

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 **KENT ALAN SWAINE, M.D.,**)

7 **Respondent.**)
8)
9)

Case No. 07-20873-1
NO. _____

FILED 31 March 2008

[Signature]
EXECUTIVE DIRECTOR

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee of the
12 Nevada State Board of Medical Examiners (the Board), composed of Charles N. Held, M.D., Chairman,
13 Jean Stoess, M.A., and Cindy Lamerson, M.D., by and through counsel, Lyn E. Beggs, Esq., and
14 Respondent herein, Kent Alan Swaine, M.D. (Respondent), representing himself, as follows:

15 **WHEREAS**, on or about November 26, 2007, the Investigative Committee filed a Complaint
16 and Request for Summary Suspension based upon which the adjudicating members of the Board
17 summarily suspended Respondent's license to practice medicine in the state of Nevada.

18 **WHEREAS**, on or about November 28, 2007, the Investigative Committee filed an Amended
19 Complaint and Request for Summary Suspension containing the same counts as included in the
20 Complaint and Request for Summary Suspension.

21 **WHEREAS**, on or about February 20, 2008, the Investigative Committee of the Nevada State
22 Board of Medical Examiners filed a Second Amended Complaint in the above-referenced matter, charging
23 Respondent with violations of the Medical Practice Act (NRS Chapter 630), to wit: two counts of
24 engaging in conduct which is intended to deceive, a violation of NRS 630.306(2)(a); one count of
25 dependency on a controlled substance, a violation of NRS 630.306(10); and one count of prescribing a
26 controlled substance or dangerous drug to or for himself or others except as authorized by law, a
27 violation of NRS 630.306(3).
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1 **WHEREAS**, Respondent has received a copy of the Second Amended Complaint, reviewed it,
2 understands the nature and significance of the Second Amended Complaint, and Respondent is fully
3 advised concerning his rights and defenses to the Second Amended Complaint as well as the possible
4 sanctions that may be imposed if the Board finds and concludes that he has violated one or more
5 provisions of the Medical Practice Act; and

6 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United States
7 Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act
8 (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but
9 not limited to the right to a formal hearing on the charges against him, the right to representation by
10 counsel in the preparation and presentation of his defense, the right to confrontation and cross-examination
11 of witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written
12 findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of
13 any final decision by the Board that is adverse to him; and

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

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

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

3 **WHEREAS**, Respondent has reviewed and understands all the relevant facts and circumstances of
4 this matter and after due consideration concedes that he did engage in activity meant to deceive, does have
5 a drug dependence and did prescribe a controlled substance or dangerous drug in a manner not authorized
6 by law as outlined in the Second Amended Complaint filed by the Investigative Committee of the Nevada
7 State Board of Medical Examiners in this case.

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

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

15 2. **Representation by Counsel.** Respondent acknowledges that he is not represented by
16 counsel and wishes to proceed towards resolution of this matter as set forth in this Agreement without
17 counsel. Respondent understands and acknowledges that he may retain and consult counsel prior to
18 entering into this Agreement and agrees that if counsel is retained for representation in this matter prior to
19 entering into this Agreement, that counsel for the Investigative Committee will be informed of such prior
20 to Respondent executing this Agreement.

21 3. **Waiver of Rights.** Respondent covenants and agrees that he enters into this Agreement
22 knowingly, willingly, and intelligently with knowledge that he may consult with counsel prior to entering
23 into this Agreement. In connection with this Agreement, and the terms, covenants and conditions
24 contained herein, Respondent knowingly, willingly and intelligently, without the advice of counsel, waives
25 all rights arising under or pursuant to the United States Constitution, the Constitution of the state of
26 Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him
27 in connection with the proceeding regarding the Second Amended Complaint filed herein, the defense of
28 said complaint and the adjudication of the charges in said complaint, and Respondent further agrees that

1 the matter of the disciplinary action commenced by the filing of the Second Amended Complaint herein
2 may be settled and resolved in accordance with this Agreement without a hearing or any further
3 proceeding, and without the right to judicial review.

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

7 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
8 proceedings pending against him without any further cost and expense of providing a defense to the
9 complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,
10 finding that Respondent has violated the Medical Practice Act, to wit: two counts of engaging in activity
11 meant to deceive, violations of NRS 630.306(2)(a); one count of having a drug dependency, a violation
12 of NRS 630.306(10); and one count of prescribing a controlled substance or dangerous drug in a manner
13 not authorized by law, a violation of NRS 630.306(3) and ordering that Respondent's license to practice
14 medicine be revoked. Said revocation shall be stayed and Respondent shall be placed on probation for
15 five (5) years with the following terms and conditions:

16 a. that Respondent shall not be reinstated to active status until such time as the Nevada
17 Professionals Health Program (NPHP) has stated in writing that Respondent is able to safely resume the
18 practice of medicine and the Nevada State Board of Medical Examiners has issued and served upon
19 Respondent an Order stating that Respondent is reinstated to active status;

20 b. that Respondent shall be issued a public reprimand;

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

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

27 e. that Respondent shall submit to random alcohol and/or drug screens requested by the
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1 Nevada State Board of Medical Examiners in addition to any such screens required by NPHP, at his
2 own expense;

3 f. that Respondent shall notify the Nevada State Board of Medical Examiners within forty-
4 eight (48) hours of any arrest, criminal conviction, including misdemeanors, or any admission for
5 treatment of substance abuse or psychological illness;

6 g. that Respondent, once reinstated to practice medicine, will be restricted to only
7 practicing with one or more medical doctors and/or doctors of osteopathy and must provide a copy of
8 this agreement to all his practice partners and obtain from them a written acknowledgement that they
9 have received said copy;

10 h. that Respondent shall comply with all terms and conditions of his contract with the
11 NPHP and shall extend his contract with the NPHP if so recommended by the program;

12 i. that Respondent shall sign a new release of information allowing the Nevada State Board
13 of Medical Examiners to communicate and receive any and all information from the NPHP regarding
14 Respondent's treatment through said program;

15 j. that Respondent shall sign a new release of information allowing the Nevada State Board
16 of Medical Examiners to communicate and receive any and all information from any treatment program
17 that Respondent has attended, is attending or will attend for the treatment of substance abuse or
18 psychological illness;

19 k. that Respondent shall submit to a psychological and/or psychiatric evaluation if
20 requested to do so by the Nevada State Board of Medical Examiners and shall sign any necessary
21 release of information for the results to be forwarded to the Board;

22 l. that Respondent shall not prescribe any controlled substance or dangerous drug as
23 defined in NRS 454 to any member of his immediate family or himself and shall prescribe controlled
24 substances or dangerous drugs only in the manner authorized by law;

25 m. that Respondent agrees that if he is charged with professional misconduct in the future,
26 this Agreement, and/or any related orders, and/or records of his compliance, may be admitted into
27 evidence at a hearing regarding the alleged professional misconduct, at the sole discretion of the
28 Investigative Committee;

1 n. that Respondent agrees to pay the costs of investigation and prosecution of this matter in
2 the current amount of \$4287.64, along with the costs to conclude the matter, if any, within sixty (60)
3 days of the Board's acceptance and approval of this Agreement;

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

7 p. that no sooner than six months prior to end the five year probationary term, Respondent
8 agrees to file a written petition for restoration of an unrestricted license, including proof of compliance
9 with all conditions of this Agreement, to practice medicine in the state of Nevada and, if requested, to
10 appear in front of the Nevada State Board of Medical Examiners at a regularly scheduled Board
11 meeting, with the understanding that restoration of an unrestricted license will not be unreasonably
12 denied.

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

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

3 8. Effect of Acceptance of Agreement by Board. In the event the Board approves,
4 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
5 Investigative Committee will cause to be entered herein the Board's Order finding Respondent twice
6 violated NRS 630.306(2)(a), which states the engaging of conduct which is intended to deceive is grounds
7 for discipline, when he twice practiced medicine after being informed by the NPHP that he was not fit
8 to practice medicine; also finding Respondent violated NRS 630.306(10), which states that dependency
9 on controlled substances is grounds for discipline, due to his multi-year use of controlled substances,
10 namely opiates; and also finding Respondent violated NRS 630.306(3), which states that prescribing
11 controlled substances or dangerous drugs except as authorized by law is grounds for discipline, when he
12 prescribed schedule II controlled substances for his wife on multiple occasions.

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

23 10. Release From Liability. In execution of this Agreement, the Respondent, for himself,
24 his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the
25 Board, the Nevada Attorney General, and each of their members, agents and employees in their
26 representative capacities, and in their individual capacities absent evidence of bad faith, from any and
27 all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
28 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or

1 claim to have, against any or all of the persons or entities named in this paragraph arising out of or by
2 reason of this investigation, this disciplinary action, this settlement or its administration, in connection
3 with the complaint. The Investigative Committee hereby agrees to accept this Agreement in full
4 settlement of all claims related to the complaint, with the understanding that the final decision rests with
5 the Board.

6 11. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and
7 enforceable contract upon Respondent and the Board's Investigative Committee, which contract may be
8 enforced in a court or tribunal having jurisdiction.

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

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

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

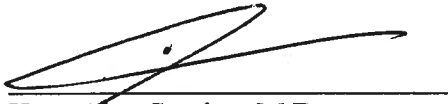
22 Dated this 21st day of February 2008.

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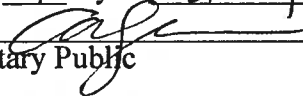
25 Lyn E Beggs, Esq.
26 Attorney for the Investigative Committee
27 of the Nevada State Board of Medical Examiners
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1 I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent
2 Agreement signed on the 21st day of February, 2008, by Lyn E. Beggs, Esq., Attorney for the
3 Investigative Committee.

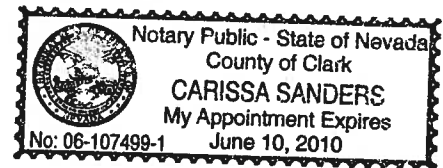
4 Dated this 27th day of February 2008.

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6 _____
7 Kent Alan Swaine, M.D.
8 Respondent

Signature of Kent Alan Swaine, M.D.
subscribed and sworn to before me
this 27th day of February 2008



Notary Public



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 \$4,287.64.



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