

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

3 * * * * *

4 In The Matter of Charges and)
5 Complaint Against)
6 DANA MARKS, M.D.,)
7)
8 Respondent.)
9 _____)

Case No. 08-18131-1
FILED October 14, 2008
[Signature]
CLERK OF THE BOARD

10 **SETTLEMENT, WAIVER AND CONSENT 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 Charles N. Held, M.D, Chairman,
13 Cindy Lamerson, M.D, member, and Jean Stoess, M.A., member, by and through counsel Lyn E. Beggs,
14 Esq., and Dana Marks, M.D. (Respondent), by and through his counsel John Ohlson, Esq., as follows:

15 **WHEREAS**, on June 30, 2008, 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
17 Medical Practice Act (NRS Chapter 630) to wit: one count of engaging in conduct that is in violation of a
18 regulation adopted by the State Board of Pharmacy and one count of prescribing a controlled substance in
19 a manner not authorized by law; and

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

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

1 counsel in the preparation and presentation of his defense, the right to confrontation and cross-examination
2 of witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written
3 findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of
4 any final decision by the Board that is adverse to him; and

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

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

17 **WHEREAS**, Respondent and the Investigative Committee each understand and agree that if the
18 Board approves the terms, covenants and conditions of this Agreement, then the terms, covenants and
19 conditions enumerated below shall be binding and enforceable upon Respondent and the Board's
20 Investigative Committee; and

21 **WHEREAS**, Respondent has reviewed, understands and has discussed with counsel, all the
22 relevant facts and circumstances of this matter and after due consideration, will not admit to the
23 allegations set forth in counts I and II of the complaint, but concedes that the Board has sufficient
24 evidence to proceed with its complaint against him and make a finding that he has violated the Medical
25 Practice Act.

26 **NOW THEREFORE**, in order to resolve the above-captioned case and charges brought against
27 Respondent by the Board's Investigative Committee in said matter, Respondent and the Investigative
28 Committee hereby agree to the following terms, covenants and conditions:

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

5 2. **Representation by Counsel.** Respondent is represented by counsel, John Ohlson Esq.,
6 whom Respondent covenants and agrees is fully capable, competent, and fully advised in these
7 circumstances, and Respondent further covenants and agrees that he enters into this Agreement knowingly,
8 willingly, and intelligently after full consultation with and upon the advice of counsel.

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

24 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and agrees
25 that the Board's Investigative Committee has a reasonable basis to believe that Respondent violated one or
26 more provisions of the Medical Practice Act.

27 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
28 proceedings pending against him without any further costs and expense of providing a defense to the

1 complaint, or to an amended complaint, Respondent, although not admitting to the allegations as set forth
2 in counts I and II of the complaint, does not wish to contest the same and agrees that the Board has
3 sufficient evidence to proceed with its complaint and that an order may be entered herein by the Board
4 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the Medical Practice
5 Act, to wit; one count of engaging in conduct that is in violation of a regulation adopted by the State Board
6 of Pharmacy as set forth in count I, and one count of prescribing a controlled substance in a manner not
7 authorized by law as set forth in count II; and ordering that Respondent's license to practice medicine be
8 revoked, said revocation to be stayed and Respondent to be placed on sixty (60) months of probation with
9 the following conditions:

10 a. that Respondent shall be issued a public reprimand; and

11 b. that Respondent shall pay a fine of \$1000 to be paid within one hundred and eighty (180)
12 days of the acceptance, adoption and approval of this Agreement by the Board; and

13 c. that Respondent shall complete a course of continuing medical education (CME) on the
14 topic ethics. Said CME course to be pre-approved by the Investigative Committee Chair and to be
15 completed within twelve (12) months of the adoption and approval of this Agreement by the Board. Said
16 CME shall be in addition to any other continuing medical education required as a condition of licensure;
17 and

18 d. that Respondent shall contact the Compliance Officer of the Nevada State Board of
19 Medical Examiners (hereinafter "Compliance Officer") within thirty (30) days of the approval and
20 acceptance of this Agreement in order to provide information regarding the most expeditious method of
21 contacting him;

22 e. that Respondent shall submit to a drug and alcohol evaluation and comply with any
23 recommendations of said evaluation, said evaluation to be paid for by Respondent but arranged with the
24 assistance of the Compliance Officer; and

25 f. that Respondent shall sign a contract with and participate in the Nevada Professionals
26 Health Program (NPHP) for a period of time to be determined by NPHP, if NPHP determines such
27 participation to be appropriate, and shall remain in compliance with terms and conditions of the contract
28 entered into with NPHP; and

1 g. that Respondent shall reimburse the Board the reasonable costs and expenses incurred in
2 the investigation and prosecution of this case, the current amount being \$2726.64 to be paid to the Nevada
3 State Board of Medical Examiners within ninety (90) days of the acceptance, adoption and approval of
4 this Agreement by the Board.

5 h. that Respondent agrees to pay the reasonable costs, if any, of monitoring his probation to
6 the Nevada State Board of Medical Examiners and shall pay said costs within thirty (30) days of the due
7 date of any invoice presented by the Board;

8 i. that Respondent shall comply with all federal, state and local laws and rules governing
9 the practice of medicine in Nevada at all times he is practicing within the state.

10 6. **Procedure for Adoption of Agreement.** The Investigative Committee and counsel for
11 the Investigative Committee shall recommend approval and adoption of the terms, covenants and
12 conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein
13 against Respondent pursuant to the complaint. In the course of seeking Board approval, adoption and/or
14 acceptance of this Agreement, counsel for the Investigative Committee may communicate directly with
15 the Board staff and members of the panel of the Board who would adjudicate this case if it were to go to
16 hearing. Respondent covenants and agrees that such contacts and communication may be made or
17 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel,
18 until the public Board meeting where this Agreement is discussed, and that such contacts and
19 communications may include, but not be limited to, matters concerning this Agreement, the complaint
20 and the allegation therein, any and all evidence that may exist in support of the complaint, and any and
21 all information of every nature whatsoever related to the complaint against Respondent. The IC and its
22 counsel agree that Respondent and his counsel may appear at the Board meeting where this Agreement
23 is discussed in order to respond to any and all questions that may be addressed to the IC or its counsel at
24 such meeting.

25 7. **Board Approval Required.** This Agreement will be placed on the next available Agenda
26 of a regularly-scheduled and duly-noticed quarterly Board meeting. It is expressly understood that this
27 Agreement will only become effective if the Board approves the recommendation of the Investigative
28 Committee for acceptance.

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, counsel for the
3 Investigative Committee will cause to be entered herein the Board's Order, accepting, adopting and
4 approving this Settlement, Waiver and Consent Agreement, ordering full compliance with the terms
5 herein and ordering that this case be closed, subject to the provisions in Section 5.

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

16 10. Release From Liability. In execution of this Agreement, the Respondent, for himself,
17 his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the
18 Board, the Nevada Attorney General, and each of their members, agents and employees in their
19 representative capacities, and in their individual capacities absent evidence of bad faith, from any and
20 all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
21 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or
22 claim to have, against any or all of the persons or entities named in this paragraph arising out of or by
23 reason of this investigation, this disciplinary action, this settlement or its administration, in connection
24 with the complaint. The Investigative Committee hereby agrees to accept this Agreement in full
25 settlement of all claims related to the complaint, with the understanding that the final decision rests with
26 the Board.

27 11. Binding Effect. Respondent covenants and agrees that this Agreement is a binding and

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1 enforceable contract upon Respondent and the Board's Investigative Committee, which contract may be
2 enforced in a court or tribunal having jurisdiction.

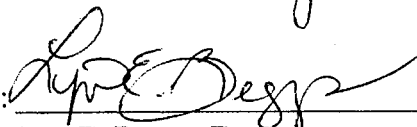
3 12. **Forum Selection Clause.** Respondent covenants and agrees that in the event either
4 party is required to seek enforcement of this Agreement in the district court, he consents to such
5 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District
6 Court of the State of Nevada in and for the County of Washoe.

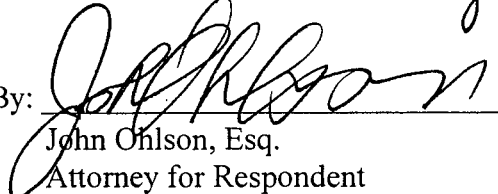
7 13. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
8 action is commenced in the district court to enforce any provision of this Agreement, the prevailing
9 party shall be entitled to recover reasonable costs and attorneys' fees.

10 14. **Failure to comply with terms.** In the event the Board enters its Order approving this
11 Agreement, should Respondent fail to comply with the terms recited herein, the Board shall impose the
12 stayed suspension of Respondent's license to practice medicine and would then have grounds, after
13 notice and a hearing, to take disciplinary action against Respondent for the subject's violation of an
14 Order of the Board in accordance with NRS 630.3065(2)(a).

15 Dated this 6th day of August of 2008.

Dated this 31 day of July, 2008.

16
17 By: 
18 Lyn E. Beggs, Esq.
19 Attorney for the Investigative Committee
20 of the Nevada State Board of Medical
21 Examiners

16
17 By: 
18 John Ohlson, Esq.
19 Attorney for Respondent

21 UNDERSTOOD AND AGREED:

22 
23 Dana Marks, M.D., Respondent

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25 Dated this 1st day of Aug, 2008
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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 3rd day of October, 2008, with the
3 final total amount of costs due of \$2726.64 pursuant to Paragraph 5 above.

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6 CHARLES N. HELD, President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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