

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

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In The Matter of Charges and)
Complaint Against)
DARBY-ANNETTE CLAYSON, M.D.,)
Respondent.)

Case No. 11-30595-1

FILED

SEP 12 2011

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 Darby-Annette Clayson, M.D. (Respondent), by and through her counsel Maria Nutile, Esq., as follows:

WHEREAS, on April 25, 2011, the Board's IC filed a Complaint 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 of malpractice as set forth in count I of the Complaint, a violation of NRS 630.301(4); and

WHEREAS, Respondent has received and reviewed a copy of the Complaint, understands it, and has consulted with competent counsel Maria Nutile, Esq., concerning 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 committed malpractice as defined and set forth in count I of the 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

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

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

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

12 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
13 proceedings pending against her without any further costs and expense of providing a defense to
14 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be
15 entered herein by the Board finding that Respondent engaged in conduct that is grounds for
16 discipline pursuant to the Medical Practice Act to wit: one count of malpractice as defined by
17 NAC 630.040 and as set forth in count I of the Complaint, a violation of NRS 630.301(4); and
18 ordering that Respondent be issued a public reprimand and shall further be further ordered to
19 reimburse the Board the reasonable costs and expenses incurred in the investigation and
20 prosecution of this case, the current amount being \$2,311.97, not including any costs that may be
21 necessary to finalize this Agreement. The costs and fines shall be paid to the Nevada State Board
22 of Medical Examiners within ninety (90) days of the acceptance of this Agreement by the Board.

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

27 3. **Waiver of Rights.** Respondent covenants and agrees that she enters into this
28 Agreement knowingly, willingly, and intelligently with knowledge that she may consult with

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

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

17 5. **Procedure for Adoption of Agreement.** It is expressly understood that this
18 Agreement will only become effective if the Board approves the recommendation of the
19 Investigative Committee for acceptance. The Investigative Committee and counsel for the
20 Investigative Committee shall recommend approval of the terms, covenants and conditions
21 contained herein by the Board in resolution of the disciplinary proceedings pending herein
22 against Respondent pursuant to the Complaint. In the course of seeking Board approval of this
23 Agreement, counsel for the Investigative Committee may communicate directly with the Board
24 staff and members of the panel of the Board who would adjudicate this case if it were to go to
25 hearing. Respondent covenants and agrees that such contacts and communication may be made
26 or conducted ex parte, without notice or opportunity to be heard on her part or on the part of her
27 counsel until the public Board meeting where this Agreement is discussed, and that such
28 contacts and communications may include, but not be limited to, matters concerning this

1 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in
2 support of the Complaint, and any and all information of every nature whatsoever related to the
3 complaint against Respondent. The Investigative Committee and its counsel agree that
4 Respondent and her counsel may appear at the Board meeting where this Agreement is discussed
5 in order to respond to any and all questions that may be addressed to the Investigative
6 Committee or its counsel at such meeting.

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

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

22 8. **Release From Liability.** In execution of this Agreement, the Respondent, for
23 herself, her executors, successors and assigns, hereby releases and forever discharges the state of
24 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
25 employees in their representative capacities, and in their individual capacities absent evidence of
26 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
27 executions, claims and demands whatsoever, known and unknown, in law or equity, that
28 Respondent ever had, now has, may have or claim to have, against any or all of the persons or

1 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
2 action, this settlement or its administration, in connection with the complaint. The Investigative
3 Committee hereby agrees to accept this Agreement in full settlement of all claims related to the
4 complaint, with the understanding that the final decision rests with the Board.

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


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

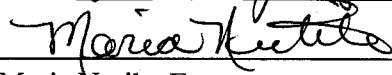
12 11. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event
13 an action is commenced in the district court to enforce any provision of this Agreement, the
14 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.


15 12. **Failure to comply with terms.** In the event the Board enters its Order approving
16 this Agreement, should Respondent fail to comply with the terms recited herein, the Board
17 would then have grounds, after notice and a hearing, to take disciplinary action against
18 Respondent in addition to that included herein for the subject's violation of an Order of the
19 Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to
20 reimburse the Board for monies agreed to be paid as a condition of settlement, may subject
21 Respondent to civil collection efforts.

22 Dated this 11th day of July of 2011.

Dated this 8th day of July, 2011.

23 By: 
24 Lyn E. Beggs, Esq.
25 Attorney for the Investigative Committee

By: 
26 Maria Nutile, Esq.
27 Attorney for Respondent Respondent

26 UNDERSTOOD AND AGREED:
27 
28 Darby Annette Clayson, M.D., Respondent

Dated this 1st day of July, 2011.

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 9th day of
3 September 2011, with the final total amount of costs due of \$2,311.97.

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

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