

COPY

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA

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In The Matter of Charges and  
Complaint Against  
SIDNEY FRANK, M.D.,  
Respondent.

Case No. 08-8527-1

FILED 24 June 2008

*[Signature]*  
EXECUTIVE DIRECTOR

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board), composed of Sohail U. Anjum, M.D., Chairman, and S. Daniel McBride, M.D. Member, by and through counsel, Edward Cousineau, Esq., and Sidney Frank, M.D. (Respondent), as follows: WHEREAS, on or about April 21, 2008, the IC of the Board filed a formal complaint in the above-referenced matter, charging Respondent with violations of the Medical Practice Act (NRS Chapter 630), to wit: suspension, modification or limitation of a license to practice medicine in another jurisdiction, a violation of NRS 630.301(3).

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands 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 violated one or more provisions of 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

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

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

12           WHEREAS, Respondent and the IC each understand and agree that if the Board approves the  
13 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated  
14 below shall be binding and enforceable upon Respondent and the Board's IC; and

15           WHEREAS, Respondent has reviewed and understands all the relevant facts and circumstances of  
16 this matter and after due consideration concedes that his active license to practice medicine in California  
17 has been suspended, modified and or limited as outlined in the Complaint filed by the IC of the Board in  
18 this case.

19           NOW THEREFORE, in order to resolve the above-captioned case and charges brought against  
20 him by the Board's Investigative Committee in said matter, Respondent and the IC hereby agree to the  
21 following terms, covenants and conditions:

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

26           2.       **Representation by Counsel.** Respondent acknowledges that he is not represented by  
27 counsel and wishes to proceed towards resolution in this matter as set forth in this Agreement without  
28 counsel. Respondent understands and acknowledges that he may retain and consult counsel prior to

1 entering into this Agreement and agrees that if counsel is retained for representation in this matter prior to  
2 entering into this Agreement, that counsel for the IC will be informed of such prior to Respondent  
3 executing this Agreement.

4       3.       **Waiver of Rights.** Respondent covenants and agrees that he enters into this Agreement  
5 knowingly, willingly, and intelligently with knowledge that he may consult with counsel prior to entering  
6 into this Agreement. In connection with this Agreement, and the terms, covenants and conditions  
7 contained herein, Respondent knowingly, willingly and intelligently, without the advice of counsel, waives  
8 all rights arising under or pursuant to the United States Constitution, the Constitution of the state of  
9 Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him  
10 in connection with the proceeding on the complaint filed herein, the defense of said complaint and the  
11 adjudication of the charges in said complaint, and Respondent further agrees that the matter of the  
12 disciplinary action commenced by complaint herein may be settled and resolved in accordance with this  
13 Agreement without a hearing or any further proceeding, and without the right to judicial review.

14       4.       **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and agrees  
15 that the Board's IC has a reasonable basis to believe that Respondent violated one or more provisions of  
16 the Medical Practice Act.

17       5.       **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
18 proceedings pending against him without any further cost and expense of providing a defense to the  
19 complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,  
20 finding that Respondent has violated the Medical Practice Act to wit: suspension, modification or  
21 limitation of his California license to practice medicine, a violation of NRS 630.301(3), and ordering  
22 that Respondent's Nevada license to practice medicine be placed in a probationary status until  
23 August 30, 2012, and that he remain in compliance with the following terms and conditions:

24       a.       that Respondent both has, and shall continue to, comply with all the terms and conditions  
25 set forth by the California Medical Board in its Decision which became effective on August 30, 2007,  
26 (see Exhibit A);

27       b.       that Respondent shall contact the Compliance Officer of the Board (hereinafter

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1 "Compliance Officer") within thirty (30) days of the approval and acceptance of this Agreement in  
2 order to provide information regarding the most expeditious method of contacting him;

3 c. that Respondent shall sign a release of information allowing the Board to communicate  
4 with the California Medical Board regarding Respondent's compliance with the terms of his California  
5 probation or provide proof of completion of said probation and reinstatement of his license without  
6 restrictions;

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

9 e. that Respondent shall cooperate fully with the Compliance Officer, or any other  
10 designated person, in the administration and enforcement of this Agreement;

11 f. that Respondent agrees to pay the costs of investigation and prosecution of this matter in  
12 the current amount of \$227.17, along with the costs to conclude the matter, if any, within sixty (60) days  
13 of the Board's acceptance and approval of this Agreement;

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

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 IC for acceptance.

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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 IC  
3 will cause to be entered herein the Board's Order finding Respondent violated NRS 630.301(3), which  
4 states that the suspension, modification or limitation of a license to practice medicine by another  
5 jurisdiction is grounds for discipline, when his California license to practice medicine was suspended  
6 and/or modified.

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

17          10.       Release From Liability. In execution of this Agreement, the Respondent, for himself,  
18 his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the  
19 Board, the Nevada Attorney General, and each of their members, agents and employees in their  
20 representative capacities, and in their individual capacities absent evidence of bad faith, from any and  
21 all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands  
22 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or  
23 claim to have, against any or all of the persons or entities named in this paragraph arising out of or by  
24 reason of this investigation, this disciplinary action, this settlement or its administration, in connection  
25 with the complaint. The IC hereby agrees to accept this Agreement in full settlement of all claims  
26 related to the complaint, with the understanding that the final decision rests with 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 IC, which contract may be enforced in a court or  
2 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 action  
8 is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall  
9 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 would then have  
12 grounds, after notice and a hearing, to take disciplinary action against Respondent in addition to that  
13 included herein for the subject's violation of an Order of the Board in accordance with  
14 NRS 630.3065(2)(a).

15 Dated this 21<sup>st</sup> day of April, 2008.

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17 Edward Cousineau, Esq.  
18 Attorney for the Investigative Committee  
19 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 21<sup>st</sup> day of April, by Edward Cousineau, Esq., Attorney for the Investigative  
3 Committee of the Nevada State Board of Medical Examiners.

4 Dated this 15<sup>th</sup> day of MAY 2008.

5 Sidney Alan Frank  
6 Sidney Frank, M.D.  
7 Respondent

Signature of Sidney Frank, M.D.  
subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_ 2008

8 \_\_\_\_\_  
9 Notary Public

# CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below).  
 See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

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Signature of Document Signer No. 1 \_\_\_\_\_ Signature of Document Signer No. 2 (if any) \_\_\_\_\_

State of California  
County of Tulare

Subscribed and sworn to (or affirmed) before me on this  
16 day of May, 2008, by  
Date Month Year  
(1) Sidney Alan Frank,  
Name of Signer

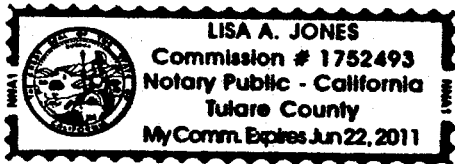
proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (✓)

(and

(2) \_\_\_\_\_,  
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Lisa A. Jones  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### Further Description of Any Attached Document

Title or Type of Document: Settlement Waiver Consent Agreement  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: None

**RIGHT THUMBPRINT OF SIGNER #1**  
Top of thumb here

**RIGHT THUMBPRINT OF SIGNER #2**  
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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 13<sup>th</sup> day of June 2008, with the  
3 final total amount of costs due of \$227.17.



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