BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In The Matter of Charges and
Complaint Against
DANA MARKS, M.D.,
Respondent.

CASE No. 08-18131-1
FILED October 14, 2009

CLERK OF THE BOARD

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board) composed of Charles N. Held, M.D, Chairman, Cindy Lamerson, M.D, member, and Jean Stoess, M.A., member, by and through counsel Lyn E. Beggs, Esq., and Dana Marks, M.D. (Respondent), by and through his counsel John Ohlson, Esq., as follows:

WHEREAS, on June 30, 2008, 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 engaging in conduct that is in violation of a regulation adopted by the State Board of Pharmacy and one count of prescribing a controlled substance in a manner not authorized by law; and

WHEREAS, Respondent has received and reviewed a copy of the complaint, understands it, and has consulted with competent counsel John Ohlson, 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 engaged in conduct that is grounds for discipline pursuant to 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 witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written
findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of
any final decision by the Board that is adverse to him; and

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

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

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

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

NOW THEREFORE, in order to resolve the above-captioned case and charges brought against
Respondent by the Board’s Investigative Committee in said matter, Respondent and the Investigative
Committee hereby agree to the following terms, covenants and conditions:
1. **Jurisdiction.** Respondent is, and at all times mentioned in the complaint filed in the above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

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

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

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

5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary proceedings pending against him without any further costs and expense of providing a defense to the
complaint, or to an amended complaint, Respondent, although not admitting to the allegations as set forth in counts I and II of the complaint, does not wish to contest the same and agrees that the Board has sufficient evidence to proceed with its complaint and that an order may be entered herein by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act, to wit; one count of engaging in conduct that is in violation of a regulation adopted by the State Board of Pharmacy as set forth in count I, and one count of prescribing a controlled substance in a manner not authorized by law as set forth in count II; and ordering that Respondent’s license to practice medicine be revoked, said revocation to be stayed and Respondent to be placed on sixty (60) months of probation with the following conditions:

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

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

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

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

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

f. that Respondent shall sign a contract with and participate in the Nevada Professionals Health Program (NPHP) for a period of time to be determined by NPHP, if NPHP determines such participation to be appropriate, and shall remain in compliance with terms and conditions of the contract entered into with NPHP; and
g. that Respondent shall reimburse the Board the reasonable costs and expenses incurred in
the investigation and prosecution of this case, the current amount being $2726.64 to be paid to the Nevada
State Board of Medical Examiners within ninety (90) days of the acceptance, adoption and approval of
this Agreement by the Board.

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

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

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

7. Board Approval Required. This Agreement will be placed on the next available Agenda
of a regularly-scheduled and duly-noticed quarterly Board meeting. It is expressly understood that this
Agreement will only become effective if the Board approves the recommendation of the Investigative
Committee for acceptance.
8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves, accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the Investigative Committee will cause to be entered herein the Board’s Order, accepting, adopting and approving this Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and ordering that this case be closed, subject to the provisions in Section 5.

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

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

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

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

13. **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 reasonable costs and attorneys' fees.

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

Dated this __th__ day of __________, 2008. Dated this __th__ day of __________, 2008.

By: ____________ By: ____________
Lyn E. Beggs, Esq. John Ohlson, Esq.
Attorney for the Investigative Committee Attorney for Respondent
of the Nevada State Board of Medical Examiners

UNDERSTOOD AND AGREED:

__________________________
Dana Mark, M.D., Respondent

Dated this __th__ day of __________, 2008

__________________________
John Ohlson, Esq.
Attorney for Respondent
IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 3rd day of October, 2008, with the final total amount of costs due of $2726.64 pursuant to Paragraph 5 above.

[Signature]

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