STATE OF FLORIDA
BOARD OF OSTEOPATHIC MEDICINE

DEPARTMENT OF HEALTH

Petitioner,

vs.

DAVID L. HICKS, D.O.,

Respondent.

Case No: 2011-17074
License No.: OS 4796

FINAL ORDER ACCEPTING SETTLEMENT AGREEMENT

This matter appeared before the Board of Osteopathic Medicine (hereinafter "Board") pursuant to Sections 120.569 and 120.57(4), Florida Statutes, at a duly-noticed public meeting on August 25, 2017, in Orlando, Florida, for consideration of a Settlement Agreement (attached hereto as Exhibit "A") entered into between the parties in this cause and incorporated by reference into this Final Order. The Department of Health (hereinafter "Petitioner") was represented by Matthew Witters, Assistant General Counsel, with the Department of Health. David L. Hicks, D.O., (hereinafter "Respondent") was present and was represented by Gregory Chaires, Esquire. Both parties agreed to orally amend the proposed Settlement Agreement at the meeting to clarify that the Respondent shall submit quarterly reports. (Settlement Agreement, Stipulated Disposition, Paragraph 10 (A) vii).

The Petitioner filed an Administrative Complaint against the Respondent on April 11, 2014, attached hereto as Exhibit "B" and incorporated by reference into this Final Order.
Upon consideration of the Settlement Agreement, the documents submitted in support thereof, the arguments of the parties and otherwise being advised in the premises, the Board accepted the Settlement Agreement as amended. Costs are assessed in the amount of eleven thousand four hundred sixty-four dollars and thirty-five cents ($11,464.35) and payable within ninety (90) days from the filing date of this Final Order.

WHEREFORE, the Board hereby accepts the Settlement Agreement, settling all matters in this case consistent with the terms of the agreement between the parties, and Respondent is hereby ORDERED to abide by the terms of the Settlement Agreement. This Final Order shall be placed in and made part of the Respondent’s official records.

This Final Order shall become effective upon filing with the Clerk for the Department of Health.

DONE AND ORDERED this 18 day of September, 2017.

BOARD OF OSTEOPATHIC MEDICINE

Kama Monroe, J.D., Executive Director
on behalf of Michelle Mendez, D.O., Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to David L. Hicks, D.O., West Coast Family Medical Care, 3165 Mcmullen Booth Road, #H, Clearwater, FL 33761 and at West Coast Family Medical Care, 3165 Mcmullen Booth Road, #G-2, Clearwater, FL 33761; and Gregory Chaires, Esq., 283 Cranes Roost Blvd., Suite 165, Altamonte Springs, FL 32701; and by email to
Donna C. McNulty, Senior Assistant Attorney General, at Donna.McNulty@myfloridalegal.com; and Matthew Witters, Assistant General Counsel, at Matthew.Witters@flhealth.gov; this 19th day of September, 2017.

Audrey Greene
Deputy Agency Clerk
STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

Petitioner,

v. 

Case No. 2011-17074

DAVID L. HICKS, D.O.,

Respondent,

____________________________________

SETTLEMENT AGREEMENT

David L. Hicks, D.O., 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 Osteopathic Medicine, referred to as "Board", incorporating the Stipulated Facts and Stipulated Disposition in this matter.

Petitioner is the state agency charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes, and Chapter 456, Florida Statutes, and Chapter 459, Florida Statutes.
STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed osteopathic physician in the State of Florida having been issued license number OS 4796.

2. The Department charged Respondent with an Administrative Complaint that was filed and properly served upon Respondent with violations of Chapter 459, 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 licensed physician, he is subject to the provisions of Chapters 456 and 459, 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
Chapters 456 and/or 459, 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. **Reprimand** - The Board shall reprimand the license of Respondent.

2. **Fine** - The Board of Osteopathic Medicine shall impose an administrative fine of **TEN THOUSAND DOLLARS and NO CENTS ($10,000.00)** 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 Osteopathic Medicine Compliance Officer, within ninety (90) days from the date of filing of the Final Order incorporating this Settlement Agreement. 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 ONE HUNDRED FIVE (105) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE FINE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.

4. **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 TEN THOUSAND FOUR HUNDRED TWENTY TWO DOLLARS and TWENTY-FIVE CENTS ($10,422.25) but this amount will increase prior to the Board meeting where this Settlement Agreement is
presented. 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 Osteopathic Medicine Compliance Officer, within ninety (90) days from the date of filing of the Final Order in this cause. 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 (ONE HUNDRED FIVE) DAYS OF THE DATE OF FILING OF THE FINAL ORDER, RESPONDENT HAS NOT RECEIVED WRITTEN CONFIRMATION THAT THE FULL AMOUNT OF THE COSTS NOTED ABOVE HAS BEEN RECEIVED BY THE BOARD OFFICE, RESPONDENT AGREES TO CEASE PRACTICE UNTIL SUCH WRITTEN CONFIRMATION IS RECEIVED BY RESPONDENT FROM THE BOARD.
5. **Laws And Rules Course** - Respondent shall complete course, “Legal and Ethical Implications in Medicine Physician’s Survival Guide-Laws and Rules” administered by the Florida Medical Association (FMA), or a Board-approved equivalent, within twelve (12) months of the date of filing of the Final Order of the Board incorporating this Settlement Agreement. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical education course within thirteen (13) months of the date of filing of the Final Order incorporating this Settlement Agreement to the Department of Health, Compliance Management Unit, Bin C76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine Compliance Officer.

6. **Drug Course** - Respondent shall complete the course, "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls of Prescribing," sponsored by the University of Florida, or a Board-approved equivalent, within twelve (12) months of the date of filing of the Final Order incorporating this Settlement Agreement. In addition, Respondent shall submit documentation in the form of certified copies of
the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical education course within thirteen (13) months of the date of filing of the Final Order incorporating this Settlement Agreement to the Department of Health, Compliance Management Unit, Bin C76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine Compliance Officer.

7. **Records Course** - Respondent shall complete the 8 hour course, "Quality Medical Record Keeping for Health Care Professionals," sponsored by the Florida Medical Association, or a Board-approved equivalent, within twelve (12) months of the date of filing of the Final Order incorporating this Settlement Agreement. In addition, Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical education course within thirteen (13) months of the date of filing of the Final Order incorporating this Settlement Agreement to the Department of Health, Compliance Management Unit, Bin C76, P.O. Box 6320,
Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine Compliance Officer.

8. **Continuing Medical Education – “Risk Management”** - Respondent shall complete five (5) hours of Continuing Osteopathic Medical Education in “Risk Management”, sponsored by the Florida Medical Association within one (1) year of the date of filing of the Final Order. Respondent shall first submit a written request to the Board Chairman for approval prior to performance of said continuing medical education course(s). However, the Board has approved five (5) hours of risk management continuing education for attending the first day of a full Board of Osteopathic Medicine meeting.

9. **Restriction Language: Restriction on Practice (CME)** - Respondent’s practice is restricted in that Respondent may not order or prescribe schedule two controlled substances, unless or until Respondent has documented to the Board Chairman completion of the Drug and Risk Management Courses described above.

10. **Probation Language** - Effective on the date of the filing of the Final Order incorporating the terms of this Settlement Agreement, Respondent’s license to practice osteopathic medicine shall be placed
on probation for a period of two years or for two years after the Schedule II controlled substances ordering and/or prescribing restrictions are lifted, whichever is longer. The purpose of probation is not to prevent Respondent from practicing osteopathic 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 physician in the appropriate field of expertise. To this end, during the period of probation, Respondent shall comply with the following obligations and requirements:

(A) **Restrictions During Probation** - During the period of probation, Respondent's license shall be restricted as follows:

i. **Indirect Supervision** - Respondent shall practice only under the indirect supervision of a Board-approved physician, hereinafter referred to as the "Monitor", whose responsibilities are set by the Board. Indirect supervision does not require that the Monitor practice on the same premises as Respondent, however, the Monitor shall practice within a reasonable geographic
proximity to Respondent, which shall be within twenty (20) miles unless otherwise provided by the Board and shall be readily available for consultation. The Monitor shall be Board Certified in Respondent’s specialty unless otherwise approved of by the Board. In this regard, Respondent shall allow the Monitor access to Respondent's medical records, calendar, patient logs or other documents necessary for the Monitor to supervise Respondent, as detailed below.

ii. **Required Mentor/Supervision Criteria:**

   a) If the terms of the Settlement Agreement include indirect monitoring of the Respondent’s practice, or direct supervising of the Respondent’s practice, Respondent shall not practice osteopathic medicine without an approved Monitor/Supervisor, as specified by this Settlement Agreement, unless otherwise stated by the Board.

   b) The Monitor/Supervisor must be a licensee under Chapter 458 and/or 459, Florida Statutes, in good standing and without restriction or limitation on his license. The Monitor/Supervisor must be actively engaged in the same or similar specialty unless otherwise approved of by the Board and be practicing within twenty
(20) miles of Respondent's practice, unless otherwise specifically provided for in this Settlement Agreement. The Monitor/Supervisor must be sufficiently qualified and experienced to appropriately monitor/supervise the Respondent. The Board will make a determination whether Respondent's proposed Monitor/Supervisor is appropriate and the Board retains the absolute discretion to reject any Monitor/Supervisor proposed by the Respondent.

iv. **Mechanism For Approval Of Monitor/Supervisor:**

a) **Temporary Approval** - The Board confers authority on the Board Chairman to temporarily approve Respondent's Monitor/Supervisor. To obtain this temporary approval, Respondent shall submit to the Board Chairman the name and curriculum vitae of the proposed Monitor/Supervisor at the time this Settlement Agreement is considered by the Board. **Once a Final Order adopting the Settlement Agreement is filed, Respondent shall not practice osteopathic medicine without an approved Monitor/Supervisor. Temporary approval shall only remain in effect until the next meeting of the Board.**
b) **Formal Approval** - Respondent shall have the Monitor/Supervisor with Respondent at Respondent’s first probation appearance before the Board. Prior to the consideration of the Monitor/Supervisor by the Board, Respondent shall provide to the Monitor/Supervisor a copy of the Administrative Complaint and Final Order in this case. Respondent shall submit a current curriculum vita and a description of current practice from the proposed Monitor/Supervisor to the Board office no later than fourteen (14) days before Respondent’s first scheduled appearance before the Board. Respondent’s Monitor/Supervisor shall also appear before the Board at such other times as directed by the Board or Board Chairman. It shall be Respondent’s responsibility to ensure the appearance of the Monitor/Supervisor as directed. Failure of the Monitor/Supervisor to appear, as directed, shall constitute a violation of the terms of this Settlement Agreement and shall subject Respondent to disciplinary action.

v. **Change In Monitor/Supervisor** - In the event that Respondent’s Monitor/Supervisor is unable or unwilling to fulfill the responsibilities of a Monitor/Supervisor as described above, Respondent
shall immediately advise the Board and Board Office. Respondent shall immediately submit to the Board Chairman the name of a temporary Monitor/Supervisor for consideration. Respondent shall not practice pending approval of this temporary Monitor/Supervisor by the Board Chairman. Furthermore, Respondent shall make arrangements with his temporary Monitor/Supervisor to appear before the Board at its next regularly scheduled meeting for consideration of the Monitor/Supervisor by the Board. Respondent shall only practice under the auspices of the temporary Monitor/Supervisor (approved by the Chairman) until the next regularly scheduled meeting of the Board at which time the issue of the Board Chairman’s approval of Respondent’s new Monitor/Supervisor shall be addressed.

vi. **Responsibilities of the Monitor/Supervisor**

The Monitor/Supervisor shall:

a) Review 100 percent of Respondent's active patient records at least once every quarter for the purpose of ascertaining whether Respondent is overprescribing Schedule II controlled substances. The Monitor/Supervisor shall go to Respondent's
office once every quarter and shall review Respondent's calendar or patient log and shall select the records to be reviewed.

b) Review all of Respondent's patient records for patients treated for chronic nonmalignant pain with Schedule II controlled substances. In this regard, Respondent shall maintain a log documenting all such patients.

c) Consult with Respondent on all cases involving chronic pain. For the purposes of this Settlement Agreement, the scope of consultation shall be as follows:

1) Receive and review copies of all schedule two controlled substance prescriptions in order to determine the appropriateness of Respondent's prescribing of schedule two controlled substances;

2) Any other records review requirements; and

3) Maintain contact with Respondent on a frequency of at least once per month. In the event that the Monitor/Supervisor is not timely contacted by Respondent, then the
Monitor/Supervisor shall immediately report this fact in writing to the Board Chairman.

d) Submit reports on a quarterly basis, in affidavit form, which shall include:

1) A brief statement of why Respondent is on probation;

2) A description of Respondent's practice (type and composition);

3) A statement addressing Respondent's compliance with the terms of probation;

4) A brief description of the Monitor's/Supervisor's relationship with Respondent;

5) A statement advising the Board Chairman of any problems which have arisen;

6) A summary of the dates the Monitor/Supervisor 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/Supervisor pursuant to subsection c), 3), above;

7) A statement of the number of schedule two controlled substances ordered and/or prescribed by Respondent each quarter; and

8) A statement of any approval of medication specified in Paragraph 10(A)(x), which was pre-authorized and shall maintain a list of those pre-approved medications for review by the Department of Health's investigator.
e) Report immediately to the Board any violations by Respondent of Chapters 456 or 459, Florida Statutes, and the rules promulgated thereto.

f) Respondent's Monitor/Supervisor shall appear before the Board at the first meeting of the Board following commencement of the probation, and at such other times as directed by the Board or Board Chairman. It shall be Respondent's responsibility to ensure the appearance of Respondent's Monitor/Supervisor to appear as requested or directed. If the approved Monitor/Supervisor fails to appear as requested or directed by the Board or Board Chairman, Respondent shall immediately cease practicing osteopathic medicine until such time as the approved Monitor/Supervisor or alternate Monitor/Supervisor appears before the Board.

vii. Reports from Respondent - Respondent shall submit quarterly/semiannual reports, in affidavit form, the contents of which may be further specified by the Board, but which shall include:

a) A brief statement of why Respondent is on probation;

b) A description of practice location;
c) A description of current practice (type and composition);

d) A brief statement of compliance with probationary terms;

e) A description of the relationship with monitoring/supervising physician;

f) A statement advising the Board of any problems which have arisen;

g) A statement addressing compliance with any restrictions or requirements imposed; and

h) A statement of the number of schedule two controlled substances ordered and/or prescribed each quarter.

viii. **Continuity of Practice:**

a) **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 osteopathic medicine in the State of Florida, then certain provisions of
Respondent's probation (and only those provisions of the probation) shall be tolled as enumerated below and shall remain in a tolled status until Respondent returns to active practice in the State of Florida:

1) The time period of probation shall be tolled;

2) The provisions regarding supervision, whether direct or indirect by another physician, and required reports from the Monitor/Supervisor shall be tolled;

3) The provisions regarding preparation of reports detailing compliance with this Settlement Agreement shall be tolled; and

4) Any provisions regarding community service shall be tolled.

b) **Active Practice** - In the event that Respondent leaves the active practice of osteopathic 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 osteopathic medicine with skill and safety to patients prior to resuming the practice of osteopathic medicine in this state.
ix. **Controlled Substances** - Respondent may order and/or prescribe Schedule II controlled substances only in compliance with the restrictions set forth below:

a) Respondent shall maintain copies of each order/prescription he writes in the patients' medical records, which may be photocopies and made available as provided in (b) and (c) below;

b) Respondent shall provide one copy of each order/prescription to the Monitor/Supervisor when they meet; and

c) Respondent shall provide one copy of each order/prescription to Department's Compliance Officer upon request.

(a) **Obligations/Requirements Of Probation** - During the period of probation, Respondent shall comply with the following obligations and requirements:

i. **Appearance** - Respondent shall appear before the Board of Osteopathic Medicine at the first Board meeting after probation commences, at the last meeting of the Board preceding scheduled termination of the probation, and at such other times as requested by the Board or Board Chairman. Respondent shall be noticed by the Board Office of the date, time and place of the Board
meeting at which Respondent's appearance is required. Failure of Respondent to appear as requested, or directed, or failure of Respondent to comply with any of the terms of this Settlement Agreement shall be considered a violation of the terms of this Settlement Agreement, and shall subject Respondent to disciplinary action.

ii. Respondent shall be responsible for ensuring that the Monitor/Supervisor submits all required reports.

iii. Supervision of Physician Assistants and/or Anesthesiology Assistants - Respondent is required to notify, in writing, any physician assistant and/or anesthesiologist assistant which the Respondent supervises, of his probationary status. A copy of said written notification(s) shall be submitted to the Board’s Compliance Officer within thirty (30) days of entry of the Final Order incorporating this Settlement Agreement.

x. Other Conditions on Respondent During Probation –
a) If a patient requires 120 or more morphine equivalents per day of opiate medications for chronic non-malignant pain and does not have a Board Certified Pain Management Physician’s written recommendation, the patient needs to be re-assessed by an appropriate specialist.

b) The Respondent shall not concomitantly order or prescribe more than one type of opiate medication per patient. A long acting formulation and intermediate release formulation may be ordered or prescribed provided they are the same molecule and the same combination does not exceed 120 morphine equivalents per day.

c) The Respondent shall document in his patient medical records that the PDMP (Prescription Drug Monitoring Program) was reviewed before ordering or prescribing any class of controlled substances for his patients.

d) The Respondent shall not order or prescribe opiate medication in combination with any benzodiazepine medication unless pre-approved by his Monitor.
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. **Continuing Medical Education** - Unless otherwise provided in this Settlement Agreement, Respondent shall first submit a written request to the Board Chairman for approval prior to performance of said continuing medical education course(s). Respondent shall submit documentation in the form of certified copies of the receipts, vouchers, certificates, or other papers, such as physician's recognition awards, documenting completion of this medical course within one year of the date of filing of the Final Order incorporating this Settlement Agreement. All such documentation shall
be sent to the Department of Health, Compliance Management Unit, Bin C76, P.O. Box 6320, Tallahassee, Florida 32314-6320, Attention: Board of Osteopathic Medicine Compliance Office, 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 those hours required for renewal of licensure. Unless otherwise approved by the Board, said continuing medical education course(s) shall consist of a formal, live lecture format.

4. **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.

5. **Future Conduct** - In the future, Respondent shall not violate Chapter 456, 459 or 893, 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 osteopathic medicine. Prior to signing this Settlement Agreement, the Respondent shall read Chapters 456, 459 and 893 and the Rules of the
Board of Osteopathic Medicine, at Chapter 64B15, Florida Administrative Code.

6. **Violation of Settlement Agreement Terms** - 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 459, Florida Statutes.

7. **Purpose of Settlement Agreement** - Respondent, for the purpose of avoiding further administrative action with respect to this case, 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.

8. **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”.

9. **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.

10. **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 13 day of February, 2017.

DAVID L. HICKS, D.O.

Before me, personally appeared David L. Hicks, D.O., whose identity is known to me by personally known (type of identification) and who, under oath, acknowledges that his signature appears above.

Sworn to and subscribed before me this 13 day of February, 2017.

Geraldine Moerseburg
Notary Public State Of Florida
Printed Name: Geraldine Moerseburg
Commission No.: FFA19604
Commission Expires: 4/12/2019
APPROVED this 28th day of February, 2010.

Celeste Philip, MD, MPH
State Surgeon General
Florida Department of Health

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STATE OF FLORIDA
DEPARTMENT OF HEALTH

DEPARTMENT OF HEALTH,

PETITIONER,

v.

CASE NO.: 2011-17074

DAVID L. HICKS, D.O.,

RESPONDENT.

ADMINISTRATIVE COMPLAINT

COMES NOW, Petitioner, Department of Health, by and through its undersigned counsel, and files this Administrative Complaint before the Board of Osteopathic Medicine against the Respondent, David L. Hicks, D.O., and in support thereof alleges:

1. Petitioner is the state agency charged with regulating the practice of osteopathic medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 459, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed osteopathic physician within the State of Florida, having been issued license number OS 4796.
3. Respondent's address of record is 3165 McMullen Booth Road, 
   # H, West Coast Family Medical Care, Clearwater, Florida 33761.

4. At all times material to this Complaint, Respondent practiced in 
   and was board certified in pain management and family practice in 
   Clearwater, Florida.

5. Alprazolam is prescribed to treat anxiety. According to Section 
   893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled 
   substance that has a low potential for abuse relative to the substances in 
   Schedule III and has a currently accepted medical use in treatment in the 
   United States. Abuse of alprazolam may lead to limited physical or 
   psychological dependence relative to the substances in Schedule III.

6. Ambien is the brand name for the drug zolpidem, prescribed to 
   treat insomnia. According to Title 21, Section 1308.14, Code of Federal 
   Regulations, zolpidem is a Schedule IV controlled substance. Zolpidem can 
   cause dependence and is subject to abuse.

7. Duralgesic is a trade name for fentanyl transdermal patches 
   used to treat moderate to severe pain.

8. Fentanyl is prescribed to treat pain. According to Section 
   893.03(2), Florida Statutes, fentanyl is a Schedule II controlled substance.
that has a high potential for abuse and has a currently accepted but severely restricted medical use in treatment in the United States. Abuse of fentanyl may lead to severe psychological or physical dependence.

9. Hydrocodone/APAP contains hydrocodone and acetaminophen, or Tylenol and is prescribed to treat pain. According to Section 893.03(3), Florida Statutes, hydrocodone, in the dosages found in hydrocodone/APAP is a Schedule III controlled substance that has a potential for abuse less than the substances in Schedules I and II and has a currently accepted medical use in treatment in the United States. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

10. Lunesta is a sedative hypnotic drug used to treat insomnia.

11. Lyrica is a legend drug used to treat neuropathic pain and fibromyalgia.

12. Mirapex is used to treat early stage Parkinson's disease, fibromyalgia, and restless leg syndrome.

13. Xanax is the brand name for alprazolam and is prescribed to treat anxiety. According to Section 893.03(4), Florida Statutes, alprazolam is a Schedule IV controlled substance that has a low potential for abuse.

Dal v. David Hicks, D.O.
Case No.: 2011-17074
relative to the substances in Schedule III and has a currently accepted medical use in treatment in the United States. Abuse of alprazolam may lead to limited physical or psychological dependence relative to the substances in Schedule III.

14. Zoloft is a legend drug used to treat depression.

15. From on or about May 5, 2008, until on or about November 10, 2010, Patient N.H., a then 68 year-old patient, presented to Respondent with complaints of anxiety, insomnia, depression, low back pain, fibromyalgia, restless leg syndrome, and acquired polyneuropathy, along with other medical disorders. Medical records indicate Patient N.H. was an established patient in Respondent's practice.

16. Patient N.H.'s medical history is significant for submitting to a urine drug screen which returned positive for THC in or about March, 2010.

17. Tetrahydrocannabinols (THC) are the psychoactive ingredients in marijuana, or cannabis. According to Section 893.03(1), Florida Statutes (2012), THC is a Schedule I controlled substance that has a high potential for abuse and has no currently accepted medical use in treatment in Florida. Its use under medical supervision does not meet accepted safety standards.
18. Medical records indicate that from on or about May 5, 2008 until on or about November 10, 2010, Respondent wrote multiple prescriptions for Alprazolam, Ambien, Duralgesic patches, Fentanyl, Hydrocodone/APAP, Lunesta, Lyrica, Mirapex, Xanax, and/or Zoloft to Patient N.H. on the following dates, dosages, and quantities described in the following table:

<table>
<thead>
<tr>
<th>DATE</th>
<th>DRUG</th>
<th>STRENGTH</th>
<th>QUANTITY</th>
<th>EXAMINATION</th>
</tr>
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<tbody>
<tr>
<td>05/05/2008</td>
<td>Fentanyl</td>
<td>25 mcg</td>
<td>15 patches</td>
<td>Yes</td>
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<tr>
<td>05/12/2008</td>
<td>Alprazolam</td>
<td>0.5 mg</td>
<td>90 tablets</td>
<td>Yes</td>
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<tr>
<td>05/12/2008</td>
<td>Lyrica</td>
<td>25 mg</td>
<td>90 tablets</td>
<td>Yes</td>
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<tr>
<td>06/06/2008</td>
<td>Duralgesic</td>
<td>50 mcg</td>
<td>10 patches</td>
<td>Yes</td>
</tr>
<tr>
<td>06/06/2008</td>
<td>Xanax</td>
<td>0.5 mg</td>
<td>90 tablets</td>
<td>Yes</td>
</tr>
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<td>QUANTITY</td>
<td>EXAMINATION</td>
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20. Medical records indicate Respondent failed to obtain an adequate medical history from Patient N.H.

21. Medical records indicate Respondent failed to perform adequate physical examinations of Patient N.H.

22. Medical records indicate that Respondent failed to adequately monitor Patient N.H.'s use of narcotics.

23. Medical records indicate Patient N.H. submitted to a urine drug screen in or about March 2010 which returned positive for THC and Respondent failed to address Patient N.H.'s use of THC and/or marijuana.

24. Medical records indicate that Respondent failed to order specialized consultations for Patient N.H.

25. Respondent's medical records fail to justify the high frequency and simultaneous prescriptions of Ambien, Fentanyl, Xanax, Zoloft, and Lyrica to Patient N.H.

26. Medical records indicate that Respondent failed to adequately, accurately, appropriately and/or and timely diagnose Patient N.H.

27. Medical records indicate that Respondent failed to develop an appropriate treatment plan for Patient N.H.
28. Medical records indicate that Respondent failed to maintain sufficient medical records documenting the course of Patient N.H.'s treatment.

**COUNT ONE**

29. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), as if fully set forth herein.

30. Section 459.015(1)(x), Florida Statutes (2007 – 2010), allows the Board of Osteopathic Medicine to impose discipline for committing medical malpractice as defined in Section 456.50, Florida Statutes.

31. "Medical malpractice" is defined in Section 456.50(1), Florida Statutes (2007 – 2010), as the "failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure."

32. For purposes of Section 459.015(1)(x), Florida Statutes (2007 – 2010), the Board shall give great weight to the provisions of Section 766.102, Florida Statutes (2007 – 2010), which provides:

The prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.
33. From on or about May 5, 2008 until on or about November 10, 2010, Respondent committed medical malpractice in one or more of the following manners:

a. By failing to monitor Patient N.H.’s use of narcotics; and/or
b. By failing to order specialized consultations for Patient N.H.; and/or

c. By failing to conduct appropriate physical examinations on Patient N.H.; and/or

d. By failing to accurately, adequately, appropriately, and/or timely conduct assessments on Patient N.H.; and/or

e. By failing to adequately, accurately, appropriately, and/or timely diagnose Patient N.H.; and/or

f. By prescribing large quantities, combinations and/or dosages of controlled substances to Patient N.H.; and/or

g. By failing to refer Patient N.H. for specialized consultations.
34. Based on the foregoing, Respondent violated Section 459.015(1)(x), Florida Statutes (2007 – 2010), by committing medical malpractice.

COUNT TWO

35. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), as if fully set forth herein.

36. Section 459.015(t), Florida Statutes (2007 – 2010), allows the Board of Osteopathic Medicine to impose discipline against an osteopathic physician for prescribing, dispensing, administering, supplying, selling, giving, mixing, or otherwise preparing a legend drug, including all controlled substances, other than in the course of the osteopathic physician's professional practice. For the purposes of this paragraph, it shall be legally presumed that prescribing, dispensing, administering, supplying, selling, giving, mixing, or otherwise preparing legend drugs, including all controlled substances, inappropriately or in excessive or inappropriate quantities is not in the best interest of the patient and is not in the course of the osteopathic physician's professional practice, without regard to his or her intent.
37. From on or about May 5, 2008 until on or about November 10, 2010, Respondent inappropriately prescribed and/or prescribed excessive or inappropriate quantities of controlled substances in one or more of the following manners:

   a. By prescribing large quantities, combinations and/or dosages of controlled substances to Patient N.H.; and/or

   b. By prescribing large quantities, combinations and/or dosages of controlled substances to Patient N.H. without appropriately monitoring N.H.'s use of the narcotics prescribed to her; and/or

   c. By prescribing large quantities, combinations, and/or dosages of controlled substances to Patient N.H. without conducting timely and/or appropriate assessments on the patient; and/or

   d. By prescribing large quantities, combinations, and/or dosages of controlled substances to Patient N.H. without conducting timely and/or appropriate physical examinations on the patient.
38. Based on the foregoing, Respondent violated Section 459.015(t), Florida Statutes (2007 – 2010), by prescribing, dispensing, administering, supplying, selling, giving, mixing, or otherwise preparing a legend drug, including all controlled substances, other than in the course of the osteopathic physician's professional practice.

**COUNT THREE**

38. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), as if fully set forth herein.

39. Section 459.015(1)(pp), Florida Statutes (2007 – 2010), provides that violating any provision of Chapters 456 or 459, Florida Statutes, or any rules adopted pursuant thereto, is grounds for discipline by the Board of Osteopathic Medicine.

40. Rule 64B15-14.005(3), Florida Administrative Code, sets forth guidelines for evaluating the use of controlled substances for pain control, including:

(3) Guidelines. The Board has adopted the following guidelines when evaluating the use of controlled substances for pain control:

(a) Evaluation of the Patient. A complete medical history and physical examination must be conducted and documented in the medical record. The medical record should document the nature and intensity of the pain, current and past treatments
for pain, underlying or coexisting diseases or conditions, the effect of the pain on physical and psychological function, and history of substance abuse. The medical record also should document the presence of one or more recognized medical indications for the use of a controlled substance.

(b) Treatment Plan. The written treatment plan should state objectives that will be used to determine treatment success, such as pain relief and improved physical and psychosocial function, and should indicate if any further diagnostic evaluations or other treatments are planned. After treatment begins, the osteopathic physician should adjust drug therapy to the individual medical needs of each patient. Other treatment modalities, including osteopathic manipulative treatment and applications, or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.

* * *

(e) Consultation. The osteopathic physician should be willing to refer the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives. Special attention should be given to those pain patients who are at risk for misusing their medications and those whose living arrangements pose a risk for medication misuse or diversion. The management of pain in patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care, monitoring, documentation, and consultation with or referral to an expert in the management of such patients.

(f) Medical Records. The osteopathic physician is required to keep accurate and complete medical records to include, but not be limited to:

1. The medical history and physical examination;
2. Diagnostic, therapeutic, and laboratory results;
3. Evaluations and consultations;
4. Treatment objectives;
5. Discussions of risks and benefits;
6. Treatments;
7. Medications (including date, type, dosage, and quantity prescribed);
8. Instructions and agreements;
9. Periodic reviews.

41. Between on or about May 5, 2008 and on or about November 10, 2010, Respondent failed to follow the guidelines for use of controlled substances in the treatment of pain, in one or more of the following manners:

   a. By failing to order specialized consultations for Patients N.H.; and/or
   b. By failing to conduct adequate physical examinations of Patient N.H.; and/or
   c. By failing to adequately diagnose Patient N.H.; and/or
   d. By failing to adequately assess Patient N.H.; and/or
   e. By failing to develop an appropriate treatment plan for Patient N.H.; and/or
   f. By failing to document consultations for Patient N.H.; and/or
g. By failing to document adequate justification for prescribing large quantities of the medications Respondent prescribed to the patient; and/or

h. By failing to document the course of Patient N.H.'s course of treatment in an appropriate manner.

42. Based on the foregoing, Respondent violated Section 459.015(1)(pp), Florida Statutes (2007 - 2010), by violating Rule 64B15-14.005(3), Florida Administrative Code by failing to follow the guidelines for the use of controlled substances in the treatment of pain.

**COUNT FOUR**

43. Petitioner realleges and incorporates paragraphs one (1) through twenty-eight (28), as if fully set forth herein.

44. Section 459.015(1)(o), Florida Statutes (2007 - 2010), allows the Board of Osteopathic Medicine to impose discipline against an osteopathic physician for failing to keep legible, as defined by department rule in consultation with the board, medical records that identify the licensed osteopathic physician or the osteopathic physician extender and supervising osteopathic physician by name and professional title who is or are responsible for rendering, ordering, supervising, or billing for each
diagnostic or treatment procedure and that justify the course of treatment of the patient, including, but not limited to, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; and reports of consultations and hospitalizations.

45. Rule 64B15-15.004(1), Florida Administrative Code, provides that an osteopathic physician shall maintain written legible records for each patient including, at a minimum, patient histories; examination results; test results; records of drugs prescribed, dispensed or administered; reports of consultations; and hospitalizations.

46. From on or about May 5, 2008 until on or about November 10, 2010, Respondent failed to keep legible medical records in one or more of the following manners:

   a. By failing to justify the controlled substances prescribed to Patient N.H.; and/or

   b. By failing to document appropriate courses of treatment for Patient N.H.; and/or

   c. By failing to document appropriate physical evaluations of Patient N.H.; and/or
d. By failing to document an appropriate medical history for Patient N.H.; and/or

e. By failing to document regular narcotics monitoring, if any, for Patients N.H.

47. Based on the foregoing, Respondent violated Section 459.015(1)(o), Florida Statutes (2007 - 2010), as defined by Rule 64B15-15.004(1), Florida Administrative Code, by failing to keep legible medical records.

WHEREFORE, the Petitioner respectfully requests that the Board of Osteopathic Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.
SIGNED this 11th day of April, 2014.

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Surgeon General and Secretary of Health

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PCP: April 4, 2014
PCP Members: Moran + Bullinger