

ORIGINAL

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and)
Complaint Against)
PRAKASH CHAUDHARI, M.D.,)
Respondent.)

Case No. 09-12595-1

FILED

AUG 11 2009

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 Prakash Chaudhari, M.D. (Respondent), by and through his counsel Shirley Blazich, Esq. and Jacob Hafter, Esq., as follows:

WHEREAS, on March 23, 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 malpractice, a violation of NRS 630.301(4); and

WHEREAS, Respondent has received and reviewed a copy of the Complaint, understands it, and has consulted with competent counsel Shirley Blazich, Esq. and Jacob Hafter, 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 the Board has evidence to proceed with the allegations set forth in count I of the Complaint against him although Respondent submits that he was found not to be liable for medical malpractice and negligence after a jury trial in a civil matter regarding the same patient and same facts giving rise to this matter;

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

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

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

14 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
15 proceedings pending against him without incurring further time and expense necessary to defend the
16 complaint, Respondent, although not conceding to or admitting to the allegations as set forth in Count I of
17 the Complaint, does not wish to contest the same and agrees that the Board has sufficient evidence to
18 proceed with its Complaint that Respondent engaged in conduct that is ground for discipline pursuant to
19 the Medical Practice Act to wit; one count of malpractice, a violation of NRS 630.301(4), which evidence
20 Respondent disputes and denies, and which, but for his desire to reach a compromise of this matter, he
21 would contest at formal hearing. Therefore, as a condition of this compromise, Respondent agrees that the
22 Board may enter an order that the Board has sufficient evidence to proceed with its Complaint that
23 Respondent violated NRS 630.301(4), and ordering that Respondent pay a fine of \$1000 to be paid
24 within ninety (90) days of the acceptance, adoption and approval of this Agreement by the Board and that
25 he shall reimburse the Board the reasonable costs and expenses incurred in the investigation and
26 prosecution of this case, the current amount being \$2,480.64 to be paid within ninety (90) days of the
27 acceptance, adoption and approval of this Agreement by the Board;

28 ///

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

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

22 5. **National Practitioner Data Bank Reporting.** The Board hereby acknowledges and
23 agrees that notwithstanding the investigation of the Respondent nor the approval and execution of this
24 Agreement, the Board has no obligation under any law or regulation, including, without limitation, the
25 Health Care Quality Improvement Act of 1996, 42 U.S.C. § 11101, et. seq., or 45 C.F.R. §60.1, et. seq., to
26 make any report regarding the Respondent to the National Practitioner Data Bank. Moreover, provided
27 that the Board approves the recommendation of the Investigative Committee for acceptance of this
28 Agreement and the Agreement is subsequently effectuated, the Board hereby covenants and agrees that

1 neither it, nor any of its agents, employees or affiliates, will file any report to the National Practitioner
2 Data Bank regarding the Respondent related to the Complaint or the investigation underlying this
3 Agreement

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

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

25 8. **Effect of Rejection of Agreement by Board.** In the event the Board does not approve
26 the terms, covenants and conditions set out in this Agreement, this Agreement, in its entirety, shall be
27 null, void, and of no further force and effect except as to the following covenant and agreement
28 regarding disqualification of adjudicating Board panel members. Respondent agrees that,

1 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that
2 occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance and adoption
3 of this Agreement by the Board shall disqualify any member of the adjudicating panel of the Board from
4 considering the charges against Respondent and participating in the disciplinary proceedings in any role,
5 including adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any
6 such member absent evidence of bad faith.

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

18 10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and
19 enforceable contract upon Respondent and the Board's Investigative Committee, which contract may be
20 enforced in a court or tribunal having jurisdiction.

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

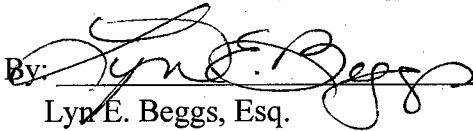
25 12. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
26 action is commenced in the district court to enforce any provision of this Agreement, the prevailing
27 party shall be entitled to recover reasonable costs and attorneys' fees.

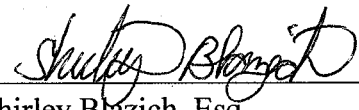
28 ///

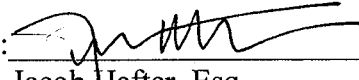
1 13. Failure to comply with terms. In the event the Board enters its Order approving this
2 Agreement, upon receipt of credible information that Respondent has materially failed to comply with
3 any term or condition of this Order, the Board shall be authorized to immediately suspend Respondent's
4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

9 Dated this 9th day of July of 2009.

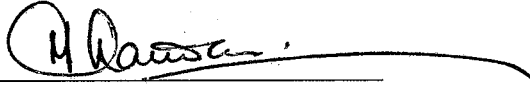
Dated this 10th day of July, 2009.

10
11 By: 
12 Lyn E. Beggs, Esq.
13 Attorney for the Investigative Committee
14 Nevada State Board of Medical Examiners

By: 
Shirley Blazich, Esq.
Attorney for Respondent


By: 
Jacob Hafter, Esq.
Attorney for Respondent

15
16 UNDERSTOOD AND AGREED:

17 
18 Prakash Chaudhari, M.D. Respondent

19 Dated this 15th day of July, 2009.
20
21
22
23
24
25
26
27
28

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 7th day of August 2009, with the
3 final total amount of costs due of \$2,529.75.

4 

5 _____
6 RENEE WEST, Secretary-Treasurer
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28