

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

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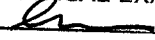
4
5 **In The Matter of Charges and**)
6 **Complaint Against**)
7 **BRANDON J. GREEN, M.D.**)
8 **Respondent.**)
9)

Case No. 11-35356-1

FILED

DEC - 5 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is hereby entered into by and between the
12 Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board)
13 composed of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF,
14 Member, Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through
15 Bradley O. Van Ry, Esq., Deputy General Counsel for the Board and counsel for the IC, and
16 Brandon J. Green, M.D. (Respondent), as follows:

17 **WHEREAS**, on October 7, 2011, the Board's IC filed a formal Complaint in the above-
18 referenced matter charging Respondent with engaging in conduct that is grounds for discipline
19 pursuant to the Nevada's Medical Practice Act, i.e., Chapter 630 of the Nevada Revised Statutes
20 (NRS), to wit: a violation of NRS Section 630.301(3); and,

21 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,
22 understands it, and has had ample opportunity to consult with his counsel,
23 if any, concerning the nature and significance of the formal Complaint, and Respondent is fully
24 aware concerning his rights and defenses to the formal Complaint as well as the possible sanctions
25 that may be imposed if the Board finds and concludes that he has violated one or more provisions
26 of the Medical Practice Act; and,

27 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by
28 and between himself and the Board's IC, and not with the Board, but that the IC will present this

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

4 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
5 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
6 below shall be binding and enforceable upon him; and,

7 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the
8 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
9 enumerated below shall not be binding and enforceable upon him except the provisions as to
10 disqualification of adjudicating panel members in paragraph number 8, and he will be provided
11 with an opportunity to defend himself against the charges against him as alleged in the formal
12 Complaint at a regularly scheduled hearing in accordance with all applicable laws; and,

13 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
14 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
15 terms, covenants and conditions:

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

20 **2. Representation by Counsel/ Knowing, Willing and Intelligent Agreement.**
21 Respondent has had ample opportunity to review this agreement, the formal Complaint
22 filed in this matter and related factual basis with potential legal counsel. Respondent further
23 covenants and agrees that he enters into this Agreement knowingly, willingly, and intelligently.

24 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
25 and conditions contained herein, and the understanding that Respondent knowingly, willingly and
26 intelligently, waives all rights arising under or pursuant to the United States Constitution, the
27 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory
28 rights that may be available to him or that may apply to him in connection with the proceeding on

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

10 **4. Consent to Entry of Order.** Respondent is aware that the trier of fact, the Board,
11 may find a factual basis in support of the formal Complaint against Respondent. Accordingly, in
12 order to resolve the matter without incurring further costs and expense of providing a defense to
13 the formal Complaint or to any other further amended complaint, and in exchange for the waiver
14 of the Respondent's foregoing rights, Respondent has entered into this Agreement¹, and agrees:

15 a. The Board may find that Respondent has engaged in conduct that is grounds
16 for discipline pursuant to the Medical Practice Act, to wit: a violation of Nevada Revised Statute
17 Section 630.301(3) by the disciplinary action against his license to practice medicine in the state of
18 Florida; and,

19 b. Pursuant to NRS §622.400, Respondent shall pay the sum of \$403.40, the
20 current amount of the costs incurred by the Board to investigate and prosecute this matter, along
21 with the costs to conclude the matter, if any. The costs shall be paid to the Nevada State Board of
22 Medical Examiners within thirty (30) days of the Board's acceptance and approval of this
23 Agreement; and,

24 c. Respondent shall pay a fine of \$1,500.00.

25 **5. Release From Liability.** In execution of this Agreement, the Respondent, for
26 himself, his executors, successors and assigns, hereby releases and forever discharges the state of

27 ¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by
Respondent are not intended or made for any other use, such as in the context of another state or federal government
regulatory agency proceeding, state or federal civil or criminal court proceeding, or any other state or federal court.

1 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
2 employees in their representative capacities, and in their individual capacities, from any and all
3 manner of actions, causes of action, suites, debts, judgments, executions, claims and demands
4 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have
5 or claim to have, against any or all of the persons or entities named in this paragraph arising out of
6 or by reason of this investigation, this settlement or its administration.

7 **6. Procedure of Adoption of Agreement.** The IC and counsel for the IC shall
8 recommend approval and adoption of the terms, covenants and conditions contained herein by the
9 Board in resolution of the formal Complaint pending herein against Respondent. In the course of
10 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
11 communicate directly with the Board staff and members of the panel of the Board who would
12 adjudicate this case if it were to go to hearing.

13 Respondent acknowledges that such contacts and communication may be made or
14 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
15 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
16 and communications may include, but not be limited to, matters concerning this Agreement, the
17 formal Complaint, and any and all information of every nature whatsoever related to the formal
18 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
19 Respondent and/or his counsel, if any, may appear at the Board meeting where this Agreement is
20 discussed, and if requested, to respond to any questions that may be addressed to the IC or its
21 counsel.

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

27 **8. Effect of Rejection of Agreement by Board.** In the event the Board does not
28 approve, accept and adopt the terms covenants and conditions set out in this Agreement, this

1 shall be null, void, and of no further force and effect except as to the following covenant and
2 agreement regarding disqualification of adjudicating Board panel members. Respondent agrees
3 that, notwithstanding rejection of this Agreement by the Board, nothing contained herein and
4 nothing that occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of
5 this Agreement by the Board shall disqualify any member of the adjudicating panel of the Board
6 from considering the charges against Respondent and participating in the disciplinary proceeding in
7 any role, including adjudication of the case. Respondent further agrees that he shall not seek to
8 disqualify any such member absent evidence of bad faith.

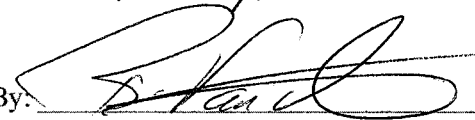
9 **9. Binding Effect.** Providing this Agreement is approved by the Board, Respondent
10 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
11 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

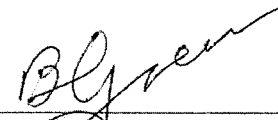
12 **10. Forum Selection Clause.** Respondent covenants and agrees that in the event
13 either party is required to seek enforcement of this Agreement in the district court, he consents to
14 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second
15 Judicial District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

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

19 Dated this 16th day of November, 2011.

Dated this 07 day of November, 2011.

20
21 By: 
22 Bradley O. Van Ry, Esq.
23 Attorney for the Investigative Committee

By: 
Brandon Jon Green, M.D.
Respondent

23 **IT IS HEREBY ORDERED** that the foregoing Settlement, Waiver and Consent
24 Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the
25 2nd day of December, 2011, with the final total amount of costs due of
26 \$ 403.40.

27 
28 Benjamin J. Rodriguez, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS