

ORIGINAL

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and)
Complaint Against)
PAMELA GABRIEL, M.D.,)
Respondent.)

Case No. 10-18713-1

FILED

SEP 13 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: *[Signature]*

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby 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, Theodore B. Berndt, M.D., Member, and Valerie J. Clark, Member, by and through Bradley O. Van Ry, Deputy General Counsel, and Pamela Gabriel, M.D. (Respondent), as follows:

WHEREAS, on or about June 1, 2010, the IC of the Board filed a formal complaint in the above-referenced matter, charging Respondent with violations of the Medical Practice Act (NRS Chapter 630), to wit: revocation, suspension, modification or limitation of a license to practice medicine in another jurisdiction, a violation of NRS 630.301(3).

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands 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 violated one or more provisions of the Medical Practice Act; and

WHEREAS, Respondent understands and agrees that she has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to the right to a formal hearing on the charges against her, the right to representation by counsel in the preparation and presentation of her defense,

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1 the right to confrontation and cross-examination of witnesses against her, the right to present
2 evidence and witnesses on her own behalf, the right to written findings, conclusions and order
3 regarding a final decision by the Board, and the right to judicial review of any final decision by the
4 Board that is adverse to her; and

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

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

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

20 **WHEREAS**, Respondent has reviewed and understands all the relevant facts and
21 circumstances of this matter and after due consideration concedes that she suffered a disciplinary
22 action in the state of North Carolina as outlined in the Complaint filed by the IC of the Board in this
23 case.

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

27 1. **Jurisdiction**. Respondent is, and at all times mentioned in the complaint filed in the
28 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject

1 to the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical
2 Practice Act (NRS 630), and to impose sanctions as provided by the Act.

3 2. **Representation by Counsel.** Respondent acknowledges that she understands that
4 she has the right to consult with counsel prior to entering into this Agreement.

5 3. **Waiver of Rights.** Respondent covenants and agrees that she enters into this
6 Agreement knowingly, willingly, and intelligently and that she has consulted with out-of-state
7 counsel prior to entering into this Agreement. In connection with this Agreement, and the terms,
8 covenants and conditions contained herein, Respondent knowingly, willingly and intelligently,
9 waives 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 her or that may
11 apply to her in connection with the proceeding on the complaint filed herein, the defense of said
12 complaint and the adjudication of the charges in said complaint, and Respondent further agrees that
13 the matter of the disciplinary action commenced by complaint herein may be settled and resolved in
14 accordance with this Agreement without a hearing or any further proceeding, and without the right
15 to judicial review.

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

19 5. **Underlying Facts.** The facts underlying this Settlement, Waiver and Consent
20 Agreement are summarized in the consent order by the North Carolina Medical Board, which is
21 attached hereto as Exhibit 1 and is incorporated by reference.

22 6. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
23 proceedings pending against her without any further cost and expense of providing a defense to the
24 complaint, Respondent hereby agrees that an order may be entered herein by the Board against her,
25 finding that Respondent has violated Nevada's Medical Practice Act to wit: the North Carolina
26 Medical Board disciplinary action related to Respondent's license to practice medicine in the state
27 of North Carolina and therefore constitutes a violation of the provisions of NRS 630.301(3), and

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1 that based upon the same, that Respondent shall be publicly reprimanded and that Respondent
2 shall agree to the following terms and conditions:

3 a. that Respondent has complied with all the terms and conditions set forth by the
4 North Carolina Medical Board in its Consent Order which became effective on October 16, 2009,
5 (see Exhibit 1);

6 b. that Respondent shall contact the Compliance Officer of the Board (hereinafter
7 "Compliance Officer") within thirty (30) days of the approval and acceptance of this Agreement
8 in order to provide information regarding the most expeditious method of contacting her;

9 c. that Respondent shall sign a release of information allowing the Board to
10 communicate with the North Carolina Medical Board regarding Respondent's compliance with
11 the terms of her North Carolina Consent Order;

12 d. that Respondent shall cooperate fully with the Compliance Officer, or any other
13 designated person, in the administration and enforcement of this Agreement;

14 e. that Respondent agrees to pay the costs of investigation and prosecution of this
15 matter in the current amount of \$574.14, along with the costs to conclude the matter, if any,
16 within sixty (60) days of the Board's acceptance and approval of this Agreement;

17 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
18 recommend approval and adoption of the terms, covenants and conditions contained herein by
19 the Board in resolution of the disciplinary proceedings pending herein against Respondent
20 pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or
21 acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff
22 and members of the panel of the Board who would adjudicate this case if it were to go to hearing.
23 Respondent covenants and agrees that such contacts and communication may be made or
24 conducted ex parte, without notice or opportunity to be heard on her part or on the part of her
25 counsel, and that such contacts and communications may include, but not be limited to, matters
26 concerning this Agreement, the complaint, the allegations in the complaint, any and all evidence
27 that may exist in support of the complaint, and any and all information of every nature
28 whatsoever related to the complaint against Respondent.

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

5 9. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
6 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
7 IC will cause to be entered herein the Board's Order finding Respondent violated
8 NRS 630.301(3), which states that the revocation, suspension, modification or limitation of a
9 license to practice medicine by another jurisdiction is grounds for discipline, when she was
10 publicly reprimanded by the North Carolina Medical Board.

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

22 11. **Release From Liability.** In execution of this Agreement, the Respondent, for
23 herself, her executors, successors and assigns, hereby releases and forever discharges the state of
24 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
25 employees in their representative capacities, and in their individual capacities absent evidence of
26 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
27 executions, claims and demands whatsoever, known and unknown, in law or equity, that
28 Respondent ever had, now has, may have or claim to have, against any or all of the persons or

1 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
2 action, this settlement or its administration, in connection with the complaint. The IC hereby
3 agrees to accept this Agreement in full settlement of all claims related to the complaint, with the
4 understanding that the final decision rests with the Board.

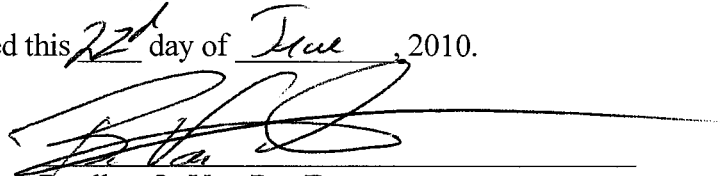
5 12. **Binding Effect.** Respondent covenants and agrees that this Agreement is a
6 binding and enforceable contract upon Respondent and the Board's IC, which contract may be
7 enforced in a court or tribunal having jurisdiction.

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

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

15 15. **Failure to comply with terms.** In the event the Board enters its Order approving
16 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would
17 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in
18 addition to that included herein for the subject's violation of an Order of the Board in accordance
19 with NRS 630.3065(2)(a).

20 Dated this 22nd day of June, 2010.

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22 Bradley O. Van Ry, Esq.
23 Attorney for the Investigative Committee
24 of the Nevada State Board of Medical Examiners

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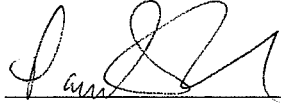
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I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent Agreement signed on the 18th day of June, 2010, by Bradley O. Van Ry, Esq., Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners.

Dated this 18th day of June 2010.

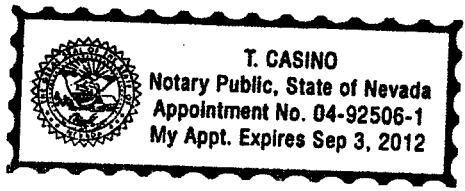


Pamela Gabriel, M.D.
Respondent

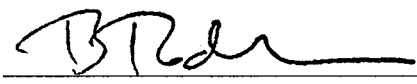
Signature of Pamela Gabriel, M.D.
subscribed and sworn to before me
this 18th day of JUNE, 2010



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 \$574.14.

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6 Benjamin J. Rodriguez, M.D., Vice President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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