

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**  
2 **OF THE STATE OF NEVADA**

3 In the Matter of the Charges and )  
4 Complaint Against: )

) Case No. 07-20873-1  
) *October 14, 2008*

5 **KENT ALAN SWAINE, M.D.,** )

6 Respondent. )

)   
) **Executive Director**

7 \_\_\_\_\_ )  
8 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**  
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10 The above-entitled matter came on regularly for decision before the Nevada State  
11 Board of Medical Examiners, hereinafter "Board," on Friday, October 3, 2008, at the Board's  
12 Office located at 1105 Terminal Way, Suite 301, Reno, Nevada 89502, on the Motion for  
13 Order to Show Cause filed herein. Respondent, KENT ALAN SWAINE, M.D., hereinafter  
14 "Respondent," was not present at the meeting.

15 The Members of the Board participating in the decision were: Javaid Anwar, M.D.;  
16 Sohail Anjum, M.D.; Van V. Heffner; S. Daniel McBride, M.D; Benjamin J. Rodriguez, M.D.  
17 and Renee West. All other remaining members of the Board, being members of the  
18 Investigative Committee which issued the complaint in this matter, were excused from  
19 participating and took no part in the proceedings of the Board. Christine M. Guerci-Nyhus,  
20 Chief Deputy Attorney General, acted as legal counsel to the Board.

21 The Board having received and read the complaint and exhibits offered in this matter  
22 and having reviewed and read all of the above, proceeded to make a decision pursuant to the  
23 provisions of NRS chapter 233B and NRS 630.352.

24 The Board after due consideration of the record, evidence and law, and being fully  
25 advised in the premises, makes its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
26 ORDER in this matter as follows:

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1 **FINDINGS OF FACT**

2 I.

3 Respondent held a license to practice medicine in the State of Nevada at all relevant  
4 times.

5 II.

6 A Motion for Order to Show Cause was filed by the Investigative Committee against  
7 Respondent in August of 2008 alleging that Respondent had failed to comply with a previously  
8 entered into Settlement Agreement with the Board.

9 III.

10 A Complaint and Request for Summary Suspension was filed against Respondent on  
11 November 26, 2007 based upon which the adjudicating member of the Board summarily  
12 suspended Respondent's license to practice medicine in the state of Nevada. On November  
13 28, 2007, an Amended Complaint and Request for Summary Suspension was filed containing  
14 the same counts as set forth in the Complaint of November 26, 2007.

15 On February 20, 2008, a Second Amended Complaint was filed against Respondent  
16 containing two counts of engaging in conduct which is intended to deceive, violations of NRS  
17 630.306(2)(a), one count of dependency on a controlled substance, a violation of NRS  
18 630.306(10) and one count of prescribing a controlled substance or dangerous drug to himself  
19 or other except as authorized by law, a violation of NRS 630.306(3).

20 The matter was resolved by a Settlement, Waiver and Consent Agreement which was  
21 signed by Respondent and was adopted by the adjudicating members of the Board on March  
22 28, 2008. In the settlement agreement, Respondent admitted to all counts alleged in the  
23 Second Amended Complaint and the Board imposed a revocation of Respondent's license to  
24 practice medicine in the state of Nevada, however the revocation was stayed and Respondent  
25 was place on probation for a period of five years with numerous conditions.

26 IV.

27 The conditions contained in the Settlement, Waiver and Consent Agreement included:  
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1 e. that Respondent shall submit to random alcohol and/or drug screens requested  
2 by the Nevada State Board of Medical Examiners in addition to any such screens required by  
3 the Nevada Professionals Health Program ("NPHP"), at his own expense; and

4 h. that Respondent shall comply with all terms and conditions of his contract with  
5 the NPHP and shall extend his contract with the NPHP if so recommended by the program.

6 V.

7 Respondent failed to comply with paragraph "e" of the Settlement, Waiver and Consent  
8 Agreement when he failed to submit to a drug screen on July 17, 2008 when presented with  
9 an Order to do so by the Compliance Officer for the Board.

10 VI.

11 Respondent failed to comply with paragraph "h" of the Settlement, Waiver and Consent  
12 Agreement when he failed to comply with all terms and conditions of his contract with the  
13 NPHP. Respondent was inactivated from the NPHP on July 17, 2008 and thus is no longer  
14 participating in NPHP.

15 VII.

16 The Board finds that the Respondent failed to comply with the Settlement, Waiver and  
17 Consent Agreement when he failed to submit to the requested drug screen and when he failed  
18 to comply with and maintain his contract with NPHP.

19 VIII.

20 If any of the foregoing Findings of Fact is more properly deemed a Conclusion of Law,  
21 it may be so construed.

22 **CONCLUSIONS OF LAW**

23 I.

24 The Board has jurisdiction over Respondent.

25 II.

26 Respondent was properly served with notice of the Motion for Order to Show Cause  
27 before the Hearing Officer, pursuant to NRS and NAC Chapters 630 and NRS Chapter 233B.

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III.

The Board concludes that Respondent failed to comply with the Settlement, Waiver and Consent Agreement as described above.

IV.

If any of the foregoing Conclusions of Law is more properly deemed a Findings of Fact, it may be so construed.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefore,

IT IS HEREBY ORDERED that:

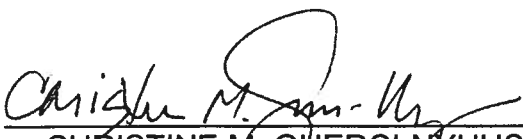
1. The stay of the revocation of Respondent's license as a physician in the State of Nevada contained in the Settlement, Waiver and Consent Agreement is hereby lifted; and that
2. Respondent's license as a physician in the State of Nevada is revoked.

DATED this 14<sup>th</sup> day of October 2008.

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:   
CHARLES N. HELD, M.D., President

Submitted by:  
CATHERINE CORTEZ MASTO  
Attorney General

By:   
CHRISTINE M. GUERCI-NYHUS  
Chief Deputy Attorney General  
555 East Washington, # 3900  
Las Vegas, Nevada 89101  
Attorneys for Nevada State Board of Medical Examiners

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**CERTIFICATION**

I hereby certify that the foregoing is the full and true original FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER on file in the office of the Board of Medical Examiners in the matter of KENT ALAN SWAINE, M.D., Case No. 07-20873-1.

I further certify that CHARLES N. HELD, M.D., is the President of the Nevada State Board of Medical Examiners and that full force and credit is due to his official acts as such; and that the signature to the foregoing ORDER is the signature of said CHARLES N. HELD, M.D.

IN WITNESS THEREOF, I have hereunto set my hand in my official capacity as Secretary-Treasurer of the Nevada State Board of Medical Examiners.



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RENEE WEST  
Secretary-Treasurer  
Nevada State Board of Medical Examiners