

**COPY**

**BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA**

\* \* \* \* \*

**In the Matter of Charges and**

**Complaint Against**

**ALBERT COOK, M.D.,**

**Respondent.**

**Case No. 08-4854-1**

**FILED**

**MAY 12 2009**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

**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 Charles N. Held, M.D., Chairman, Jean Stoess, M.A., Member, and Benjamin J. Rodriguez, M.D., member by and through IC counsel, Edward O. Cousineau, and Albert Cook, M.D. (Respondent), as follows:

**WHEREAS**, on or about December 30, 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: revocation, 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

**OFFICE OF THE GENERAL COUNSEL**  
Nevada State Board of Medical Examiners  
1105 Terminal Way #301  
Reno, Nevada 89502  
(775) 688-2559

1 witnesses on his own behalf, the right to written findings, conclusions and order regarding a final  
2 decision by the Board, and the right to judicial review of any final decision by the Board that is  
3 adverse to him; and

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

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

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

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

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

26             1.         **Jurisdiction**. Respondent is, and at all times mentioned in the complaint filed in the  
27 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject

28 ///

1 to the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical  
2 Practice Act (NRS 630), and to impose sanctions as provided by the Act.

3       2.       **Representation by Counsel.** Respondent acknowledges that he is not represented  
4 by counsel, but that he understands that he had the right to consult with counsel prior to entering into  
5 this Agreement.

6       3.       **Waiver of Rights.** Respondent covenants and agrees that he enters into this  
7 Agreement knowingly, willingly, and intelligently, and as such, waives all rights arising under or  
8 pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630  
9 and NRS Chapter 233B that may be available to him or that may apply to him in connection with the  
10 proceeding on the complaint filed herein, the defense of said complaint and the adjudication of the  
11 charges in said complaint, and Respondent further agrees that the matter of the disciplinary action  
12 commenced by complaint herein may be settled and resolved in accordance with this Agreement  
13 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  
15 agrees that the Board's IC has a reasonable basis to believe that Respondent violated one or more  
16 provisions of 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: revocation, suspension,  
21 modification or limitation of his California license to practice medicine, a violation of  
22 NRS 630.301(3), and ordering that Respondent's Nevada license to practice medicine be  
23 revoked, with that revocation stayed, and that Respondent's license be placed in a probationary  
24 status until March 25, 2011, that Respondent shall be publicly reprimanded, and that he remain in  
25 compliance with the following terms and conditions:

26       a.       that Respondent both has, and shall continue to, comply with all the terms and  
27 conditions set forth by the California Medical Board in its Decision which became effective on  
28 April 25, 2008, (see Exhibit A);

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

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

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

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

12          f.       that Respondent agrees to pay the costs of investigation and prosecution of this  
13 matter in the current amount of \$1,547.72, along with the costs to conclude the matter, if any,  
14 within sixty (60) days of the Board’s acceptance and approval of this Agreement;

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

27          7.       Board Approval Required. This Agreement will be placed on the next available  
28 Agenda of a regularly scheduled and duly noticed quarterly Board meeting. It is expressly

1 understood that this Agreement will only become effective if the Board approves the  
2 recommendation of the IC 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 IC will cause to be entered herein the Board's Order finding Respondent violated NRS  
6 630.301(3), which states that the revocation, suspension, modification or limitation of a license to  
7 practice medicine by another jurisdiction is grounds for discipline, when his California license to  
8 practice medicine was suspended and/or modified.

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

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

1 agrees to accept this Agreement in full settlement of all claims related to the complaint, with the  
2 understanding that the final decision rests with the Board.

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

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

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

13 14. **Failure to comply with terms.** In the event the Board enters its Order approving  
14 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would  
15 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in  
16 addition to that included herein for the subject's violation of an Order of the Board in accordance  
17 with NRS 630.3065(2)(a).

18 Dated this 6<sup>th</sup> day of January, 2009.

19 


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

23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

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

I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent Agreement signed on the 16<sup>th</sup> day of January, 2009, by Edward O. Cousineau, Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners.

Dated this 11 day of MARCH 2009.

  
Albert Cook, M.D.  
Respondent


Signature of Albert Cook, M.D.  
subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_ 2009

\_\_\_\_\_  
Notary Public

OFFICE OF THE GENERAL COUNSEL  
Nevada State Board of Medical Examiners  
1105 Terminal Way #301  
Reno, Nevada 89502  
(775) 688-2559

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

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 8<sup>th</sup> day of May, 2009, with the final total amount of costs due of \$1,547.72.

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