

COPY

Before the Board of Medical Examiners
of the State of Nevada

In The Matter of Charges and)
Complaint Against)
ANDREW WESELY, M.D.,)
Respondent.)

NO. Case No. 06-10450-1
FILED 30 June 2008
EXECUTIVE DIRECTOR

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board) composed of Sohail U. Anjum, M.D., Mrs. Marlene J. Kirch, and S. Daniel McBride, M.D., at the time the associated Complaint was authorized, by and through Deputy General Counsel, Edward O. Cousineau and Andrew Wesely, M.D., (Respondent), through his counsel of record, Edward J. Lemons, Esq., as follows:

WHEREAS, on October 16, 2006, the Board's IC filed a formal Complaint in the above-referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630), to wit: one count of malpractice, a violation of NRS 630.301(4); and

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands it, and has consulted with competent counsel Edward J. Lemons, Esq., concerning the nature and significance of the complaint, and Respondent is fully advised concerning his rights and defenses to the complaint as well as the possible sanctions that may be imposed if the Board finds and concludes that he has violated one or more provisions of the Medical Practice Act; and

WHEREAS, Respondent understands and agrees that he has certain rights under the United States Constitution and the Constitution of the State of Nevada as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B) including but not limited to the right to a formal hearing on the charges against him, the right to representation by counsel in the preparation and presentation of his defense, the right to confrontation and cross-examination of

1 witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written
2 findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of
3 any final decision by the Board that is adverse to him; and

4 **WHEREAS**, provided this Agreement is approved by the Board, Respondent, agrees to waive all
5 of his rights under the United States Constitution, the Constitution of the State of Nevada, the Medical
6 Practice Act and the Nevada Administrative Procedures Act, including but not limited to the right to a
7 hearing on the charges and written findings of fact, conclusions of law and order, and he agrees to settle
8 and resolve this matter of the formal complaint against him by way of, and in accordance with, this
9 Settlement, Waiver and Consent Agreement; and

10 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and
11 between himself and the Board's IC, and not with the Board, but that the IC will present this Agreement to
12 the Board for consideration in open session at a regular meeting duly noticed and scheduled, and that the
13 IC shall advocate approval of this Agreement by the Board, but that the Board has the right to decide in its
14 own discretion whether or not to approve this Agreement; and

15 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms, covenants
16 and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be
17 binding and enforceable upon him, and

18 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the terms,
19 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below
20 shall not be binding and enforceable upon him except the provisions as to disqualification of adjudicating
21 panel members in paragraph number 9, and he will be provided with an opportunity to defend himself
22 against the charges against him at a regularly scheduled hearing in accordance with all applicable laws;

23 **NOW THEREFORE**, in order to resolve Case No. 05-9441-01 and charges alleged by the
24 Board's IC in the above captioned matter, Respondent and the IC hereby agree to the following terms,
25 covenants and conditions:

26 1. **Jurisdiction**. Respondent is, and at all times mentioned in the Complaint filed in the
27 above-captioned matter was, a physician licensed to practice medicine in the State of Nevada subject to

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1 the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act
2 (NRS 630), and to impose sanctions as provided by the Act.

3 2. Representation by Counsel. Respondent is represented by counsel herein, whom
4 Respondent covenants and agrees is fully capable, competent, and fully advised in these circumstances and
5 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and
6 intelligently after full consultation with counsel.

7 3. Waiver of Rights. In connection with this Agreement, and the terms, covenants and
8 conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of above
9 identified counsel, waives all rights arising under or pursuant to the United States Constitution, the
10 Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to
11 him or that may apply to him in connection with the proceeding on the Complaint filed herein, the defense
12 of said Complaint and the adjudication of the charges in said Complaint, and Respondent further agrees
13 that the matter of the Complaint herein may be settled and resolved in accordance with this Agreement
14 without a hearing or any further proceeding, and without the right to judicial review. In the event this
15 Agreement is not approved by the Board, this Agreement shall have no force and effect and Respondent
16 shall have all rights arising under or pursuant to the United States Constitution, the Constitution of the
17 State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply
18 to him in connection with the proceeding on the Complaint filed herein.

19 4. Acknowledgement of Reasonable Basis to Proceed. Respondent covenants and agrees
20 that the Board's IC had a reasonable basis to believe that Respondent engaged in conduct that is grounds
21 for discipline pursuant to the provisions of the Medical Practice Act.

22 5. Consent to Entry of Order. In order to resolve the matter of these disciplinary
23 proceedings pending against him without any further costs and expense of providing a defense to the
24 Complaint or to an amended complaint, Respondent hereby agrees and does not contest that an order may
25 be entered herein by the Board finding that Respondent engaged in conduct that is grounds for discipline
26 pursuant to the Medical Practice Act to wit: failure to maintain complete medical records relating to the
27 treatment and care of a patient, a violation of NRS 630.3062(1), as Respondent failed to document that he
28 thoroughly explain the risks and complications of the medical procedure addressed in the underlying

1 Complaint. That Respondent shall be issued a formal written public letter of reprimand from the Board,
2 which will include language which is synonymous with the terms of this Agreement, that within one year
3 of the acceptance, adoption and approval of this Agreement, Respondent shall complete ten (10) hours
4 of Continuing Medical Education (CME) regarding the subject of informed consent and/or medical
5 record keeping, which are to be approved by the IC Chairman in advance of their accomplishment. The
6 aforementioned CME's are to be in addition to any CME requirements that are regularly imposed upon
7 Respondent as a condition of licensure in the State of Nevada. And, Respondent shall reimburse the
8 Board the reasonable costs and expenses incurred in the investigation and prosecution of this case in the
9 current amount of \$4,693.46, plus any additional costs that may be accrued subsequent in the disposition
10 of this matter. The aforementioned costs are to be paid to the Nevada State Board of Medical
11 Examiners within ninety (90) days of the acceptance, adoption and approval of this Agreement by the
12 Board. A final accounting of the additional costs will be provided to Respondent in the entry of the
13 Board's Order relating to the matter.

14 6. Release From Liability. In execution of this Settlement Agreement, the Respondent,
15 for himself, his executors, successors and assigns, hereby releases and forever discharges the state of
16 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and employees in
17 their representative capacities, and in their individual capacities, from any and all manner of actions,
18 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
19 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against any
20 or all of the persons or entities named in this paragraph arising out of or by reason of this investigation,
21 this settlement or its administration.

22 7. Procedure for Adoption of Agreement. The IC and counsel for the IC shall
23 recommend approval and adoption of the terms, covenants and conditions contained herein by the
24 Board in resolution of the Complaint pending herein against Respondent. In the course of seeking
25 Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate
26 directly with the Board staff and members of the panel of the Board who would adjudicate this case if it
27 were to go to hearing. Respondent acknowledges that such contacts and communication may be made
28 or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel

1 until the public Board meeting where this Agreement is discussed, and that such contacts and
2 communications may include, but not be limited to, matters concerning this Agreement, the Complaint,
3 and any and all information of every nature whatsoever related to the Complaint or the proceedings
4 herein against Respondent. The IC and its counsel agree that Respondent and his counsel may appear at
5 the Board meeting where this Agreement is discussed, and if requested, to respond to any questions that
6 may be addressed to the IC or its counsel.

7 8. Effect of Acceptance of Agreement by Board. In the event the Board approves,
8 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC
9 will cause to be entered herein the Board's Order accepting, adopting and approving this Settlement,
10 Waiver and Agreement, ordering full compliance with the terms herein and ordering that this case be
11 closed, subject to the provisions of Section 5.

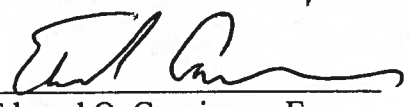
12 9. Effect of Rejection of Agreement by Board. In the event the Board does not approve,
13 accept and adopt the terms, covenants and conditions set out in this Agreement, this Agreement shall be
14 null, void, and of no further force and effect except as to the following covenant and agreement
15 regarding disqualification of adjudicating Board panel members. Respondent agrees that,
16 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that
17 occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by
18 the Board shall disqualify any member of the adjudicating panel of the Board from considering the
19 charges against Respondent and participating in the disciplinary proceedings in any role, including
20 adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such
21 member absent evidence of bad faith.

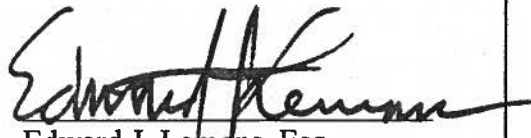
22 10. Binding Effect. Providing this Agreement is approved by the Board, Respondent
23 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and
24 the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

25 11. Forum Selection Clause. Respondent covenants and agrees that in the event either
26 party is required to seek enforcement of this Agreement in the District Court, he consents to such
27 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District
28 Court of the State of Nevada in and for the County of Washoe.

1 12. Attorneys Fees and Costs. Respondent covenants and agrees that in the event an action
2 is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall
3 be entitled to recover costs and reasonable attorneys' fees.

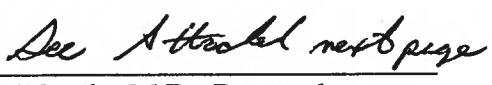
4 Dated this 10th day of ~~May~~ ^{June}, 2008.

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6 Edward O. Cousineau, Esq.
7 Attorney for the Investigative Committee of the
8 Nevada State Board of Medical Examiners


 Edward J. Lemons, Esq.
 Attorney for Respondent

9 I, Andrew Wesely, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to
10 the complaint in Nevada State Board of Medical Examiners Case No. 06-10450-1.

11 Dated this ____ day of May, 2008.

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13 Andrew Wesely, M.D., Respondent
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12. Attorneys Fees and Costs. Respondent covenants and agrees that in the event an action is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

Dated this ____ day of May, 2008.

Edward O. Cousineau, Esq.
Attorney for the Investigative Committee of the
Nevada State Board of Medical Examiners

Edward J. Lemons, Esq.
Attorney for Respondent

I, Andrew Wesely, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to the complaint in Nevada State Board of Medical Examiners Case No. 06-10450-1.

Dated this ____ day of May, 2008.

Andrew Wesely, 6/10/8
Andrew Wesely, M.D., Respondent

1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is approved
2 and accepted by the Nevada State Board of Medical Examiners on the 13th day of June 2008, with the
3 final total amount of costs due of \$4,693.46.



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6 JAVAID ANWAR, President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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