

1 *Before the Board of Medical Examiners*
2 *of the State of Nevada*

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4
5 In The Matter of Charges and
6 Complaint Against
7 BRIAN FOX, M.D.,
8 Respondent.

Case No. 07-23881-01
NO. _____

FILED 1 April 2008


EXECUTIVE DIRECTOR

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10 **SETTLEMENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of the
12 Nevada State Board of Medical Examiners (the Board), composed of Sohail U. Anjum, M.D., Chairman,
13 and S. Daniel McBride, M.D., Member, at the time the Complaint was authorized, by and through Deputy
14 General Counsel, Edward Cousineau, Esq., and , M.D. (Respondent), as follows:

15 **WHEREAS**, on October 16, 2007, the Board's IC filed a formal complaint in the above-referenced
16 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical
17 Practice Act (NRS Chapter 630), to wit: one count of malpractice, a violation of
18 NRS 630.301(4).

19 **WHEREAS**, Respondent has received and reviewed a copy of the complaint, understands it, and
20 has consulted with his counsel, Edward J. Lemons, Esq., concerning the nature and significance of the
21 complaint, and Respondent fully understands his rights and defenses regarding the complaint as well as the
22 possible sanctions that may be imposed if the Board finds and concludes that he has engaged in conduct
23 that is grounds for discipline pursuant to the Medical Practice Act; and

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

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

3 **WHEREAS**, Respondent, based upon his understanding of the relevant facts and circumstances,
4 and subject to the conditions set forth in this Agreement, desires to waive all of his rights under the United
5 States Constitution, the Constitution of the State of Nevada, the Medical Practice Act and the Nevada
6 Administrative Procedures Act, including but not limited to the right to a hearing on the charges and a
7 written findings of fact, conclusions of law and order, and he desires to settle and resolve this matter of the
8 formal complaint against him by way of and in accordance with this Settlement, Waiver and Consent
9 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 IC
13 will advocate approval of this Agreement by the Board, but that the Board has the right to decide in its own
14 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 the pending complaint and charges brought against him
24 by the Board's IC in the above captioned matter, Respondent and the IC hereby agree to the following
25 terms, covenants and conditions:

26 1. **Jurisdiction**. Respondent was at all times mentioned in the complaint filed in the above-
27 captioned matter, a physician licensed to practice medicine in the State of Nevada, subject to jurisdiction
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1 of the Board to hear and adjudicate charges of violations of the Medical Practice Act (NRS 630), and to
2 impose sanctions as provided by the Act.

3 2. Representation by Counsel. Respondent is represented by counsel named 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 and upon the advice of counsel.

7 3. Waiver of Rights. In connection with this Agreement, and the terms, covenants and
8 conditions contained herein, Respondent knowingly, voluntarily, and intelligently waives all rights arising
9 under or pursuant to the United States Constitution, the Constitution of the State of Nevada, NRS Chapter
10 630 and NRS Chapter 233B that may be available to him or that may apply to him in connection with the
11 proceedings on the complaint filed herein, the defense of said complaint, the adjudication of the charges in
12 said complaint, and the imposition of sanctions, and Respondent further agrees that the matter of the
13 disciplinary action commenced by complaint herein may be settled and resolved in accordance with this
14 Agreement without a hearing or any further proceeding, and without the right to judicial review.

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

18 5. Consent to Entry of Order. In order to resolve the matter of these disciplinary
19 proceedings pending against him without any further costs and expense of providing a defense to the
20 complaint, or to an amended complaint, Respondent hereby agrees, and does not contest, that an order may
21 be entered herein by the Board finding that Respondent engaged in conduct that is grounds for discipline
22 pursuant to the Medical Practice Act, to wit: one count of malpractice, a violation of NRS 630.301(4), that
23 in treating the patient referenced in the original complaint filed by the IC, Respondent's care and treatment
24 of the patient at issue was inconsistent with the appropriate standard of care that should have been applied
25 based upon the circumstances, that Respondent shall be publicly reprimanded, the Respondent shall be
26 fined in the amount of \$5,000.00, and that within one year of the acceptance, adoption and approval of
27 this Agreement, Respondent shall complete twenty (20) hours of Continuing Medical Education (CME)
28 regarding the subject of pre-natal care, which are to be approved by the IC Chairman in advance of

1 their accomplishment. The aforementioned CME's are to be in addition to any CME requirements that
2 are regularly imposed upon Respondent as a condition of licensure in the State of Nevada. Further,
3 Respondent shall reimburse the Board the reasonable costs and expenses incurred in the investigation and
4 prosecution of this case in the current amount of \$1,749.66, plus any additional costs that may be accrued
5 subsequent in the disposition of this matter. The aforementioned fine and costs are to be paid to the
6 Nevada State Board of Medical Examiners within sixty (60) days of the acceptance, adoption and
7 approval of this Agreement by the Board. A final accounting of the additional costs will be provided to
8 Respondent in the entry of the Board's Order relating to the matter.

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

17 7. Procedure for Adoption of Agreement. The IC and counsel for the IC shall
18 recommend approval and adoption of the terms, covenants and conditions contained herein by the
19 Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the
20 formal complaint. In the course of seeking Board approval, adoption and/or acceptance of this
21 Agreement, counsel for the IC may communicate directly with the Board staff and members of the
22 panel of the Board that would adjudicate this case if it were to go to hearing. Respondent covenants
23 and agrees that such contacts and communication may be made or conducted ex parte, without notice or
24 opportunity to be heard on his part, and that such contacts and communications may include, but not be
25 limited to, matters concerning this Agreement, the complaint, the allegations in the complaint, any and
26 all evidence that may exist in support of the complaint, and any and all information of every nature
27 whatsoever related to the complaint or the proceedings herein against Respondent.

1 8. Effect of Acceptance of Agreement by Board. In the event the Board approves,
2 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will enter
3 an order finding Respondent committed a violation of Nevada's Medical Practice Act, specifically NRS
4 630.301(4), that Respondent will be publicly reprimanded, Respondent shall be fined in the amount of
5 \$5,000.00, and that Respondent shall, within one year of the adoption of this Agreement, enroll in and
6 attend twenty (20) hours of CME approved by the Board regarding the subject of pre-natal care, which
7 are to be in addition to any CME requirements which are regularly imposed upon Respondent as a
8 condition of licensure in the State of Nevada, and ordering Respondent to pay the fine, costs, and
9 expenses of the investigation and prosecution of this matter as provided previously herein, and
10 dismissing the underlying complaint.

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


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

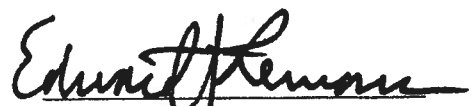
23 11. Forum Selection Clause. Respondent covenants and agrees that in the event either
24 party is required to seek enforcement of this Agreement in the district court, he consents to such
25 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District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

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

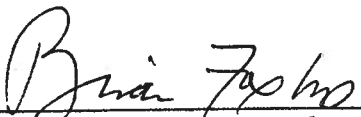
3 Dated this 7th day of March, 2008.

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

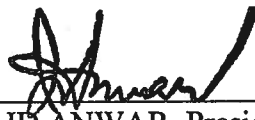

Edward J. Lemons, Esq.
Attorney for Respondent

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9 I, Brian Fox, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to the
10 complaint in Nevada State Board of Medical Examiners Case No. 07-23881-01

11 Dated this 3rd day of March, 2008.

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13 Brian Fox, M.D., Respondent
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1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement, Case No.
2 07-23881-1, is approved and accepted by the Nevada State Board of Medical Examiners on the 28th day
3 of March 2008, with the final total amount of costs due of \$1,749.66 pursuant to Paragraph 5 above.



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