BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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In The Matter of Charges and	)	**Case No. 10-6816-1**
Complaint Against	)	
LARRY YEE, M.D.,	)	
Respondent.	)	

FILED
SEP 12 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., Theodore B. Berndt, M.D., and Valerie J. Clark, BSN, RHU, LUTCF, at the time the formal Complaint was authorized and filed on September 29, 2010 in the above-captioned matter, by and through Bradley O. Van Ry, Esq., Deputy General Counsel for the Board and counsel for the IC, and Larry Yee, M.D. (Respondent), as follows:

WHEREAS, on September 29, 2010, the Board's IC filed a formal Complaint in the above-referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Nevada's Medical Practice Act, i.e., Chapter 630 of the Nevada Revised Statutes (NRS), to wit: a violation of NRS Section 630.3065(2)(a); and,

WHEREAS, Respondent has received a copy of the formal Complaint, reviewed it, understands it, and has had ample opportunity to consult with his counsel, Louis C. Schneider, Esq., concerning the nature and significance of the formal Complaint, and Respondent is fully aware concerning his rights and defenses to the formal 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 this Agreement is entered into by and between himself and the Board's IC, and not with the Board, but that the IC will present this Agreement to the Board for consideration in open session at a meeting duly noticed and scheduled, and that the IC 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 understands and agrees 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 him; and,

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

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

1. **Jurisdiction**. Respondent is, and at all times mentioned in the formal 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.

2. **Representation by Counsel/ Knowing, Willing and Intelligent Agreement**. Respondent is represented by Louis C. Schneider, Esq. in this matter and has had ample opportunity to review this agreement, the formal Complaint filed in this matter and related factual basis with said legal counsel. Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and intelligently.

3. **Waiver of Rights**. In connection with this Agreement, and the terms, covenants and conditions contained herein, and the understanding that 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, NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply to him in connection with the proceeding on the formal Complaint filed herein, the defense of said formal Complaint and the adjudication of the charges in said formal Complaint, and Respondent further agrees that the matter of the formal 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 shall be *void ab initio*, 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, NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply to him in connection with the proceeding on the formal Complaint filed herein.

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

a. The Board may find that Respondent has engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act, to wit: a violation of Nevada Revised Statute Section 630.3065(2)(a) by failing to comply with an Order of a committee designated by the Board to investigate a complaint against a Respondent;

b. Pursuant to NRS §622.400, Respondent shall pay the sum of $1,858.51, the current amount of the costs incurred by the Board to investigate and prosecute this matter, along with the costs to conclude the matter, if any. The costs shall be paid to the Nevada State Board of Medical Examiners within thirty (30) days of the Board's acceptance and approval of this Agreement;

c. The Board shall issue a public reprimand;

d. Respondent shall pay a fine of $1,000.00;

e. Respondent shall attend and participate in six (6) hours of CME in medical ethics in addition to the normal CME requirements. Respondent's attendance and participation in the ordered CME is to be accomplished within one (1) year of the entry of this Agreement, and Respondent is to provide proof of attendance and participation to the Board; and,

f. The terms of this Agreement may be reported as allowed by law.

5. 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, from any and all manner of actions, causes of action, suites, 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 settlement or its administration.

6. Procedure of 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 formal Complaint pending herein against Respondent. 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 acknowledges that such contacts and communication may be made or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel 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 formal Complaint, and any and all information of every nature whatsoever related to the formal Complaint or the proceedings herein against Respondent. The IC and its counsel agree that Respondent and/or his counsel, if any, may appear at the Board meeting where this Agreement is discussed, and if requested, to respond to any questions that may be addressed to the IC or its counsel.

7. **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.

8. **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 proceeding in any role, including adjudication of the case. Respondent further agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

10. **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.

11. **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

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prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

Dated this 29th day July of 2011.

By: _____
Bradley O. Van Ry, Esq.
Attorney for the Investigative Committee

Dated this 22nd day of July, 2011.

By: _____
Louis C. Schneider, Esq.
Attorney for Respondent

Read and understood by:

Dated this 22nd day of July, 2011.

By: _____
Larry Yee, M.D.

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 9th day of September 2011, with the final total amount of costs due of $1,858.51.

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