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

* * * * *

**In The Matter of Charges and)
)
Complaint Against)
DAVID SACK, M.D.,)
)
Respondent.)**

Case No. 09-28070-1

FILED

MAR 14 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby 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., Valerie J. Clark, BSN, RHU, LUTCF, and Theodore B. Berndt, M.D., by and through Edward O. Cousineau, Deputy Executive Director for the Board and counsel for the IC, and David Sack, M.D. (Respondent), by and through his counsel, Adam Schneider, Esq., as follows:

WHEREAS, on or about December 3, 2009, the IC filed a formal complaint in the above-referenced matter (the "Complaint"), charging Respondent with a violation of the Medical Practice Act (NRS Chapter 630), to wit: a one count violation of NRS 630.301(4); and

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands the nature and significance of the Complaint, and Respondent is fully advised concerning his rights and defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board finds and concludes that he has violated one or more provisions of the Medical Practice Act; and

WHEREAS, Respondent understands and agrees that he has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to the right to a formal hearing on the charges against him, the right to representation by counsel in the preparation and presentation of his defense, the right to

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

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

11 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and
12 between himself and the Board's IC, and not with the Board, but that the IC will present this
13 Agreement to the Board for consideration in open session at a regularly-scheduled quarterly
14 meeting, duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but
15 that the Board has the right to decide in its own discretion whether or not to approve this Agreement;
16 and

17 **WHEREAS**, Respondent and the IC each understand and agree that if the Board approves
18 the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
19 enumerated below shall be binding and enforceable upon Respondent and the Board's IC; and

20 **WHEREAS**, Respondent has reviewed and understands all the relevant facts and
21 circumstances of this matter;

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

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

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2. **Representation by Counsel.** Respondent is represented by counsel named herein, whom Respondent covenants and agrees is fully capable, competent and fully advised in these circumstances and Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and intelligently after full consultation with and upon the advice of said counsel.

3. **Waiver of Rights.** Respondent covenants and agrees that he 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 available to him or that may apply to him in connection with the proceeding on 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 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 him or that may apply to him in connection with the proceeding on the Complaint.

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

5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary proceedings pending against him without any further cost and expense of providing a defense to the complaint, Respondent hereby agrees that an order may be entered herein by the Board against him, finding that Respondent has violated the Medical Practice Act, specifically: that in treating the patient referenced in the original complaint filed by the IC, Respondent's associated medical record keeping related to the underlying patient was deficient, and therefore a violation of NRS 630.3062(1), that Respondent shall be publicly reprimanded, and that within one year of the acceptance, adoption and approval of this Agreement, Respondent shall complete ten (10) hours

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of Continuing Medical Education (CME) regarding the subject of medical record keeping, which are to be approved by the IC Chairman in advance of their accomplishment. The aforementioned CME's are to be in addition to any CME requirements that are regularly imposed upon Respondent as a condition of licensure in the State of Nevada. And, Respondent shall reimburse the Board the reasonable costs and expenses incurred in the investigation and prosecution of this case in the current amount of \$4,449.20, plus any additional costs that may be accrued subsequent in the disposition of this matter. The aforementioned costs are to be paid to the Board within sixty (60) days of the acceptance, adoption and approval of this Agreement by the Board. A final accounting of the additional costs will be provided to Respondent in the entry of the Board's Order relating to the matter.

6. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall recommend approval and adoption of the terms, covenants and conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC 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, until the public Board meeting where this Agreement is discussed, without notice or opportunity to be heard on his part or on the part of his counsel, and that such contacts and communications may include, but not be limited to, matters concerning this Agreement, the Complaint, the allegations in the Complaint, 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.

7. **Board Approval Required.** This Agreement will be placed on the next available Agenda of a regularly scheduled and duly noticed quarterly Board meeting. It is expressly understood that this Agreement will only become effective if the Board approves the recommendation of the IC for acceptance.

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8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves, accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC will cause to be entered herein the Board's Order accepting, adopting and 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 Section 5.

9. **Effect of Rejection of Agreement by Board.** In the event the Board does not approve, accept and adopt 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 IC 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 he shall not seek to disqualify any such member absent evidence of bad faith.

10. **Release From Liability.** In execution of this Agreement, the Respondent, for himself, his 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, executions, 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 IC 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.

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


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


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

11 14. **Failure to comply with terms.** In the event the Board enters its Order approving
12 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would
13 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in
14 addition to that included herein for the subject's violation of an Order of the Board in accordance
15 with NRS 630.3065(2)(a).

16 Dated this 17th day of February, 2011.

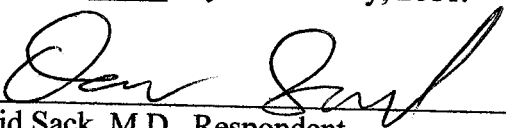
Dated this 14 day of February, 2011.

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18 By: 
19 Edward O. Cousineau, Esq.
20 Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners

By: 
Adam Schneider, Esq.
Attorney for Respondent

21
22 I, David Sack, M.D., hereby agree to the foregoing Settlement, Waiver and Consent
23 Agreement as to the complaint in Nevada State Board of Medical Examiners Case No. 09-28070-1.

24 Dated this 9 day of February, 2011.

25 
26 David Sack, M.D., Respondent

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 11th day of
3 March 2011, with the final total amount of costs due of \$4,449.20.

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