

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

* * * * *

)
In The Remediation Matter of)
)
)
Board Licensee 14819)
)
)

Case No. 11-R-2
FILED

JUN 13 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: _____

STIPULATED REMEDIATION AGREEMENT

THIS STIPULATED REMEDIATION AGREEMENT (Agreement) is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (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 Board licensee 14819, as follows:

WHEREAS, after its review of the underlying matter, the IC determined that evidence exists supporting the filing of a formal complaint against Board licensee 14819; the IC also believes that the circumstance is one that is appropriate for resolution by way of this Agreement; and

WHEREAS, Board licensee 14819 recognizes 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 if a formal complaint was to be filed against him, the right to representation by counsel in the preparation and presentation of his defense to the formal complaint, the right to confrontation and cross-examination of witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of any final decision by the Board that is adverse to him; and

1 **WHEREAS**, provided this Agreement is approved by the Board, Board licensee 14819
2 agrees to waive all of his rights under the United States Constitution, the Constitution of the state of
3 Nevada, the Medical Practice Act, and the Nevada Administrative Procedures Act, including but not
4 limited to the right to a hearing on the charges and written findings of fact, conclusions of law and
5 order, and he agrees to resolve a potential formal complaint filing by way of, and in accordance
6 with, this Agreement; and

7 **WHEREAS**, Board licensee 14819 understands and agrees that this Agreement is entered
8 into by and between himself and the IC, and not with the Board, but that the IC will present this
9 Agreement to the Board for consideration in open session at a regularly-scheduled quarterly
10 meeting, duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but
11 that the Board has the right to decide in its own discretion whether or not to approve this Agreement;
12 and

13 **WHEREAS**, Board licensee 14819 and the IC each understand and agree that if the Board
14 approves the terms, covenants and conditions of this Agreement, then the terms, covenants and
15 conditions enumerated below shall be binding and enforceable upon Board licensee 14819 and the
16 Board's IC; and

17 **WHEREAS**, Board licensee 14819 has reviewed and understands all the relevant facts and
18 circumstances of this matter;

19 **NOW THEREFORE**, in order to resolve the above-captioned case in said matter 11-R-2,
20 Board licensee 14819 and the IC hereby agree to the following terms, covenants and conditions:

21 1. **Jurisdiction**. Board licensee 14819 is, and at all times mentioned in the complaint
22 filed in the above-captioned matter was, a physician licensed to practice medicine in the state of
23 Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the
24 Medical Practice Act, and to impose sanctions as provided by the Act.

25 2. **Representation by Counsel**. Board licensee 14819 is represented by legal counsel
26 and agrees that he enters into this Agreement knowingly, willingly, and intelligently, after his
27 consultation with counsel.

28 ///

1 3. Waiver of Rights. Board licensee 14819 covenants and agrees that he waives all
2 rights arising under or pursuant to the United States Constitution, the Constitution of the state of
3 Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to
4 him in connection with the potential filing of a formal complaint, the defense of this complaint and
5 the adjudication of the charges in this complaint, and without the right to judicial review of the
6 adjudication determination. In the event this Agreement is not approved by the Board, this
7 Agreement shall have no force and effect and Board licensee 14819 shall have all rights arising
8 under or pursuant to the United States Constitution, the Constitution of the state of Nevada,
9 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in
10 connection with the future filing of a formal complaint.

11 4. Acknowledgement of Reasonable Basis to Proceed. Board licensee 14819
12 covenants and agrees that the IC has a reasonable basis to believe that he violated one or more
13 provisions of the Medical Practice Act.

14 5. Consent to Entry of Order. In order to resolve the matter, Board licensee 14819
15 hereby agrees that, in treating the patient referenced in the underlying complaint investigated by the
16 IC, Board licensee 14819's medical record keeping was incomplete, a potential violation of
17 NRS 630.3062(1), and as a result:

18 a. Board licensee 14819 shall complete ten (10) hours of Continuing Medical Education
19 regarding medical record keeping. These Continuing Medical Education hours are to be in
20 addition to any Continuing Medical Education requirements that are regularly imposed upon
21 Board licensee 14819 as a condition of licensure in the state of Nevada, and are to be approved
22 by the Board in advance of their accomplishment.

23 b. Board licensee 14819 shall perform thirty (30) hours of community service without
24 compensation, which are to be approved by the Board in advance of their accomplishment.

25 c. Board licensee 14819 shall reimburse the Board the reasonable costs and expenses
26 incurred in the investigation and prosecution of this case in the current amount of \$5,475.44, plus
27 any additional costs that may be accrued subsequent in the disposition of this matter.

28 ///

1 The aforementioned costs are to be paid to the Board within sixty (60) days of the
2 adoption and approval of this Agreement. All other aforementioned conditions are to be
3 completed within one (1) year of the adoption and approval of this Agreement.

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. In
6 the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for
7 the IC may communicate directly with Board staff and members of the panel of the Board who
8 would adjudicate this case if it were to go to hearing. Board licensee 14819 covenants and agrees
9 that such contacts and communication may be made or conducted ex parte, until the public Board
10 meeting where this Agreement is discussed, without notice or opportunity to be heard on his part
11 or on the part of his counsel, and that such contacts and communications may include, but not be
12 limited to, matters concerning this Agreement, the underlying complaint, any and all evidence
13 that may exist in support of the underlying complaint, and any and all information of every nature
14 whatsoever related to the underlying complaint against Board licensee 14819.

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

19 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
20 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
21 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
22 Agreement and ordering full compliance with the terms herein and ordering that this case be
23 closed, subject to completion of the provisions in Section 5. The Board and Board
24 licensee 14819 both acknowledge and understand that this Agreement does not constitute
25 disciplinary action and the Agreement is not reportable to any national database.

26 9. **Effect of Rejection of Agreement by Board.** In the event the Board does not
27 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
28 Agreement shall be null, void, and of no further force and effect except as to the following

1 covenant and agreement regarding disqualification of adjudicating Board panel members. Board
2 licensee 14819 agrees that, notwithstanding rejection of this Agreement by the Board, nothing
3 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
4 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
5 adjudicating panel of the Board from considering the charges against Board licensee 14819 and
6 participating in the disciplinary proceedings in any role, including adjudication of the case, and
7 Board licensee 14819 further agrees that he shall not seek to disqualify any such member absent
8 evidence of bad faith.

9 10. **Release From Liability.** In execution of this Agreement, Board licensee 14819,
10 for himself, his executors, successors and assigns, hereby releases and forever discharges the
11 state of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
12 employees in their representative capacities, and in their individual capacities absent evidence of
13 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
14 executions, claims and demands whatsoever, known and unknown, in law or equity, that
15 Board licensee 14819 ever had, now has, may have or claim to have, against any or all of the
16 persons or entities named in this paragraph arising out of or by reason of this investigation, this
17 settlement or its administration, in connection with the underlying complaint

18 11. **Binding Effect.** Board licensee 14819 covenants and agrees that this Agreement
19 is a binding and enforceable contract upon Board licensee 14819 and the Board, which contract
20 may be enforced in a court or tribunal having jurisdiction.

21 12. **Forum Selection Clause.** Board licensee 14819 covenants and agrees that in the
22 event either party is required to seek enforcement of this Agreement in the district court, he
23 consents to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
24 Second Judicial District Court of the State of Nevada in and for the County of Washoe.

25 13. **Attorneys' Fees and Costs.** Board licensee 14819 covenants and agrees that in
26 the event an action is commenced in the district court to enforce any provision of this Agreement,
27 the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

28 ///

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners
1105 Terminal Way #201
Reno, Nevada 89502
(775) 688-2559

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. Failure to Comply With Terms. In the event the Board enters its Order approving this Agreement and Board licensee 14819 violates a provision of section five (5) of this Agreement, the Board or the IC may take any action it deems appropriate, including, without limitation, initiating disciplinary proceedings against him as if this Agreement had never been put in place.

Dated this 10th day of May, 2011.

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

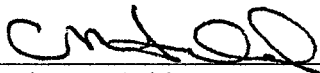
I, Board licensee 14819, hereby agree to the terms of the foregoing Agreement.

Dated this 9 day of May, 2011.

~~Board licensee 14819~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED that the foregoing Stipulated Remediation Agreement, is approved and accepted by the Nevada State Board of Medical Examiners on the 10th day of June 2011, with the final total amount of costs due of \$5,475.44.



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