BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and

Complaint Against

YVONNE BARRY, M.D.,

Respondent.

Case No. 10-7835-1

FILED

SEP 13 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By:

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

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

WHEREAS, on April 8, 2010, the Board’s IC filed an Order of Summary Suspension of Respondent’s license to practice medicine and on April 22, 2010 filed a Complaint and subsequently an Amended Complaint on August 9, 2010 in the above referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count willful failure to comply with an order of the Board or committee designated by the Board to investigate a complaint against a physician, a violation of NRS 630.3065(2)(a); one count engaging in conduct intended to deceive, a violation of NRS 630.306(2)(a); one count of habitual intoxication from alcohol or dependency on controlled substances, a violation of NRS 630.306(8); one count engaging in conduct which is in violation of a regulation adopted by the State Board of Pharmacy, a violation of NRS 630.306(20(c); one count of obtaining, maintaining or renewing or attempting to renew a license by any false, misleading, inaccurate or incomplete statement, a violation of NRS 630.304(1); and one count of failure by a licensee to report in writing, within 30 days, any criminal action taken against a licensee, a violation of NRS 630.306(12); and
WHEREAS, Respondent has received and reviewed a copy of the Complaint, understands
the nature and significance of the Complaint and 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 engaged in conduct that is grounds for discipline pursuant to the
Medical Practice Act and after due consideration concedes that she engaged in the conduct set
forth in counts I, II, IV, and V of the Amended Complaint; and

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

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

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

1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
proceedings pending against her without any further costs and expense of providing a defense to
the Complaint or to any amended complaints, Respondent hereby agrees that an order may be
entered herein by the Board finding that Respondent engaged in conduct that is grounds for
discipline pursuant to the Medical Practice Act to wit: one count willful failure to comply with an
order of the Board or committee designated by the Board to investigate a complaint against a
physician, a violation of NRS 630.3065(2)(a) as set forth in Count I of the Amended Complaint;
one count engaging in conduct intended to deceive, a violation of NRS 630.306(2)(a) as set forth in
Count II of the Amended Complaint; one count engaging in conduct which is in violation of a
regulation adopted by the State Board of Pharmacy, a violation of NRS 630.306(2)(c) and set forth in Count IV of the Amended Complaint; and one count of obtaining, maintaining or renewing or attempting to renew a license by any false, misleading, inaccurate or incomplete statement, a violation of NRS 630.304(1) as set forth in Count V of the Amended Complaint. It shall be ordered that Respondent shall ’s license to practice medicine in the state of Nevada be revoked, said revocation being stayed and Respondent being placed on probation for a period of forty-eight (48) months subject to the following terms and conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. **Failure to comply with terms.** In the event the Board enters its Order approving
this Agreement, upon receipt of credible information that Respondent has failed to comply with
any term or condition of this Order, the Board shall be authorized to immediately suspend
Respondent’s license until Respondent complies with the term or condition. Failure to comply
with the terms recited herein may result in additional disciplinary action being initiated against
Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).
Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in such legal
action as determined to be necessary to collect the unpaid fine, fee, or cost.

Dated this 14th day of August 2010. Dated this 19th day of August, 2010.

By: Lyn E. Beggs, Esq. By: Yvonne Barry, M.D.
Bradley O. Van Ry, Esq. Respondent
Attorneys for the Investigative Committee

Subscribed and sworn to before me
This 19th day of August 2010.

[Signature]
Notary Public
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 $10,613.05.

[Signature]

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