

G) **Change in Monitor** - In the event that Respondent's Monitor is unable or unwilling to fulfill the responsibilities of a Monitor, Respondent shall immediately notify the Board office. Respondent shall obtain another Board-appointed Monitor as expeditiously as possible to fulfill the obligations. Failure to notify the Board office and obtain a new Monitor within fourteen (14) days shall be considered a violation of this Settlement Agreement.

H) **Continuity of Practice** -

1) **Tolling Provisions** - In the event Respondent leaves the State of Florida for a period of thirty (30) days or more or otherwise does not engage in the active practice of chiropractic medicine in the State of Florida, then certain provisions of Respondent's Monitoring Agreement (and only those provisions of the Monitoring

Agreement) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

- a) The time period of the Monitoring Agreement shall be tolled;
- b) The provisions regarding supervision whether direct or indirect by another chiropractic physician and required reports from the Monitor shall be tolled; and,
- c) The provisions regarding preparation of investigative reports detailing compliance with this Settlement Agreement shall be tolled.

2) **Active Practice** - In the event that Respondent leaves the active practice of chiropractic medicine for a period of one (1) year or more, the Board may require Respondent to appear before the Board and demonstrate his ability to practice chiropractic medicine with skill and safety to patients prior to resuming the practice of chiropractic medicine in this State.

6. **Continuing Education – Risk Management:** Within one (1) year of the date of the filing of a Final Order in this cause, Respondent shall

attend three (3) hours of Board approved Continuing Education in Risk Management, two (2) hours of which must be in laws and rules. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, documenting completion of this course. All such documentation shall be sent to the Department of Health Compliance Unit, Bin C76, P. O. Box 6320, Tallahassee, FL 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within thirteen (13) months from the date of filing of the Final Order in this cause regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to all those hours required for renewal of licensure; and unless otherwise approved by the Board, said continuing education course(s) shall consist of the formal, live lecture format.

7. **Continuing Education - Record Keeping, Documentation and Coding** – Respondent shall complete six (6) hours of Board approved continuing education courses in the area of record keeping, documentation and coding within one (1) year of the date of filing of the Final Order of the Board. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, documenting completion of this

course. All such documentation shall be sent to the Department of Health Compliance Unit, Bin C76, P. O. Box 6320, Tallahassee, FL 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within thirteen (13) months from the date of filing of the Final Order in this cause regardless of whether some or any of such documentation was provided previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to all those hours required for renewal of licensure; and unless otherwise approved by the Board, said continuing education course(s) shall consist of the formal, live lecture format.

8. **Continuing Education – Ethics and Boundaries:** Within one (1) year of the date of the filing of a Final Order in this cause, Respondent shall attend two (2) hours of Board approved Continuing Education in Ethics and Boundaries. Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, documenting completion of this course. All such documentation shall be sent to the Department of Health Compliance Unit, Bin C76, P. O. Box 6320, Tallahassee, FL 32314-6320, Attention: Board of Chiropractic Medicine Compliance Officer, within thirteen (13) months from the date of filing of the Final Order in this cause regardless of whether some or any of such documentation was provided

previously during the course of any audit or discussion with counsel for the Department. These hours shall be in addition to all those hours required for renewal of licensure; and unless otherwise approved by the Board, said continuing education course(s) shall consist of the formal, live lecture format.

9. **Attendance at Board Meetings** - Respondent shall be required to attend two (2) chiropractic Board meetings within two (2) years from the date of the filing of the Final Order in this cause. Respondent shall give written notice to the Chiropractic Board office, at least thirty (30) days in advance, of each Board meeting Respondent plans to attend for compliance with the paragraph. During such Board meetings, Respondent shall sign in prior to the start of the meeting, and sign out at the conclusion of each Board meeting, on a list provided by the Board Office. Respondent shall sit in the front row for each Board meeting, in an assigned seat, and shall not be permitted to utilize cell phones, computers, books, or any other items that distract Respondent from paying full-attention to the Board meeting proceedings.

10. **Laws and Rules Affidavit** - Respondent shall submit an Affidavit that he has read Chapters 456 and 460, Florida Statutes, and the Rules of the Board of Chiropractic Medicine, at Chapter 64B2, Florida Administrative code, within one (1) year of the filing of the Final Order of the Board.



### **STANDARD PROVISIONS**

1. **Appearance**: Respondent is required to appear before the Board at the meeting of the Board where this Settlement Agreement is considered.
2. **No Force or Effect Until Final Order** - It is expressly understood that this Settlement Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless the Board enters a Final Order incorporating the terms of this Settlement Agreement.
3. **Addresses** - Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the Board within ten (10) days of any changes of said addresses.
4. **Future Conduct** - In the future, Respondent shall not violate Chapter 456 or 460, Florida Statutes, or the rules promulgated pursuant thereto, or any other state or federal law, rule, or regulation relating to the practice or the ability to practice chiropractic medicine. Prior to signing this Settlement Agreement, the Respondent shall read Chapters 456 and 460, Florida, Statutes, and the Rules of the Board of Chiropractic Medicine, at Chapter 64B2,

Florida Administrative Code. Online versions of these laws and rules are available at [www.doh.state.fl.us/mqa/chiro/chiro\\_statutes.html](http://www.doh.state.fl.us/mqa/chiro/chiro_statutes.html).

5. **Violation of Terms Considered Violation of Settlement Agreement** - It is expressly understood that a violation of the terms of this Settlement Agreement shall be considered a violation of a Final Order of the Board, for which disciplinary action may be initiated pursuant to Chapters 456 and 460, Florida Statutes.

6. **Purpose of Settlement Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this cause, executes this Settlement Agreement. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Settlement Agreement. Respondent agrees to support this Settlement Agreement at the time it is presented to the Board and shall offer no evidence, testimony or argument that disputes or contravenes any stipulated fact or conclusion of law. Furthermore, should this Settlement Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Settlement Agreement and other documents and matters by the Board shall

not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

7. **No Preclusion of Additional Proceedings** - Respondent and the Department fully understand that this Settlement Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit A.

8. **Waiver of Attorney's Fees and Costs** - Upon the Board's adoption of this Settlement Agreement, the parties hereby agree that with the exception of costs noted above, the parties will bear their own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department and the Board in connection with this matter.

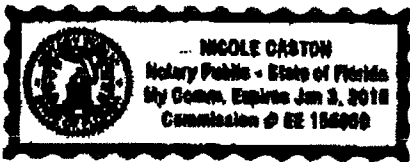
9. **Waiver of Further Procedural Steps** - Upon the Board's adoption of this Settlement Agreement, Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Settlement Agreement and the Final Order of the Board incorporating said Settlement Agreement.

SIGNED this 22 day of August, 2012.

[Signature]  
DAVID EVAN YACHTER, D.C.

STATE OF FLORIDA  
COUNTY OF Broward

Before me on this 22 day of August, 2012, personally appeared DAVID EVAN YACHTER, D.C., whose identity is known to me by Driver's License (type of identification) and who, under oath or affirmation, acknowledged that his signature appears above.



[Signature]  
Notary Public State of Florida  
Printed Name: Nicole Caston  
Commission No.: EE 1510959  
Commission Expires: 1/3/11

APPROVED this 22<sup>nd</sup> day of August, 2012.

John H. Armstrong, MD  
Surgeon General and Secretary of Health

BY: [Signature]  
Tari Rossitto-Van Winkle, R.N., J.D.  
Assistant General Counsel  
Department of Health  
Prosecution Services Unit  
4052 Bald Cypress Way, Bin C-65  
Tallahassee, FL 32399-3265  
(850) 245-4640 Ext 8139  
FAX (850) 245-4684