

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


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6 **In The Matter of Charges and**)
7 **Complaint Against**)
8 **DONALD CASSIDY, M.D.,**)
9 **Respondent.**)

Case No. 08-6105-1

FILED

SEP 13 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

11
12 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
14 (IC) of the Nevada State Board of Medical Examiners (Board), composed
15 Benjamin J. Rodriguez, M.D., Mr. Van V. Heffner, and Beverly A. Neyland, M.D., by and through
16 Edward Cousineau, Deputy Executive Director for the Board and Donald Cassidy, M.D.
17 (Respondent), by and through his counsel, Edward J. Lemons, Esq., as follows:

18 **WHEREAS**, on or about April 28, 2008, the IC of the Board filed a formal complaint in the
19 above-referenced matter, charging Respondent with violations of the Medical Practice Act
20 (NRS Chapter 630), to wit: malpractice, defined as the failure to use the reasonable knowledge,
21 skill and expertise ordinarily used in similar circumstances, and a violation of NRS 630.301(4).

22 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands the
23 nature and significance of the Complaint, and Respondent is fully advised concerning his rights and
24 defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board finds
25 and concludes that he has violated one or more provisions of the Medical Practice Act; and

26 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United
27 States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice
28 Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B),

1 including but not limited to the right to a formal hearing on the charges against him, the right to
2 representation by counsel in the preparation and presentation of his defense, the right to
3 confrontation and cross-examination of witnesses against him, the right to present evidence and
4 witnesses on his own behalf, the right to written findings, conclusions and order regarding a final
5 decision by the Board, and the right to judicial review of any final decision by the Board that is
6 adverse to him; and

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

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

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

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

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

1 2. Representation by Counsel. Respondent is represented by Edward J. Lemons,
2 Esq., and now acknowledges that he enters into this Agreement knowingly, willingly, and
3 intelligently after being afforded the opportunity to consult with legal counsel.

4 3. Waiver of Rights. In connection with this Agreement, and the terms, covenants and
5 conditions contained herein, Respondent knowingly, willingly and intelligently, waives all rights
6 arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada,
7 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in
8 connection with the proceeding on the complaint filed herein, the defense of said complaint and the
9 adjudication of the charges in said complaint, and Respondent further agrees that the matter of the
10 disciplinary action commenced by complaint herein may be settled and resolved in accordance with
11 this Agreement without a hearing or any further proceeding, and without the right to judicial review.

12 4. No Admission of Liability This Agreement is neither an admission of liability
13 by Respondent nor a concession by the IC that its claims as alleged in the underlying complaint
14 are not well founded.

15 5. Consent to Entry of Order. In order to resolve the matter of these disciplinary
16 proceedings pending against him to avoid the delay, uncertainty, inconvenience, and expense of
17 protracted litigation of the underlying claims by the IC, the parties agree and Respondent does
18 not contest that an order may be entered herein by the Board finding that the underlying
19 complaint, Case No. 08-6105-1, is to be dismissed with prejudice and that the Board will be paid
20 \$3,940.62 as reimbursement of costs and fees incurred in the investigation and associated
21 prosecution of the matter. Further, reimbursement of the costs and fees are to be paid to the Board,
22 within sixty (60) days of acceptance, adoption and approval of this Agreement by the Board.

23 6. Procedure for Adoption of Agreement. The IC and counsel for the IC shall
24 recommend approval and adoption of the terms, covenants and conditions contained herein by
25 the Board in resolution of the disciplinary proceedings pending herein against Respondent
26 pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or
27 acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff
28 and members of the panel of the Board who would adjudicate this case if it were to go to hearing.

1 Respondent covenants and agrees that such contacts and communication may be made or
2 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
3 counsel, and that such contacts and communications may include, but not be limited to, matters
4 concerning this Agreement, the complaint, the allegations in the complaint, any and all evidence
5 that may exist in support of the complaint, and any and all information of every nature
6 whatsoever related to the complaint against Respondent.

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

11 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
12 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
13 IC will cause to be entered herein the Board's Order consistent with the terms of paragraph 5
14 above.

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

26 10. **Release From Liability.** In execution of this Agreement, the Respondent, for
27 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
28 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and

1 employees in their representative capacities, and in their individual capacities absent evidence of
2 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
3 executions, claims and demands whatsoever, known and unknown, in law or equity, that
4 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
5 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
6 action, this settlement or its administration, in connection with the complaint. The IC hereby
7 agrees to accept this Agreement in full settlement of all claims related to the complaint, with the
8 understanding that the final decision rests with the Board.

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

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

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

19 14. **Failure to comply with terms.** In the event the Board enters its Order approving
20 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would
21 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in
22 addition to that included herein for the subject's violation of an Order of the Board in accordance
23 with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for
24 monies agreed to be paid as a condition of settlement, may subject Respondent to civil collection
25 efforts.

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

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Dated this 12th day of July, 2010.



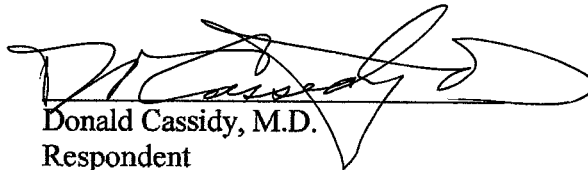
Edward O. Cousineau
Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners



Edward J. Lemons, Esq.
Attorney for Donald Cassidy, M.D.


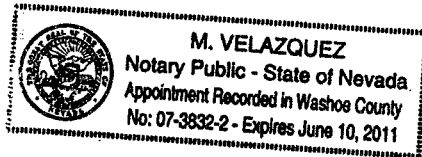
I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent Agreement.

Dated this 8th day of July, 2010.



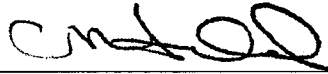
Donald Cassidy, M.D.
Respondent

Signature of Donald Cassidy, M.D.
subscribed and sworn to before me
this 8th day of JULY 2010.



Notary Public

1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is
2 approved and accepted by the Nevada State Board of Medical Examiners on the 10th day of
3 September, 2010, with the final total amount of costs due of \$3,940.62.

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6 Charles N. Held, M.D., President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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