

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

3 * * * * *

4 **In The Matter of Charges and**)
5 **Complaint Against**) **Case No. 10-23244-1**
6 **MARILYN ATKINS, R.R.T.,**) **FILED**
7 **Respondent.**) **SEP 13 2010**
8) **NEVADA STATE BOARD OF**
9) **MEDICAL EXAMINERS**
10) **By: [Signature]**

11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
13 the Nevada State Board of Medical Examiners (the Board) composed of
14 Charles N. Held, M.D, Theodore B. Berndt, M.D. and Ms. Valerie Clark, BSN, RHU, LUTCF, by
15 and through counsel, Lyn E. Beggs, Esq., and Marilyn Atkins, R.R.T. (Respondent), as follows:

16 **WHEREAS**, on January 5, 2010, the Board's IC filed a Complaint in the above referenced
17 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
18 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count of willful failure
19 to comply with an order of the Board or an investigative committee of the Board and one count
20 inability to practice to respiratory care with reasonable skill and safety because of use of narcotics;
21 and

22 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands
23 the nature and significance of the Complaint and is fully advised concerning her 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 she has engaged in conduct that is grounds for discipline pursuant to the
26 Medical Practice Act and after due consideration concedes that she engaged in the conduct set
27 forth in counts I and II of the Complaint; and

28 **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

1 Investigative Committee will present this Agreement to the Board for consideration in open
2 session at a Board meeting, appropriately noticed, and that the Investigative Committee shall
3 advocate approval of this Agreement by the Board, but that the Board has the right to decide in its
4 own discretion whether or not to approve this Agreement; and

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

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

12 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
13 proceedings pending against her without any further costs and expense of providing a defense to
14 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be
15 entered herein by the Board finding that Respondent engaged in conduct that is grounds for
16 discipline pursuant to the Medical Practice Act to wit: one count of willful failure to comply with
17 an order of the Board or an investigative committee of the Board and one count inability to practice
18 to respiratory care with reasonable skill and safety because of use of narcotics as set forth in counts
19 I and II of the Complaint; and ordering that Respondent's license to practice respiratory care be
20 revoked. Said revocation to be stayed and Respondent to be placed on probation for a period of
21 forty-eight (48) months with the following terms and conditions:

22 1) Respondent shall enter into and complete a contract with the PRN-PRN program
23 through Monte Vista Hospital and shall comply with all terms of her contract;

24 2) Respondent shall sign all necessary releases with the PRN-PRN program for the board
25 to access her records from the PRN-PRN program;

26 3) Respondent shall submit to any additional random hair or urine screens as required by
27 the Board;

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1 4) Respondent shall provide the Compliance Officer of the Nevada State Board of Medical
2 Examiners with the best and most expeditious manner of contacting her;

3 5) Respondent shall use no narcotic pain medication without notify the Compliance
4 Officer prior to such use and shall provide the Compliance Officer with a letter from her treatment
5 provider that use of such narcotic medication is medically indicated;

6 6) Respondent shall notify the Compliance Officer of where she will be practicing
7 respiratory care at least forty-eight (48) hours prior to starting to practice;

8 7) Respondent shall pay any costs associated with monitoring of her compliance with
9 these terms of probation. Respondent shall remit to the Nevada State Board of Medical Examiners
10 such costs within thirty (30) days of being presented with an invoice for said compliance costs;

11 8) Respondent shall reimburse the Board the reasonable costs and expenses incurred in the
12 investigation and prosecution of this case, the current amount being \$1,233.35. These costs shall
13 be paid to the Nevada State Board of Medical Examiners within ninety (90) days of the
14 acceptance of this Agreement by the Board;

15 2. **Jurisdiction.** Respondent was at all times mentioned in the Complaint filed in the
16 above-captioned matter was, a respiratory therapist licensed to practice respiratory care in the state
17 of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of
18 the Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

19 3. **Representation by Counsel.** Respondent acknowledges that she is not represented
20 by counsel and wishes to proceed towards resolution of this matter as set forth in this Agreement
21 without counsel. Respondent understands and acknowledges that she may retain and consult
22 counsel prior to entering into this Agreement and agrees that if counsel is retained for
23 representation in this matter prior to entering into this Agreement, that counsel for the Investigative
24 Committee will be informed of such prior to Respondent executing this Agreement.

25 4. **Waiver of Rights.** Respondent covenants and agrees that she enters into this
26 Agreement knowingly, willingly, and intelligently with knowledge that she may consult with
27 counsel prior to entering into this Agreement. In connection with this Agreement, and the terms,
28 covenants and conditions contained herein, Respondent knowingly, willingly and intelligently,

1 waives all rights arising under or pursuant to the United States Constitution, the Constitution of the
2 state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or
3 that may apply to Respondent in connection with the proceeding regarding the Complaint filed
4 herein, the defense of said Complaint and the adjudication of the charges in said Complaint, and
5 Respondent further agrees that the matter of the disciplinary action commenced by the filing of the
6 complaint herein may be settled and resolved in accordance with this Agreement without a hearing
7 or any further proceeding, and without the right to judicial review. In the event this Agreement is
8 not approved by the Board, this Agreement shall have no force and effect and Respondent shall
9 have all rights arising under or pursuant to the United States Constitution, the Constitution of the
10 State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or
11 that may apply to Respondent in connection with the proceeding on the complaint filed herein.

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

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

1 complaint against Respondent. The Investigative Committee and its counsel agree that
2 Respondent and his counsel, if any, may appear at the Board meeting where this Agreement is
3 discussed in order to respond to any and all questions that may be addressed to the Investigative
4 Committee or its counsel at such meeting.

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

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

20 9. **Release From Liability.** In execution of this Agreement, the Respondent, for
21 herself, her executors, successors and assigns, hereby releases and forever discharges the state of
22 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
23 employees in their representative capacities, and in their individual capacities absent evidence of
24 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
25 executions, claims and demands whatsoever, known and unknown, in law or equity, that
26 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
27 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
28 action, this settlement or its administration, in connection with the complaint. The Investigative

1 Committee hereby agrees to accept this Agreement in full settlement of all claims related to the
2 complaint, with the understanding that the final decision rests with the Board.

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

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

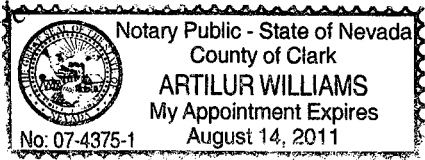
10 12. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event
11 an action is commenced in the district court to enforce any provision of this Agreement, the
12 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

13 13. **Failure to comply with terms.** In the event the Board enters its Order approving
14 this Agreement, upon receipt of credible information that Respondent has failed to comply with
15 any term or condition of this Order, the Board may seek to impose the stayed revocation of
16 Respondent's license to practice respiratory care. Failure to comply with the terms recited herein
17 may result in additional disciplinary action being initiated against Respondent for a violation of
18 an Order of the Board in accordance with NRS 630.3065(2)(a). Furthermore, any failure to pay
19 any fine, fee, or cost ordered herein will also result in such legal action as determined to be
20 necessary to collect the unpaid fine, fee, or cost.

21 Dated this 23rd day June of 2010.
22 By: [Signature]
23 Lyn E. Beggs, Esq.
24 Attorney for the Investigative Committee

Dated this 15 day of June, 2010.
By: [Signature]
Marilyn Atkins, R.R.T.
Respondent

25 Subscribed and sworn to before me
26 This 15th day of June 2010.
27 [Signature]

28 Notary Public


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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 10th day of September, 2010, with the final total amount of costs due of \$1,233.35.



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