



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

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

12 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and  
13 between himself and the Board's IC, and not with the Board, but that the IC will present this  
14 Agreement to the Board for consideration in open session at a regularly-scheduled quarterly  
15 meeting, duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but  
16 that the Board has the right to decide in its own discretion whether or not to approve this Agreement;  
17 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 IC in said matter, Respondent and the IC hereby agree to the following  
25 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  
2 Practice Act (NRS 630), and to impose sanctions as provided by the Act.

3       2.     Representation by Counsel. Respondent is represented by Maria Nutile, Esq.  
4 Respondent acknowledges and agrees that he enters into this Agreement knowingly, willingly,  
5 and intelligently after full consultation with counsel.

6       3.     Waiver of Rights. Respondent covenants and agrees that he waives all rights  
7 arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada,  
8 NRS 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       4.     Acknowledgement of Reasonable Basis to Proceed. Respondent covenants and  
14 agrees that the Board's IC has a reasonable basis to believe that Respondent violated one or more  
15 provisions of the Medical Practice Act.

16       5.     Consent to Entry of Order. In order to resolve the matter of these disciplinary  
17 proceedings pending against him without any further cost and expense of providing a defense to the  
18 complaint, Respondent hereby agrees that an order may be entered herein by the Board against him  
19 finding him guilty of a two-count violation of NRS 630.3062(1), that Respondent shall be publicly  
20 reprimanded, that within one year of the acceptance, adoption and approval of this Agreement,  
21 Respondent shall complete ten (10) hours of Continuing Medical Education (CME) regarding the  
22 subject of medical record keeping, which are to be approved by the Board in advance of their  
23 accomplishment. The aforementioned CME's are to be in addition to any CME requirements that  
24 are regularly imposed upon Respondent as a condition of licensure in the State of Nevada, and  
25 lastly, that Respondent shall reimburse the Board the reasonable costs and expenses incurred in the  
26 investigation and prosecution of this case in the current amount of \$2,030.73, plus any additional  
27 costs that may be accrued subsequent in to dispose of this matter. The aforementioned costs are  
28 to be paid to the Nevada State Board of Medical Examiners within sixty (60) days of the

1 acceptance, adoption and approval of this Agreement by the Board. A final accounting of the  
2 additional costs will be provided to Respondent in the entry of the Board's Order relating to the  
3 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  
6 the Board in resolution of the disciplinary proceedings pending herein against Respondent  
7 pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or  
8 acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff  
9 and members of the panel of the Board who would adjudicate this case if it were to go to hearing.  
10 Respondent covenants and agrees that such contacts and communication may be made or  
11 conducted ex parte, without notice or opportunity to be heard on his part or on the part of her  
12 counsel, and that such contacts and communications may include, but not be limited to, matters  
13 concerning this Agreement, the complaint, the allegations in the complaint, any and all evidence  
14 that may exist in support of the complaint, and any and all information of every nature  
15 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 consistent with the terms in paragraph 5  
23 above.

24       9.     **Effect of Rejection of Agreement by Board.** In the event the Board does not  
25 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this  
26 Agreement shall be null, void, and of no further force and effect except as to the following  
27 covenant and agreement regarding disqualification of adjudicating Board panel members.  
28 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing

1 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek  
2 acceptance and adoption of this Agreement by the Board shall disqualify any member of the  
3 adjudicating panel of the Board from considering the charges against Respondent and  
4 participating in the disciplinary proceedings in any role, including adjudication of the case, and  
5 Respondent further agrees that she shall not seek to disqualify any such member absent evidence  
6 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,  
12 executions, claims and demands whatsoever, known and unknown, in law or equity, that  
13 Respondent ever had, now has, may have or claim to have, against any or all of the persons or  
14 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary  
15 action, this settlement or its administration, in connection with the complaint. The IC hereby  
16 agrees to accept this Agreement in full settlement of all claims related to the complaint, with the  
17 understanding that the final decision rests with the Board.


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

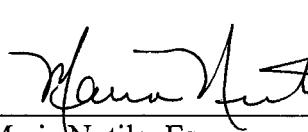
21       12.    **Forum Selection Clause.** Respondent covenants and agrees that in the event  
22 either party is required to seek enforcement of this Agreement in the district court, he consents to  
23 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second  
24 Judicial 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           14.    **Failure to comply with terms.** In the event the Board enters its Order approving  
2 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would  
3 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in  
4 addition to that included herein for the subject's violation of an Order of the Board in accordance  
5 with NRS 630.3065(2)(a).


6           Dated this 14<sup>th</sup> day of November, 2011.

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9           Edward O. Cousineau, J.D.  
10          Attorney for the Investigative Committee of the  
11          Nevada State Board of Medical Examiners

  
              Maria Nutile, Esq.  
              Attorney for Respondent

12           I, Brian E. Lee, M.D., hereby agree to the foregoing Settlement, Waiver and Consent  
13 Agreement as to the complaint in Nevada State Board of Medical Examiners Case No. 11-27952-1

14           Dated this 7<sup>th</sup> day of November, 2011.

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16           \_\_\_\_\_  
17           Brian E. Lee, M.D., Respondent  
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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 2<sup>nd</sup> day of December  
3 2011, with the final total amount of costs due of \$2,030.73.



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