

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

3 * * * * *

4 In The Matter of Charges and)
5 Complaint Against)
6 MICHAEL FORREST, P.A.-C,)
7 Respondent.)

Case No. 10-18540-1

FILED

MAR 14 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

9
10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
12 the Nevada State Board of Medical Examiners (the Board) composed of
13 Benjamin J. Rodriguez, M.D, Mr. Van V. Heffner, and Beverly Neyland, M.D. by and through
14 counsel, Lyn E. Beggs, Esq., and Michael Forrest, P.A.-C (Respondent), by and through his
15 counsel Jeffrey Whitehead, Esq., as follows:

16 **WHEREAS**, on August 6, 2010, the Board's IC filed a Complaint in the above referenced
17 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
18 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count of malpractice as
19 defined by NAC 630.040, a violation of NAC 630.380(1)(f); one count of failing to maintain
20 timely, legible, accurate and complete medical records a violation of NAC 630.380(1)(n) and
21 NRS 630.3065(1); and one count of writing prescriptions for controlled substances to treat acute
22 pain or chronic pain in a manner that deviate from the guidelines set forth in the Model Guidelines
23 for the Use of Controlled Substances for the Treatment of Pain adopted by the Board, a violation of
24 NAC 630.380(1)(m) and NAC 630.630.230; and

25 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands
26 it, and has consulted with competent counsel Jeffrey Whitehead, Esq., concerning the nature and
27 significance of the Complaint and Respondent is fully advised concerning his rights and defenses to
28 the complaint as well as the possible sanctions that may be imposed if the Board finds and
concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical

1 Practice Act. Respondent has reviewed all the relevant facts and circumstances of this matter and
2 after due consideration and consultation with his counsel, concedes that there exists enough
3 evidence that the Board could consider the allegations set forth in counts I and II of the Complaint
4 and make a finding that he violated the Medical Practice Act, specifically that he committed
5 malpractice and failed to maintain timely, legible, accurate and complete medical records for the
6 patient at issue as set forth in counts I and II of the Complaint; and

7 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by
8 and between himself and the Board's Investigative Committee, and not with the Board, but that the
9 Investigative Committee will present this Agreement to the Board for consideration in open session
10 at a Board meeting, appropriately noticed, and that the Investigative Committee shall advocate
11 approval of this Agreement by the Board, but that the Board has the right to decide in its own
12 discretion whether or not to approve this Agreement; and

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

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

20 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
21 proceedings pending against him without any further costs and expense of providing a defense to
22 the Complaint or to any amended complaint, Respondent does not wish to contest the allegations
23 set forth in counts I and II of the Complaint but does not make any admissions as to the conduct as
24 alleged. Respondent agrees that the Board has evidence to proceed with the Complaint and hereby
25 agrees that an order may be entered herein by the Board finding that Respondent engaged in
26 conduct that is grounds for discipline pursuant to the Medical Practice Act to wit: malpractice as set
27 forth in count I of the Complaint, a violation of NAC 630.380(1)(f) and failing to maintain timely,
28 legible, accurate and complete medical records as set forth in count II of the Complaint, a violation

1 of
2 NAC 630.380(1)(n) and NRS 630.3065(1) and ordering that Respondent be issued a public
3 reprimand. Furthermore, Respondent shall be ordered to reimburse the Board the reasonable costs
4 and expenses incurred in the investigation and prosecution of this case, the current amount being
5 \$4642.20. The costs and fines shall be paid to the Nevada State Board of Medical Examiners
6 within six months of the acceptance of this Agreement by the Board. Furthermore, count III of
7 the Complaint shall be dismissed.

8 2. **Jurisdiction.** Respondent was at all times mentioned in the Complaint filed in the
9 above-captioned matter was a licensed Physician Assistant in the state of Nevada subject to the
10 jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act
11 (NRS and NAC 630), and to impose sanctions as provided by the Act.

12 3. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
13 Agreement knowingly, willingly, and intelligently with the advice of above identified counsel. In
14 connection with this Agreement, and the terms, covenants and conditions contained herein,
15 Respondent knowingly, willingly and intelligently, waives all rights arising under or pursuant to
16 the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and
17 NRS Chapter 233B that may be available to Respondent or that may apply to Respondent in
18 connection with the proceeding regarding the Complaint filed herein, the defense of said Complaint
19 and the adjudication of the charges in said Complaint, and Respondent further agrees that the
20 matter of the disciplinary action commenced by the filing of the complaint herein may be settled
21 and resolved in accordance with this Agreement without a hearing or any further proceeding, and
22 without the right to judicial review. In the event this Agreement is not approved by the Board, this
23 Agreement shall have no force and effect and Respondent shall have all rights arising under or
24 pursuant to the United States Constitution, the Constitution of the State of Nevada, NRS Chapter
25 630 and NRS Chapter 233B that may be available to Respondent or that may apply to Respondent
26 in connection with the proceeding on the complaint filed herein.

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

4 5. **Procedure for Adoption of Agreement.** It is expressly understood that this
5 Agreement will only become effective if the Board approves the recommendation of the
6 Investigative Committee for acceptance. The Investigative Committee and counsel for the
7 Investigative Committee shall recommend approval of the terms, covenants and conditions
8 contained herein by the Board in resolution of the disciplinary proceedings pending herein
9 against Respondent pursuant to the Complaint. In the course of seeking Board approval of this
10 Agreement, counsel for the Investigative Committee may communicate directly with the Board
11 staff and members of the panel of the Board who would adjudicate this case if it were to go to
12 hearing. Respondent covenants and agrees that such contacts and communication may be made
13 or conducted *ex parte*, without notice or opportunity to be heard on his part or on the part of his
14 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such
15 contacts and communications may include, but not be limited to, matters concerning this
16 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in
17 support of the Complaint, and any and all information of every nature whatsoever related to the
18 complaint against Respondent. The Investigative Committee and its counsel agree that
19 Respondent and his counsel, if any, may appear at the Board meeting where this Agreement is
20 discussed in order to respond to any and all questions that may be addressed to the Investigative
21 Committee or its counsel at such meeting.

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

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

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

10 8. **Release From Liability.** In execution of this Agreement, the Respondent, for
11 himself, his executors, successors and assigns, hereby releases and forever discharges the state
12 of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
13 employees in their representative capacities, and in their individual capacities absent evidence of
14 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
15 executions, claims and demands whatsoever, known and unknown, in law or equity, that
16 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
17 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
18 action, this settlement or its administration, in connection with the complaint. The Investigative
19 Committee hereby agrees to accept this Agreement in full settlement of all claims related to the
20 complaint, with the understanding that the final decision rests with the Board.

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

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

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

4 12. Failure to comply with terms. In the event the Board enters its Order approving
5 this Agreement, upon receipt of credible information that Respondent has failed to comply with
6 any term or condition of this Order, the Board shall be authorized to immediately suspend
7 Respondent's license until Respondent complies with the term or condition. Failure to comply
8 with the terms recited herein may result in additional disciplinary action being initiated against
9 Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).
10 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in such legal
11 action as determined to be necessary to collect the unpaid fine, fee, or cost.

12 Dated this 10 day of March 2010.

Dated this 31 day of Jan, 2010.

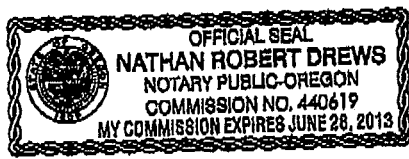
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14 By: [Signature]
15 Ivan E. Beggs, Esq.
16 Attorney for the Investigative Committee

By: [Signature]
Jeffrey Whitehead, Esq.
Attorney for Respondent

17 UNDERSTOOD AND AGREED:
18 [Signature]
19 Michael Forrest, P.A.C., Respondent

20 Date this 28 day of January, 2010.

21 Subscribed and sworn to before me
22 this 28 day of January, 2010.



23 [Signature]
24 Nathan Robert Drews
25 Notary Public

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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 11th day of March 2011, with the final total amount of costs due of \$4,642.20.



Charles N. Held, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS