

ORIGINAL

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and)

Case No. 09-9495-1)

Complaint Against)

FILED)

CHARLES MAHAKIAN, M.D.,)

NOV 06 2009)

Respondent.)

NEVADA STATE BOARD OF
MEDICAL EXAMINERS)

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is 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, Benjamin Rodriguez, M.D, member, and Jean Stoess, M.A., member, by and through counsel Lyn E. Beggs, Esq., and Charles Mahakian, M.D. (Respondent), by and through his counsel John H. Cotton, Esq., as follows:

WHEREAS, on June **, 2009, the Board's IC filed a Complaint in the above referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count of engaging in conduct which is in violation of a regulation adopted by the State Board of Pharmacy, violation of NRS 630.306(2)(c) and one count of failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1); and

WHEREAS, Respondent has received and reviewed a copy of the Complaint, understands it, and has consulted with competent counsel John H. Cotton, Esq., concerning 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 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act and after due consideration and consultation with his counsel, concedes that he engaged in conduct which is in violation of a regulation adopted by the State Board of Pharmacy as set forth in count I of the Complaint and that he

1 failed to maintain timely legible, accurate and complete medical records relating to the diagnosis,
2 treatment and care of a patient as set forth in count II of the Complaint; and

3 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and
4 between himself and the Board's Investigative Committee, and not with the Board, but that the
5 Investigative Committee will present this Agreement to the Board for consideration in open session at a
6 Board meeting, appropriately noticed, and that the Investigative Committee shall advocate approval of
7 this Agreement by the Board, but that the Board has the right to decide in its own discretion whether or
8 not to approve this Agreement; and

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

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

16 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
17 proceedings pending against him without any further costs and expense of providing a defense to the
18 Complaint or to any amended complaints, Respondent hereby agrees that an order may be entered herein
19 by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant to the
20 Medical Practice Act to wit: one count that he engaged in conduct which is in violation of a regulation
21 adopted by the State Board of Pharmacy as set forth in count I of the Complaint, a violation of NRS
22 630.306(2)(c), and that he failed to maintain timely legible, accurate and complete medical records relating
23 to the diagnosis, treatment and care of a patient as set forth in count II of the Complaint, a violation of
24 NRS 630.3062(1); and ordering that Respondent shall be issued a public reprimand. It shall be further
25 ordered that Respondent; that he shall complete a course of continuing medical education (CME) on the
26 topic ethics. Said CME course to be pre-approved by the Investigative Committee Chair and to be
27 completed within six (6) months of the adoption and approval of this Agreement by the Board. Said CME
28 shall be in addition to any other continuing medical education required as a condition of licensure.

1 Furthermore, Respondent shall be ordered to pay a fine of \$3000 reimburse the Board the reasonable costs
2 and expenses incurred in the investigation and prosecution of this case, the current amount being \$962.86.
3 Both the fine and costs shall be paid to the Nevada State Board of Medical Examiners within sixty (60)
4 days of the acceptance of this Agreement by the Board;

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

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

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

26 5. **Procedure for Adoption of Agreement.** It is expressly understood that this Agreement
27 will only become effective if the Board approves the recommendation of the Investigative Committee for
28 acceptance. The Investigative Committee and counsel for the Investigative Committee shall

1 recommend approval of the terms, covenants and conditions contained herein by the Board in resolution
2 of the disciplinary proceedings pending herein against Respondent pursuant to the complaint. In the
3 course of seeking Board approval of this Agreement, counsel for the Investigative Committee may
4 communicate directly with the Board staff and members of the panel of the Board who would
5 adjudicate this case if it were to go to hearing. Respondent covenants and agrees that such contacts and
6 communication may be made or conducted ex parte, without notice or opportunity to be heard on his
7 part or on the part of his counsel, until the public Board meeting where this Agreement is discussed, and
8 that such contacts and communications may include, but not be limited to, matters concerning this
9 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in support of
10 the Complaint, and any and all information of every nature whatsoever related to the complaint against
11 Respondent. The Investigative Committee and its counsel agree that Respondent and his counsel may
12 appear at the Board meeting where this Agreement is discussed in order to respond to any and all
13 questions that may be addressed to the Investigative Committee or its counsel at such meeting.

14 6. **Effect of Acceptance of Agreement by Board.** In the event the Board approves the
15 terms, covenants and conditions set out in this Agreement, counsel for the Investigative Committee will
16 cause to be entered herein the Board's Order approving this Settlement, Waiver and Consent
17 Agreement, ordering full compliance with the terms herein and ordering that this case be closed, subject
18 to the provisions in Paragraph 1.

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

1 8. Release From Liability. In execution of this Agreement, the Respondent, for himself,
2 his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the
3 Board, the Nevada Attorney General, and each of their members, agents and employees in their
4 representative capacities, and in their individual capacities absent evidence of bad faith, from any and
5 all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
6 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or
7 claim to have, against any or all of the persons or entities named in this paragraph arising out of or by
8 reason of this investigation, this disciplinary action, this settlement or its administration, in connection
9 with the complaint. The Investigative Committee hereby agrees to accept this Agreement in full
10 settlement of all claims related to the complaint, with the understanding that the final decision rests with
11 the Board.

12 9. Binding Effect. Respondent covenants and agrees that this Agreement is a binding and
13 enforceable contract upon Respondent and the Board's Investigative Committee, which contract may be
14 enforced in a court or tribunal having jurisdiction.

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

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

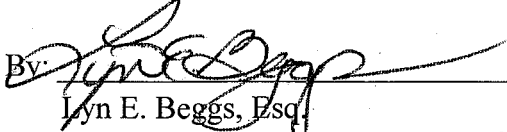
22 12. Failure to comply with terms. In the event the Board enters its Order approving this
23 Agreement, upon receipt of credible information that Respondent has failed to comply with any term or
24 condition of this Order, the Board shall be authorized to immediately suspend Respondent's license
25 until Respondent complies with the term or condition. Failure to comply with the terms recited herein
26 may result in additional disciplinary action being initiated against Respondent for a violation of an
27 Order of the Board in accordance with NRS 630.3065(2)(a). Furthermore, any failure to pay any fine,
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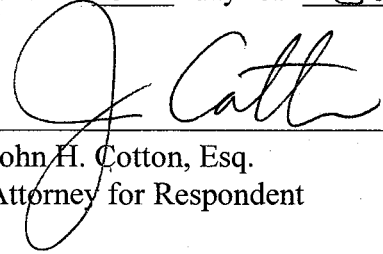
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1 fee, or cost ordered herein will also result in such legal action as determined to be necessary to collect
2 the unpaid fine, fee, or cost.

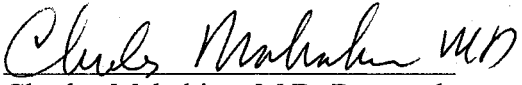
3 Dated this 3rd day August of 2009.

Dated this 30th day of July, 2009.

4
5 By: 
6 Lyn E. Beggs, Esq.
7 Attorney for the Investigative Committee
8 of the Nevada State Board of Medical
9 Examiners

By: 
John H. Cotton, Esq.
Attorney for Respondent

10 UNDERSTOOD AND AGREED:

11 
12 Charles Mahakian, M.D. Respondent

13 Dated this 30 day of JULY, 2009
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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 6th day of November 2009, with
3 the final total amount of costs due of \$962.86.

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6 RENEE WEST, Secretary-Treasurer
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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