

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

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5 **In the Matter of Charges and**) **Case No. 09-32628-1**
6 **Complaint Against**)
7 **TIMOTHY T. HAMILTON, M.D.,**) **FILED**
8 **Respondent.**) **MAR 05 2010**
9) **NEVADA STATE BOARD OF**
10 **MEDICAL EXAMINERS**

11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
13 (IC) of the Nevada State Board of Medical Examiners (the Board), composed of Charles N. Held,
14 M.D., Chairman, Jean Stoess, M.A., Member, and Benjamin J. Rodriguez, M.D., Member by and
15 through IC counsel, Edward O. Cousineau, and Timothy T. Hamilton, M.D. (Respondent), as
16 follows:

17 **WHEREAS**, on or about September 4, 2009, the IC of the Board filed a formal complaint in
18 the above-referenced matter (the "Complaint"), charging Respondent with violations of the Medical
19 Practice Act (NRS Chapter 630), to wit: the revocation, suspension, modification or limitation of
20 the license to practice any type of medicine by any other jurisdiction, and a violation of
21 NRS 630.301(3).

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, and
11 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 meeting,
16 duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but that the
17 Board has the right to decide in its own discretion whether or not to approve this Agreement; and

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

21 **WHEREAS**, Respondent has reviewed and understands all the relevant facts and
22 circumstances of this matter;

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

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

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

3 2. **Representation by Counsel.** Respondent is not represented but acknowledges and
4 agrees that he enters into this Agreement knowingly, willingly, and intelligently after the
5 opportunity for full consultation with counsel.

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

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

21 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
22 proceedings pending against him without any further cost and expense of providing a defense to the
23 Complaint, Respondent hereby agrees that an order may be entered herein by the Board against him
24 finding him guilty of a violation of NRS 630.301(3), that Respondent shall be publicly reprimanded,
25 that Respondent shall be fined in the amount of \$1,000.00, and that Respondent shall reimburse the
26 Board the reasonable costs and expenses incurred in the investigation and prosecution of this case in
27 the current amount of \$1,110.87, plus any additional costs that may be accrued subsequent in to
28 dispose of this matter. The aforementioned fine costs are to be paid to the Nevada State Board of

1 Medical Examiners within sixty (60) days of the acceptance, adoption and approval of this
2 Agreement by the Board. A final accounting of the additional costs will be provided to
3 Respondent in the entry of the Board's Order relating to the matter.

4 6. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
5 recommend approval and adoption of the terms, covenants and conditions contained herein by the
6 Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to
7 the formal complaint. In the course of seeking Board approval, adoption and/or acceptance of this
8 Agreement, counsel for the IC may communicate directly with the Board staff and members of the
9 panel of the Board who would adjudicate this case if it were to go to hearing. Respondent
10 covenants and agrees that such contacts and communication may be made or conducted ex parte,
11 until the public Board meeting where this Agreement is discussed, without notice or opportunity to
12 be heard on his part or on the part of his counsel, and that such contacts and communications may
13 include, but not be limited to, matters concerning this Agreement, the Complaint, the allegations
14 in the Complaint, any and all evidence that may exist in support of the Complaint, and any and all
15 information of every nature whatsoever related to the Complaint against Respondent.

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

20 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
21 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
22 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
23 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
24 ordering that this case be closed, subject to the provisions in Section 5.

25 9. **Effect of Rejection of Agreement by Board.** In the event the Board does not
26 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
27 Agreement shall be null, void, and of no further force and effect except as to the following
28 covenant and agreement regarding disqualification of adjudicating Board panel members.

1 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
2 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
3 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
4 adjudicating panel of the Board from considering the charges against Respondent and participating
5 in the disciplinary proceedings in any role, including adjudication of the case, and Respondent
6 further agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

7 10. **Release From Liability.** In execution of this Agreement, the Respondent, for
8 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
9 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
10 employees in their representative capacities, and in their individual capacities absent evidence of
11 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments, executions,
12 claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had,
13 now has, may have or claim to have, against any or all of the persons or entities named in this
14 paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement
15 or its administration, in connection with the complaint. The IC hereby agrees to accept this
16 Agreement in full settlement of all claims related to the complaint, with the understanding that the
17 final decision rests with the Board.

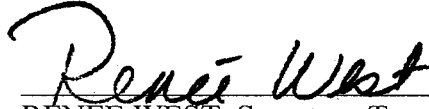
18 11. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding
19 and enforceable contract upon Respondent and the Board's IC, which contract may be enforced in
20 a court or tribunal having jurisdiction.

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

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

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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 \$1,110.87.

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6 RENEE WEST, Secretary-Treasurer
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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