

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

3 * * * * *

4 **In The Matter of Charges and**)
5 **Complaint Against**)
6 **KENNETH WESTFIELD, M.D.,**)
7 **Respondent.**)

Case No. 09-5797-1

FILED
MAR 05 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

9
10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
12 the Nevada State Board of Medical Examiners (the Board) composed of
13 Charles N. Held, M.D, Ms. Renee West and Theodore Berndt, M.D. by and through counsel,
14 Lyn E. Beggs, Esq., and Kenneth Westfield, M.D. (Respondent), by and through his counsel
15 Maria Nutile, Esq., as follows:

16 **WHEREAS**, on December 10, 2009, the Board's IC filed a Complaint in the above
17 referenced matter charging Respondent with engaging in conduct that is grounds for discipline
18 pursuant to the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: two counts
19 of malpractice, violations of NRS 630.301(4); and

20 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands
21 it, and has consulted with competent counsel Maria Nutile, Esq., concerning the nature and
22 significance of the Complaint and Respondent is fully advised concerning his rights and defenses
23 to the complaint as well as the possible sanctions that may be imposed if the Board finds and
24 concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical
25 Practice Act and after due consideration concedes that his care of the patient at issue fell below the
26 standard of care and accordingly constitutes malpractice as set forth in count I of the Complaint;
27 and

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

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

11 **NOW THEREFORE**, in order to resolve the above-captioned case and charges brought
12 against Respondent by the Board's Investigative Committee in said matter, Respondent and the
13 Investigative 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 any further costs and expense of providing a defense to
16 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be
17 entered herein by the Board finding that Respondent engaged in conduct that is grounds for
18 discipline pursuant to the Medical Practice Act to wit: one count of malpractice as set forth in
19 count I of the Complaint, violations of NRS 630.301(4); and ordering that Respondent pay a fine
20 of \$2,000. Furthermore, Respondent shall be ordered to reimburse the Board the reasonable costs
21 and expenses incurred in the investigation and prosecution of this case, the current amount being
22 \$1644.92. The costs and fines shall be paid to the Nevada State Board of Medical Examiners
23 within ninety (90) days of the acceptance of this Agreement by the Board. It is further ordered
24 that count II of the Complaint shall be dismissed;

25 2. **Jurisdiction.** Respondent was 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
27 subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the
28 Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

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

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

19 5. **Procedure for Adoption of Agreement.** It is expressly understood that this
20 Agreement will only become effective if the Board approves the recommendation of the
21 Investigative Committee for acceptance. The Investigative Committee and counsel for the
22 Investigative Committee shall recommend approval of the terms, covenants and conditions
23 contained herein by the Board in resolution of the disciplinary proceedings pending herein
24 against Respondent pursuant to the complaint. In the course of seeking Board approval of this
25 Agreement, counsel for the Investigative Committee may communicate directly with the Board
26 staff and members of the panel of the Board who would adjudicate this case if it were to go to
27 hearing. Respondent covenants and agrees that such contacts and communication may be made
28 or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his

1 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such
2 contacts and communications may include, but not be limited to, matters concerning this
3 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in
4 support of the Complaint, and any and all information of every nature whatsoever related to the
5 complaint against Respondent. The Investigative Committee and its counsel agree that
6 Respondent and his counsel, if any, may appear at the Board meeting where this Agreement is
7 discussed in order to respond to any and all questions that may be addressed to the Investigative
8 Committee or its counsel at such meeting.

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

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

24 8. **Release From Liability.** In execution of this Agreement, the Respondent, for
25 himself, his executors, successors and assigns, hereby releases and forever discharges the state
26 of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
27 employees in their representative capacities, and in their individual capacities absent evidence of
28 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,

1 executions, claims and demands whatsoever, known and unknown, in law or equity, that
2 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
3 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
4 action, this settlement or its administration, in connection with the complaint. The Investigative
5 Committee hereby agrees to accept this Agreement in full settlement of all claims related to the
6 complaint, with the understanding that the final decision rests with the Board.

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

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

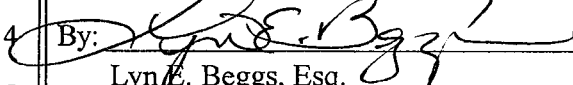
14 11. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event
15 an action is commenced in the district court to enforce any provision of this Agreement, the
16 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

17 12. **Failure to comply with terms.** In the event the Board enters its Order approving
18 this Agreement, upon receipt of credible information that Respondent has failed to comply with
19 any term or condition of this Order, the Board shall be authorized to immediately suspend
20 Respondent's license until Respondent complies with the term or condition. Failure to comply
21 with the terms recited herein may result in additional disciplinary action being initiated against
22 Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).

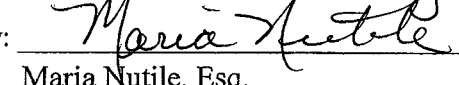
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1 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in such legal
2 action as determined to be necessary to collect the unpaid fine, fee, or cost.

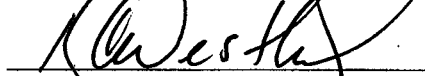
3 Dated this 14th day of February of 2010.

4 By: 
5 Lyn E. Beggs, Esq.
6 Attorney for the Investigative Committee

Dated this 9th day of February, 2010.

By: 
Maria Nutile, Esq.
Attorney for Respondent

6 UNDERSTOOD AND AGREED:

7 
8 Kenneth Westfield, M.D.

9 Dated this 8th day of FEB., 2010.

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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 5th day of
3 March 2010, with the final total amount of costs due of \$1,644.92.

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6 Javaid Anwar, M.D., Board Member
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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