BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and
Complaint Against
KOUSSAY ZARKA, M.D.,
Respondent.

Case No. 09-5622-1

FILED
NOV 06 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 (Board), composed of Sohail U. Anjum, M.D., Chairman, S. Daniel McBride, M.D., Member, and Mr. Van V. Hefner, Member, by and through Edward O. Cousineau, General Counsel for the Board, and Koussay Zarka, M.D. (Respondent), as follows:

WHEREAS, on June 30, 2009, 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: one count of failure to maintain timely, legible accurate, and complete medical records relating to the diagnosis, treatment and care of a two patients, a violation of NRS 630.3062(1).

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

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

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

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

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

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

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

2. **Representation by Counsel.** Respondent acknowledges that he is not represented
by legal counsel and agrees that he enters into this Agreement knowingly, willingly, and
intelligently despite his non-retention of counsel.

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

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

5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
proceedings pending against him without any further cost and expense of providing a defense to the
complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,
finding that Respondent has violated the Medical Practice Act to wit: that in treating the patients
referenced in the original complaint filed by the IC, Respondent’s associated medical record
keeping of the underlying patients was non-existent, and therefore a violation of NRS
630.3062(1), that Respondent shall be publicly reprimanded, the Respondent shall be fined in the
amount of $5,000.00, and that within one year of the acceptance, adoption and approval of this
Agreement, Respondent shall complete ten (10) hours of Continuing Medical Education (CME)
regarding the subject of medical record keeping, which are to be approved by the IC Chairman in advance of their accomplishment. The aforementioned CME’s are to be in addition to any CME requirements that are regularly imposed upon Respondent as a condition of licensure in the State of Nevada. Further, Respondent shall reimburse the Board the reasonable costs and expenses incurred in the investigation and prosecution of this case in the current amount of $2,847.55, plus any additional costs that may be accrued subsequent in the disposition of this matter. The aforementioned fine and costs are to be paid to the Nevada State Board of Medical Examiners within sixty (60) days of the acceptance, adoption and approval of this Agreement by the Board. A final accounting of the additional costs will be provided to Respondent in the entry of the Board’s Order relating to the matter.

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

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

8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves, accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
IC will cause to be entered herein the Board’s Order finding Respondent violated
NRS 630.301(3), which states that the revocation, suspension, modification or limitation of a
license to practice medicine by another jurisdiction is grounds for discipline, when his California
license to practice medicine was suspended and/or modified.

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

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

///

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

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

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

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

Dated this 10th day of July, 2009.

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

I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent Agreement signed on the 10th day of July, by Edward O. Cousineau, Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners.

Dated this 4th day of September 2009.

Koussay Zarka, M.D.
Respondent

Signature of Koussay Zarka, M.D. subscribed and sworn to before me this 4th day of September 2009

Harriet Jacobson
Notary Public

[Notary Seal]
**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 6th day of November 2009, with the final total amount of costs due of $2,847.55.

[Signature]

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