BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

** ** ** **

In The Matter of Charges and Case No. 09-8102-1
Complaint Against

COLLEEN LYONS, M.D.,
Respondent.

F I L E D
MAR 05 2010
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 Benjamin Rodriguez, M.D., Mr. Van H. Heffner and Beverly Neyland, M.D. by and through counsel Lyn E. Beggs, Esq., and Colleen Lyons, M.D. (Respondent), by and through her counsel Edward Lemons, Esq., as follows:

WHEREAS, on September 2, 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 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 Edward Lemons, Esq., concerning the nature and significance of the Complaint and Respondent is fully advised concerning her rights and defenses to the complaint as well as the possible sanctions that may be imposed if the Board finds and concludes that she has engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act and after due consideration and consultation with her counsel, concedes that her care of the patient at issue fell below the standard of care and accordingly constitutes malpractice as set forth in count I of the Complaint; and

WHEREAS, Respondent understands and agrees that this Agreement is entered into by and between herself and the Board’s Investigative Committee, and not with the Board, but that the Investigative Committee will present this Agreement to the Board for consideration in open session at a
Board meeting, appropriately noticed, and that the Investigative Committee 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 Investigative Committee 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 Investigative Committee; and

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

1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary proceedings pending against her without any further costs and expense of providing a defense to the Complaint or to any amended complaints, Respondent hereby agrees that an order may be entered herein by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act to wit: one count of malpractice as set forth in count I of the Complaint, a violation of NRS 630.301(4); and ordering that Respondent shall be ordered to reimburse the Board the reasonable costs and expenses incurred in the investigation and prosecution of this case, the current amount being $4,204.17. The costs shall be paid to the Nevada State Board of Medical Examiners within sixty (60) days of the acceptance of this Agreement by the Board;

2. **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.

3. **Waiver of Rights.** Respondent covenants and agrees that she enters into this Agreement knowingly, willingly, and intelligently with knowledge that she may consult with 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, with the advice of above identified counsel, 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 Respondent or that may apply to Respondent in connection with the proceeding regarding 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 the filing of the 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. In the event this Agreement is not approved by the Board, this Agreement shall have no force and effect and Respondent shall have 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 Respondent or that may apply to Respondent in connection with the proceeding on the complaint filed herein.

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

5. **Procedure for Adoption of Agreement.** It is expressly understood that this Agreement will only become effective if the Board approves the recommendation of the Investigative Committee for acceptance. The Investigative Committee and counsel for the Investigative Committee shall recommend approval of the terms, covenants and conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the complaint. In the course of seeking Board approval of this Agreement, counsel for the Investigative Committee 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, until the public Board meeting where this Agreement is discussed, and that such contacts and communications may include, but not be limited to, matters concerning this Agreement, the Complaint and the allegations therein, 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. The Investigative Committee and its counsel agree that Respondent and his counsel may appear at the Board
meeting where this Agreement is discussed in order to respond to any and all questions that may be
addressed to the Investigative Committee or its counsel at such meeting.

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

7. **Effect of Rejection of Agreement by Board.** In the event the Board does not approve
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
Investigative Committee 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 she shall not seek to disqualify any such member absent
evidence of bad faith.

8. **Release From Liability.** In execution of this Agreement, the Respondent, for herself,
herself, 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, executions, 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 Investigative Committee 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.
9. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and the Board's Investigative Committee, which contract may be enforced in a court or tribunal having jurisdiction.

10. **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, she 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.

11. **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.

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

Dated this 14th day of February 2010.

By: Lyn E. Beggs, Esq.
Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners

Dated this 10th day of Feb., 2010.

By: Edward Lemone, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:

Colleen Lyons, M.D. Respondent
Dated this 10th day of February 2010.
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 5th day of March 2010, with the final total amount of costs due of $4,134.17.

Charles N. Held, President
NEVADA STATE BOARD OF MEDICAL EXAMINERS