

1 the possible sanctions that may be imposed if the Board finds and concludes that he has violated
2 one or more provisions of the Medical Practice Act; and,

3 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by
4 and between himself and the Board's IC, and not with the Board, but that the IC will present this
5 Agreement to the Board for consideration in open session at a meeting duly noticed and scheduled,
6 and that the IC shall advocate approval of this Agreement by the Board, but that the Board has the
7 right to decide in its own discretion whether or not to approve this Agreement; and,

8 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
9 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
10 below shall be binding and enforceable upon him; and,

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

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

20 **1. Jurisdiction.** Respondent is, and at all times mentioned in the formal Complaint
21 filed in the above-captioned matter was, a physician licensed to practice medicine in the
22 State of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of
23 violations of the Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

24 **2. Representation by Counsel/ Knowing, Willing and Intelligent Agreement.**

25 Respondent is represented by Kathleen Janssen, Esq. in this matter and has had ample
26 opportunity to review this agreement, the formal Complaint filed in this matter and related factual
27 basis with said legal counsel. Respondent further covenants and agrees that he enters into this
28 Agreement knowingly, willingly, and intelligently.

1 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
2 and conditions contained herein, and the understanding that Respondent knowingly, willingly and
3 intelligently, waives all rights arising under or pursuant to the United States Constitution, the
4 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory
5 rights that may be available to him or that may apply to him in connection with the proceeding on
6 the formal Complaint filed herein, the defense of said formal Complaint and the adjudication of
7 the charges in said formal Complaint, and Respondent further agrees that the matter of the formal
8 Complaint herein may be settled and resolved in accordance with this Agreement without a
9 hearing or any further proceeding, and without the right to judicial review. In the event this
10 Agreement is not approved by the Board, this Agreement shall have no force and effect and shall
11 be *void ab initio*, and Respondent shall have all rights arising under or pursuant to the United
12 States Constitution, the Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter
13 233B, and any other statutory rights that may be available to him or that may apply to him in
14 connection with the proceeding on the formal Complaint filed herein.

15 **4. Consent to Entry of Order.** Respondent is aware that the trier of fact, the Board,
16 may find a factual basis in support of the formal Complaint against Respondent. Accordingly, (i)
17 in order to resolve the matter without incurring further costs and expense of providing a defense to
18 the formal Complaint or to any other further amended complaint; (ii) in recognition of
19 Respondent's voluntary decision to cease treating chronic pain patients and limit his medical
20 practice to family practice only, thereby prescribing pain medications only in conjunction with
21 family practice management and having a reasonable transition time for his pain patients that is up
22 to and including ninety (90) days from execution of this Agreement by Respondent; and in
23 exchange for the waiver of the Respondent's foregoing rights, Respondent has entered into this
24 Agreement¹, and agrees:

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27 ¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by
Respondent are not intended or made for any other use, such as in the context of another state or federal government
regulatory agency proceeding, state or federal civil or criminal court proceeding, or any other state or federal court, or
any credentialing or privileges matter.

- 1 a. The Board may find that Respondent has engaged in conduct that is grounds
2 for discipline pursuant to the Medical Practice Act, to wit: a violation of Nevada Revised Statute
3 Section 630.301(4) and NAC 630.040 by failing to use the reasonable care, skill, or knowledge as a
4 physician under the same or similar circumstances relating to the diagnosis, treatment and care of
5 Patients A & B; and,
- 6 b. Pursuant to NRS §622.400, Respondent shall pay the sum of \$2,363.66, the
7 current amount of the costs incurred by the Board to investigate and prosecute this matter, along
8 with the costs to conclude the matter, if any. The costs shall be paid to the Nevada State Board of
9 Medical Examiners within ninety (90) days of the Board's acceptance and approval of this
10 Agreement; and,
- 11 c. The Board shall issue a public reprimand; and,
- 12 d. Respondent shall attend and participate in six (6) hours of CME in medical
13 records/documentation in addition to the normal CME requirements. Respondent's attendance and
14 participation in the ordered CME shall be in person and is to be accomplished within one (1) year
15 of the entry of this Agreement, and Respondent is to provide proof of attendance and participation
16 to the Board. If not available within a reasonable driving distance from Las Vegas, Respondent
17 may participate in an on-line CME course; and,
- 18 e. Count II of the complaint shall be dismissed; and,
- 19 f. Pursuant to Respondent's voluntary decision to limit his practice to family
20 medicine, Respondent shall no longer treat chronic pain patients and will limit his medical practice
21 to family practice only. Relatedly, Respondent shall prescribe medications only in conjunction
22 with normal family practice management with a reasonable transition time for the existing chronic
23 pain patients, up to and including ninety (90) days from the execution of this agreement by
24 Respondent; and,
- 25 g. For one year from the date this Agreement is approved by the Board,
26 Respondent shall make a quarterly report to the Board of all new patients he has treated in his
27 practice; and,
- 28 h. The terms of this Agreement are reportable as required by law.

1 **5. Release From Liability.** In execution of this Agreement, the Respondent, for
2 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
3 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
4 employees in their representative capacities, and in their individual capacities, from any and all
5 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
6 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have
7 or claim to have, against any or all of the persons or entities named in this paragraph arising out of
8 or by reason of this investigation, this settlement or its administration.

9 **6. Procedure of Adoption of Agreement.** The IC and counsel for the IC shall
10 recommend approval and adoption of the terms, covenants and conditions contained herein by the
11 Board in resolution of the formal Complaint pending herein against Respondent. In the course of
12 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
13 communicate directly with the Board staff and members of the panel of the Board who would
14 adjudicate this case if it were to go to hearing.

15 Respondent acknowledges that such contacts and communication may be made or
16 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
17 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
18 and communications may include, but not be limited to, matters concerning this Agreement, the
19 formal Complaint, and any and all information of every nature whatsoever related to the formal
20 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
21 Respondent and/or his counsel, if any, may appear at the Board meeting where this Agreement is
22 discussed, and if requested, to respond to any questions that may be addressed to the IC or its
23 counsel.

24 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
25 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
26 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
27 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
28 ordering that this case be closed.

1 **8. Effect of Rejection of Agreement by Board.** In the event the Board does not
2 approve, accept and adopt the terms covenants and conditions set out in this Agreement, this
3 Agreement shall be null, void, and of no further force and effect except as to the following
4 covenant and agreement regarding disqualification of adjudicating Board panel members.
5 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
6 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
7 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
8 adjudicating panel of the Board from considering the charges against Respondent and participating
9 in the disciplinary proceeding in any role, including adjudication of the case. Respondent further
10 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.


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

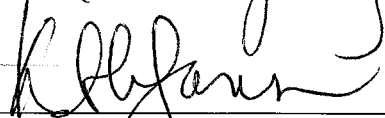
14 **10. Forum Selection Clause.** Respondent covenants and agrees that in the event either
15 party is required to seek enforcement of this Agreement in the district court, he consents to such
16 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial
17 District Court of the state of Nevada in and for the county of Washoe.

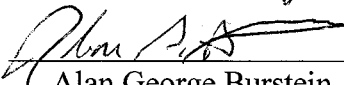
18 **11. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
19 action is commenced in the district court to enforce any provision of this Agreement, the
20 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

21 Dated this 11th day January of 2012.

Dated this 6th day of January, 2012.

22
23 By: 
24 Bradley O. Van Ry, Esq.
25 Attorney for the Investigative Committee

By: 
Kathleen Janssen, Esq.
Attorney for Respondent

26 Read and understood by:
27 Dated this 6th day of January, 2012.
28 By: 
Alan George Burstein, M.D.

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 March 2012,
3 with the final total amount of costs due of \$2,363.66.

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