

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

3                   \* \* \* \* \*

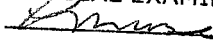
4                   **In The Matter of Charges and** )  
5                   **Complaint Against** )  
6                   **YVONNE BARRY, M.D.,** )  
7                   ) )  
8                   **Respondent.** )

Case No. 10-7835-1

**FILED**

**SEP 13 2010**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

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, Theodore B. Berndt, M.D. and Ms. Valerie Clark, BSN, RHU, LUTCF, by  
14 and through counsel, Lyn E. Beggs, Esq., and Yvonne Barry, M.D. (Respondent), as follows:

15                   **WHEREAS**, on April 8, 2010, the Board's IC filed an Order of Summary Suspension of  
16 Respondent's license to practice medicine and on April 22, 2010 filed a Complaint and  
17 subsequently an Amended Complaint on August 9, 2010 in the above referenced matter charging  
18 Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical  
19 Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count willful failure to comply  
20 with an order of the Board or committee designated by the Board to investigate a complaint against  
21 a physician, a violation of NRS 630.3065(2)(a); one count engaging in conduct intended to  
22 deceive, a violation of NRS 630.306(2)(a); one count of habitual intoxication from alcohol or  
23 dependency on controlled substances, a violation of NRS 630.306(8); one count engaging in  
24 conduct which is in violation of a regulation adopted by the State Board of Pharmacy, a violation  
25 of NRS 630.306(20)(c); one count of obtaining, maintaining or renewing or attempting to renew a  
26 license by any false, misleading, inaccurate or incomplete statement, a violation of NRS  
27 630.304(1); and one count of failure by a licensee to report in writing, within 30 days, any  
28 criminal action taken against a licensee, a violation of NRS 630.306(12); and

1           **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands  
2 the nature and significance of the Complaint and is fully advised concerning her rights and  
3 defenses to the Complaint as well as the possible sanctions that may be imposed if the Board finds  
4 and concludes that she has engaged in conduct that is grounds for discipline pursuant to the  
5 Medical Practice Act and after due consideration concedes that she engaged in the conduct set  
6 forth in counts I, II, IV, and V of the Amended Complaint; and

7           **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by  
8 and between herself and the Board's Investigative Committee, and not with the Board, but that the  
9 Investigative Committee will present this Agreement to the Board for consideration in open  
10 session at a Board meeting, appropriately noticed, and that the Investigative Committee shall  
11 advocate approval of this Agreement by the Board, but that the Board has the right to decide in its  
12 own discretion whether or not to approve this Agreement; and

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

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

20           1.       **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
21 proceedings pending against her without any further costs and expense of providing a defense to  
22 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be  
23 entered herein by the Board finding that Respondent engaged in conduct that is grounds for  
24 discipline pursuant to the Medical Practice Act to wit: one count willful failure to comply with an  
25 order of the Board or committee designated by the Board to investigate a complaint against a  
26 physician, a violation of NRS 630.3065(2)(a) as set forth in Count I of the Amended Complaint;  
27 one count engaging in conduct intended to deceive, a violation of NRS 630.306(2)(a) as set forth in  
28 Count II of the Amended Complaint; one count engaging in conduct which is in violation of a

1 regulation adopted by the State Board of Pharmacy, a violation of NRS 630.306(2)(c) and set forth  
2 in Count IV of the Amended Complaint; and one count of obtaining, maintaining or renewing or  
3 attempting to renew a license by any false, misleading, inaccurate or incomplete statement, a  
4 violation of NRS 630.304(1) as set forth in Count V of the Amended Complaint. It shall be  
5 ordered that Respondent shall 's license to practice medicine in the state of Nevada be revoked,  
6 said revocation being stayed and Respondent being placed on probation for a period of forty-eight  
7 (48) months subject to the following terms and conditions:

8 a.) Respondent's license shall be suspended for a period of 156 days, said suspension  
9 running from the date of the summary suspension of Respondent's license on April 8, 2010. Said  
10 summary suspension shall be lifted and Respondent's license to practice reinstated to the  
11 appropriate licensing status;

12 b.) Respondent shall remain in compliance with all terms of her contract with the  
13 PRN-PRN program through Monte Vista Hospital in Las Vegas and complete the contract in full;

14 c.) Respondent shall submit to random hair and urine screens at her own expense when  
15 requested by an employee of the Board. Any test that is positive for alcohol, controlled substances  
16 or dangerous drugs, other than prescribed by a treating physician or dentist, shall be considered a  
17 violation of this Agreement. Failure to comply with any such request shall be deemed to be an  
18 automatic positive test;

19 d.) Should Respondent be prescribed any controlled substances or dangerous drugs, by  
20 a treating physician or dentist, Respondent shall provide documentation from the treating physician  
21 or dentist to the Compliance Officer with seventy-two (72) hours of the prescription or within  
22 ninety-six (96) hours should the prescription be provided on a weekend;

23 e.) Respondent's practice shall be monitored by a proctor for six months upon  
24 reinstatement of her license. Respondent shall practice at the same location as the proctor for at  
25 least two days per week during the time of the proctorship. The proctor shall submit to the  
26 Compliance Officer a report once ever thirty (30) days regarding any concerns or comments the  
27 proctor may have regarding Respondent's practice. Should the proctor indicate at the end of the  
28 six month period that they do not believe Respondent should practice without continued

1 monitoring, Respondent agrees to extend the period of monitoring for an additional period of six  
2 months;

3 f) Respondent shall inform any and all employers of the terms of this Agreement  
4 during the term of her probation;

5 g) Respondent shall complete forty (40) hours of community service related to the  
6 practice of medicine, preferably within the school system or a community clinic, within six months  
7 of the date of acceptance of this Agreement by the Board. Respondent shall submit a plan  
8 outlining her intended community service and shall submit said plan for approval to the  
9 Compliance Officer within thirty (30) days of the date of acceptance of this agreement;

10 h) Respondent shall provide to the Compliance Officer for the Board with the best  
11 method to contact her and shall maintain a current address and phone number with the Compliance  
12 Officer;

13 i.) Respondent shall not violate any laws or regulations of the state of Nevada during  
14 the period of her probation;

15 j.) Respondent shall be responsible for the reasonable costs of monitoring her  
16 compliance with this Agreement. Respondent shall receive quarterly invoices regarding any  
17 monitoring costs and shall remit said costs within thirty (30) days of the date of the invoice;

18 It is further ordered that Respondent shall reimburse the Board the reasonable costs and expenses  
19 incurred in the investigation and prosecution of this case, the current amount being \$10,613.05.  
20 Respondent shall be responsible for any additional costs incurred in finalizing this matter. The  
21 costs shall be paid in full to the Nevada State Board of Medical Examiners within nine (9)  
22 months of the acceptance of this Agreement by the Board and Respondent shall make a payment  
23 of a minimum of \$1000 by the end of each month beginning the month this Agreement is  
24 accepted by the Board. It is further order that counts III and VI of the Amended Complaint shall  
25 be dismissed.

26 2. **Jurisdiction.** Respondent was 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  
28

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

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

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

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

27       6.       **Procedure for Adoption of Agreement.** It is expressly understood that this  
28 Agreement will only become effective if the Board approves the recommendation of the

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

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

22       8.       **Effect of Rejection of Agreement by Board.** In the event the Board does not  
23 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be  
24 null, void, and of no further force and effect except as to the following covenant and agreement  
25 regarding disqualification of adjudicating Board panel members. Respondent agrees that,  
26 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing  
27 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance  
28 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating

1 panel of the Board from considering the charges against Respondent and participating in the  
2 disciplinary proceedings in any role, including adjudication of the case, and Respondent further  
3 agrees that she shall not seek to disqualify any such member absent evidence of bad faith.

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

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

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

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

25 13. **Failure to comply with terms.** In the event the Board enters its Order approving  
26 this Agreement, upon receipt of credible information that Respondent has failed to comply with  
27 any term or condition of this Order, the Board shall be authorized to immediately suspend  
28 Respondent's license until Respondent complies with the term or condition. Failure to comply

1 with the terms recited herein may result in additional disciplinary action being initiated against  
2 Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).  
3 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in such legal  
4 action as determined to be necessary to collect the unpaid fine, fee, or cost.

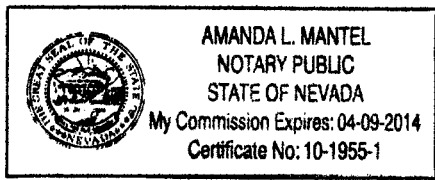
5 Dated this <sup>23<sup>rd</sup></sup> ~~10<sup>th</sup>~~ day of August of 2010.

Dated this 19<sup>th</sup> day of August, 2010.

6 By: [Signature]  
7 Lyn E. Beggs, Esq.  
8 Bradley O. Van Ry, Esq  
Attorneys for the Investigative Committee

By: [Signature]  
Yvonne Barry, M.D.  
Respondent

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

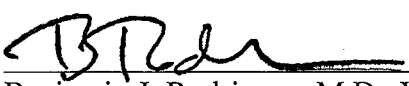


Subscribed and sworn to before me  
This 19<sup>th</sup> day of August 2010.

[Signature]  
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 10<sup>th</sup> day of  
3 September, 2010, with the final total amount of costs due of \$10,613.05.

4  
5   
6 Benjamin J. Rodriguez, M.D., Vice President  
NEVADA STATE BOARD OF MEDICAL EXAMINERS

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28