

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 **EDDY LUH, M.D.,**
8 **Respondent.**
9

NO. Case No. 06-10439-1
FILED 31 March 2008
[Signature]
EXECUTIVE DIRECTOR

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11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of the
13 Nevada State Board of Medical Examiners (the Board) composed of Sohail U. Anjum, M.D., Chairman,
14 Donald S. Baepler, Ph.D., D.Sc., Member, and S. Daniel McBride, M.D., Member, by and through
15 counsel Lyn E. Beggs, and Eddy Luh, M.D. (Respondent), by and through his counsel V. Andrew Cass,
16 Esq., as follows:

17 **WHEREAS**, on June 4, 2006, the Board's IC filed a first amended complaint in the above
18 referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant
19 to the Medical Practice Act (NRS Chapter 630) to wit: one count of malpractice; and

20 **WHEREAS**, Respondent has received and reviewed a copy of the complaint, understands it, and
21 has consulted with competent counsel V. Andrew Cass, Esq., concerning the nature and significance of
22 the complaint, and Respondent is fully advised concerning his rights and defenses to the complaint as
23 well as the possible sanctions that may be imposed if the Board finds and concludes that he has engaged
24 in 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
26 States 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-
2 examination of witnesses against him, the right to written findings, conclusions and order regarding a
3 final decision by the Board, and the right to judicial review of any final decision by the Board that is
4 adverse to him; and

5 **WHEREAS**, Respondent concedes only that the Board has sufficient evidence to proceed with its
6 complaint against him, but does not concede or admit to such allegations, which he expressly denies, and
7 which, but for his desire to reach this compromise, he would contest at the formal hearing of this matter;
8 and

9 **WHEREAS**, Respondent, based on his understanding of the relevant facts and circumstances,
10 and subject to the conditions set forth in this Agreement, desires to waive all of his rights under the
11 United States Constitution, the Constitution of the State of Nevada, the Medical Practice Act and the
12 Nevada Administrative Procedures Act, including but not limited to the right to a hearing on the charges
13 and a written findings of fact, conclusions of law and order, and he desires to settle and resolve this
14 matter of the formal complaint against him by way of and in accordance with this Settlement, Waiver and
15 Consent Agreement; and

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

21 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms, covenants
22 and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be
23 binding and enforceable upon him; and

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

1 **NOW THEREFORE**, in order to resolve the pending complaint and charge brought against him
2 by the Board's Investigative Committee in the above captioned matter, Respondent and the Investigative
3 Committee hereby agree to the following terms, covenants and conditions:

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

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

12 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and
13 conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of above
14 identified counsel, waives all rights arising under or pursuant to the United States Constitution, the
15 Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to
16 him or that may apply to him in connection with the proceeding on the complaint filed herein, the defense
17 of said complaint, the adjudication of the charge in said complaint, and the imposition of sanctions, and
18 Respondent further agrees that, if the Board accepts this Agreement, the matter of the disciplinary action
19 commenced by complaint herein shall be settled and resolved in accordance with this Agreement without
20 a hearing or any further proceedings, and without the right to judicial review.

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

24 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
25 proceedings pending against him without incurring further time and expense necessary to defend the
26 complaint, Respondent, although not conceding to or admitting to the allegations as set forth in Count I of
27 the Complaint, does not wish to contest the same and agrees that the Board has sufficient evidence to
28 proceed with its complaint that Respondent engaged in conduct that is ground for discipline pursuant to

1 the Medical Practice Act to wit; one count of malpractice, when he performed a surgical repair of an
2 aneurysm that was not medically indicated, which evidence Respondent disputes and denies, and which,
3 but for his desire to reach a compromise of this matter, he would contest at formal hearing. Therefore, as
4 a condition of this compromise, Respondent agrees that the Board may enter an order the Board had
5 sufficient evidence to proceed with its complaint that Respondent violated NRS 630.301(4),
6 allegations that Respondent denies and which, but for his desire to compromise this matter, he would
7 contest at a formal hearing, and ordering that Respondent shall pay a fine of \$500 and shall, at his own
8 expense, attend, within one year of the adoption of this Agreement by the Board, six (6) hours of
9 continuing medical education approved by the Chairman of the Investigative Committee in addition to
10 any other continuing medical education required as a condition of licensure. The Respondent also agrees
11 to reimburse the Board 50% of the reasonable costs and expenses incurred in the investigation and
12 prosecution of this case, the current amount being \$2,250.05, 50% of which is \$1125.03. The costs and
13 fine are to be paid to the Nevada State Board of Medical Examiners within one-hundred-twenty (120)
14 days of the acceptance, adoption and approval of this Agreement by the Board.

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

23 7. Procedure for Adoption of Agreement. The Investigative Committee and counsel for
24 the Investigative Committee shall recommend approval and adoption of the terms, covenants and
25 conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein
26 against Respondent pursuant to the formal complaint. In the course of seeking Board approval,
27 adoption and/or acceptance of this Agreement, counsel for the Investigative Committee may
28 communicate directly with the Board staff and members of the panel of the Board who would

1 adjudicate this case if it were to go to hearing. Respondent covenants and agrees that such contacts
2 and communication may be made or conducted ex parte, without notice or opportunity to be heard on
3 his part or on the part of his counsel, and that such contacts and communications may include, but not
4 be limited to, matters concerning this Agreement, the complaint, the allegations in the complaint, any
5 and all evidence that may exist in support of the complaint, and any and all information of every nature
6 whatsoever related to the complaint or the proceedings herein against Respondent.

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, the Board will enter
9 herein an Order finding that the Board had sufficient evidence to proceed with its complaint that
10 Respondent violated NRS 630.301(4), allegations that Respondent denies and which, but for his desire
11 to compromise this matter, he would contest at a formal hearing, and ordering Respondent to obtain six
12 (6) hours of additional continuing medical education and that Respondent pay 50% of the costs and
13 expenses of the investigation and prosecution of this matter as provided herein. Should Respondent
14 fail to comply with the terms of the Order entered, the Board will have grounds, after notice and a
15 hearing, to take disciplinary action in addition to that included herein for the subject's violation of an
16 Order of the Board.

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

27 10. 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
2 be enforced in a court or tribunal having jurisdiction.


3 11. **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
6 District Court of the State of Nevada in and for the County of Washoe.

7 12. **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.

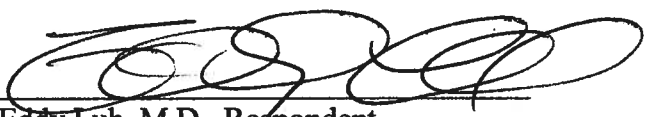
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11 Dated this 20th day of December, 2007.

Dated this 28th day of December, 2007.

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14 By: 
15 Lyn E. Beggs
16 Attorney for the Investigative Committee
of the Nevada State Board of Medical
Examiners

By: 
V. Andrew Cass
Attorney for Respondent

17 UNDERSTOOD AND AGREED:

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19 
20 Eddy Luh, M.D., Respondent

21 Dated this 31 day of DECEMBER, 2007

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 28th day of March 2008, with the
3 final total amount of costs due of \$1,125.03.



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