

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

3 * * * * *

4
5 **In The Matter of Charges and**)
6 **Complaint Against**)
7 **GERALD WAYNE DUNN, M.D.,**)
8)
9 **Respondent.**)
10 _____)

Case No. 11-4343-1

FILED

MAR 12 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the
13 Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board)
14 composed of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF,
15 Member, Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through
16 Bradley O. Van Ry, Esq., Deputy General Counsel for the Board and counsel for the IC, and
17 Gerald Wayne Dunn, M.D. (Respondent), as follows:

18 **WHEREAS**, on January 3, 2011, the Board's IC filed a formal Complaint in the above-
19 referenced matter charging Respondent with engaging in conduct that is grounds for discipline
20 pursuant to the Nevada's Medical Practice Act, i.e., Chapter 630 of the Nevada Revised Statutes
21 (NRS), to wit: a violation of NRS Section 630.301(4) and NAC 630.040; and,

22 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,
23 understands it, and has had ample opportunity to consult with his counsel,
24 Robert L. McKenna III, Esq., concerning the nature and significance of the formal Complaint, and
25 Respondent is fully aware concerning his rights and defenses to the formal Complaint as well as
26 the possible sanctions that may be imposed if the Board finds and concludes that he has violated
27 one or more provisions of the Medical Practice Act; and,

28 **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

1 Agreement to the Board for consideration in open session at a meeting duly noticed and scheduled,
2 and that the IC shall advocate approval of this Agreement by the Board, but that the Board has the
3 right to decide in its own discretion whether or not to approve this Agreement; and,

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

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

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

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

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

25 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
26 and conditions contained herein, and the understanding that Respondent knowingly, willingly and
27 intelligently, waives all rights arising under or pursuant to the United States Constitution, the
28 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory

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

11 **4. Consent to Entry of Order.** Respondent is aware that the trier of fact, the Board,
12 may find a factual basis in support of the formal Complaint against Respondent. Accordingly, in
13 order to resolve the matter without incurring further costs and expense of providing a defense to
14 the formal Complaint or to any other further amended complaint, and in exchange for the waiver
15 of the Respondent's foregoing rights, Respondent has entered into this Agreement¹, and agrees:

16 a. The Board may find that Respondent has engaged in conduct that is grounds
17 for discipline pursuant to the Medical Practice Act, to wit: a violation of
18 Nevada Revised Statute Section 630.301(4) and NAC 630.040 by failing to utilize reasonable care,
19 skill and /or knowledge ordinarily used by a physician in the same or similar circumstances as
20 alleged involving Patient A; and,

21 b. Pursuant to NRS §622.400, Respondent shall pay the sum of \$2,150.46, the
22 current amount of the costs incurred by the Board to investigate and prosecute this matter, along
23 with the costs to conclude the matter, if any. The costs shall be paid to the Nevada State Board of
24 Medical Examiners within thirty (30) days of the Board's acceptance and approval of this
25 Agreement; and,

26 c. The Board shall issue a public reprimand;

27 _____
28 ¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related 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.

- 1 d. Respondent shall pay a \$1,000.00 fine; and,
- 2 e. The terms of this Agreement may be reported as allowed by law.

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

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

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

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

1 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
2 ordering that this case be closed.

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

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

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

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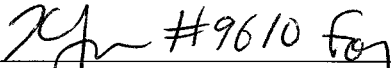
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11. Attorneys' Fees and Costs. Respondent covenants and agrees that in the event an action is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys'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

Dated this 15th day of November of 2011.

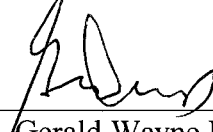
Dated this 14 day of November, 2011.

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

By:  #9610 for
Robert L. McKenna III, Esq.
Attorney for Respondent

Read and understood by:

Dated this 14 day of November, 2011.

By: 
Gerald Wayne Dunn, 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 \$2,150.46.

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