

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

3 * * * * *

4
5 **In The Matter of Charges and**
6 **Complaint Against**
7 **ROBERT L. HORNE, M.D.,**
8 **Respondent.**

Case No. 05-9441-01

FILED 1 April 2008


EXECUTIVE DIRECTOR

9
10
11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee (IC) of
13 the Nevada State Board of Medical Examiners (the Board) composed of Joel N. Lubritz, M.D., Mrs.
14 Marlene J. Kirch, and Javid Anwar, M.D., at the time the associated Complaint was authorized, by and
15 through Deputy General Counsel, Edward O. Cousineau and Robert Horne, M.D., (Respondent), through
16 his counsel of record, Maria Nutile, Esq., as follows:

17 **WHEREAS**, on April 20, 2005, the Board's IC filed a formal Complaint in the above-referenced
18 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
19 Medical Practice Act (NRS Chapter 630), to wit: one count of malpractice, a violation of NRS 630.301(4);
20 and

21 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands it, and
22 has consulted with competent counsel Maria Nutile, Esq., concerning the nature and significance of the
23 complaint, and Respondent is fully advised concerning his rights and defenses to the complaint as well as
24 the possible sanctions that may be imposed if the Board finds and concludes that he has violated one or
25 more provisions of the Medical Practice Act; and

26 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United States
27 Constitution and the Constitution of the State of Nevada as well as under the Medical Practice Act (NRS
28 Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B) including but not

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

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

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

17 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms, covenants
18 and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be
19 binding and enforceable upon him, and

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

25 **NOW THEREFORE**, in order to resolve Case No. 05-9441-01 and charges alleged by the
26 Board's IC in the above captioned matter, Respondent and the IC hereby agree to the following terms,
27 covenants and conditions:
28

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
3 the 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 herein, whom
6 Respondent covenants and agrees is fully capable, competent, and fully advised in these circumstances and
7 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and
8 intelligently after full consultation with counsel.

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

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 any further costs and expense of providing a defense to the
26 Complaint or to an amended complaint, Respondent hereby agrees and does not contest that an order may
27 be entered herein by the Board finding that Respondent engaged in conduct that is grounds for discipline
28 pursuant to the Medical Practice Act to wit: malpractice, a violation of NRS 630.301(4), that Respondent

1 engaged in a relationship with a former patient, and that the facts surrounding this behavior could be
2 considered a violation of medical ethical behavior. Therefore, Respondent's conduct fell below the
3 appropriate standard of care, as he failed to use the reasonable care, skill or knowledge ordinarily used by a
4 like practitioner in similar circumstances. Respondent shall be issued a formal written public letter of
5 reprimand from the Board, which will include language which is synonymous with the terms of this
6 Agreement. That Respondent shall be fined in the amount of \$2,5000.00. Within thirty (30) days of the
7 acceptance, adoption and approval of this Agreement by the Board, Respondent shall begin evaluation and
8 monitoring, on at least a monthly basis, which will be conducted by and in the office of Dr. Thomas
9 Bittker. The evaluation and monitoring is to continue for a period of eighteen (18) months after its
10 inception. Respondent will bear the costs of travel, as well as the costs of the evaluation and monitoring
11 charged by Dr. Bittker. Dr. Bittker will provide to the Board, on a quarterly basis, written reports regarding
12 Respondent's status in the evaluation and monitoring.

13 Further, Respondent acknowledges that his active-medical-licensure in the State of Nevada is
14 contingent upon his completion of the eighteen (18) month evaluation and monitoring process, and that
15 Respondent's failure to comply with the aforementioned evaluation and monitoring terms will result in his
16 medical license being summarily suspended for failure to comply with an order of the Board.

17 Lastly, that Respondent agrees to pay the aforementioned fine and the costs of investigation and
18 prosecution of this matter, which are now in the current amount of \$9,812.68, plus any additional costs
19 that may be accrued subsequent in the disposition of this matter, payable to the Nevada State Board of
20 Medical Examiners within sixty (60) days of acceptance, adoption and approval of this Agreement by
21 the Board. A final accounting of the additional costs will be provided to Respondent within thirty (30)
22 days of approval of the matter.

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

1 or all of the persons or entities named in this paragraph arising out of or by reason of this investigation,
2 this settlement or its administration.

3 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
4 recommend approval and adoption of the terms, covenants and conditions contained herein by the
5 Board in resolution of the Complaint pending herein against Respondent. In the course of seeking Board
6 approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly
7 with the Board staff and members of the panel of the Board who would adjudicate this case if it were to
8 go to hearing. Respondent acknowledges that such contacts and communication may be made or
9 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel
10 until the public Board meeting where this Agreement is discussed, and that such contacts and
11 communications may include, but not be limited to, matters concerning this Agreement, the Complaint,
12 and any and all information of every nature whatsoever related to the Complaint or the proceedings
13 herein against Respondent. The IC and its counsel agree that Respondent and his counsel may appear at
14 the Board meeting where this Agreement is discussed, and if requested, to respond to any questions that
15 may be addressed to the IC or its counsel.

16 **8. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
17 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC
18 will cause to be entered herein the Board's Order accepting, adopting and approving this Settlement,
19 Waiver and Agreement, ordering full compliance with the terms herein and ordering that this case be
20 closed, subject to the provisions of Section 5.

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

1 adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such
2 member absent evidence of bad faith.

3 **10. Binding Effect.** Providing this Agreement is approved by the Board, Respondent
4 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and
5 the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

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

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

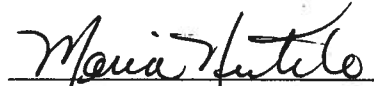
13 **13. Failure to comply with terms.** In the event the Board enters its Order approving this
14 Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have
15 grounds, after notice and a hearing, for disciplinary action, in addition to summary suspension of his
16 active-medical-licensure in the State of Nevada, for Respondent's violation of an Order of the Board.

17 NRS 630.3065(2)(a)

18 Dated this 26th day of February, 2008.

19 

20 Edward O. Cousineau, Esq.
21 Attorney for the Investigative Committee of the
22 Nevada State Board of Medical Examiners

23 

24 Maria Nutile, Esq.
25 Attorney for Respondent

26 I, Robert L. Horne, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to
27 the complaint in Nevada State Board of Medical Examiners Case No. 05-4991-01

28 Dated this 26th day of February, 2008.

///

Robert L. Horne MD

Robert L. Horne, M.D., Respondent

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

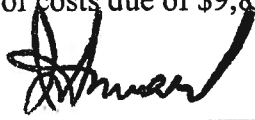
25

26

27

28

1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement, Case No.
2 05-9441-01, 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 \$9,812.68 pursuant to Paragraph 5 above.



4
5 JAVAID ANWAR, President
6 NEVADA STATE BOARD OF MEDICAL EXAMINERS

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28