

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

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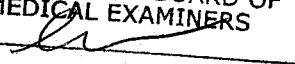
4 In The Matter of Charges and )  
5 )  
6 Complaint Against )  
7 )  
8 WILLIAM SHANE KYLE, M.D., )  
9 Respondent. )

Case No. 11-28683-1

**FILED**

JUN -8 2012

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

10  
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 Benjamin J. Rodriguez, M.D., Chairman, Beverly A. Neyland, M.D., Member, and  
15 Donna A. Ruthe, 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 William Shane Kyle (Respondent), as follows:

18 **WHEREAS**, on November 29, 2011, the Board's IC filed a formal Complaint in the  
19 above-referenced matter charging Respondent with engaging in conduct that is grounds for  
20 discipline pursuant to the Nevada Medical Practice Act, i.e., Chapter 630 of the Nevada Revised  
21 Statutes (NRS), to wit: malpractice, as defined by and as set forth in Count I of the formal  
22 Complaint, a violation of NRS Section 630.301(4), NAC Section 630.040; and,

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

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

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

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

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

16           **2.       Representation by Counsel/Knowing, Willing and Intelligent Agreement.**  
17 Respondent is represented by legal counsel in this matter and has had ample opportunity to  
18 review this Agreement, the formal Complaint filed in this matter and the related factual basis with  
19 said legal counsel, V. Andrew Cass, Esq. Respondent covenants and agrees that he enters into this  
20 Agreement knowingly, willingly, and intelligently.

21           **3.       Waiver of Rights.** In connection with this Agreement, and the terms, covenants  
22 and conditions contained herein, and the understanding that Respondent knowingly, willingly and  
23 intelligently waives all rights arising under or pursuant to the United States Constitution, the  
24 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory  
25 rights that may be available to him or that may apply to him in connection with the proceedings on  
26 the formal Complaint filed herein, the defense of said formal Complaint and the adjudication of  
27 the charges in said formal Complaint, and Respondent further agrees that the matter of the formal  
28 Complaint herein may be settled and resolved in accordance with this Agreement without a

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

7       **4. Consent to Entry of Order.** Respondent concedes only that the Board has  
8 sufficient evidence to proceed with its Complaint against him, but does not concede or admit to  
9 such allegations, which he expressly denies, and which, but for his desire to reach this  
10 compromise, he would contest at the formal hearing of this matter. Accordingly, in order to  
11 resolve the matter without incurring further costs and expense of providing a defense to the formal  
12 Complaint or to any other further amended complaint, and in exchange for the waiver of the  
13 Respondent's foregoing rights, Respondent has entered into this Agreement<sup>1</sup>, and agrees that:

14               a.       the Board may issue an Order finding that Respondent has engaged in  
15 conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act, to wit:  
16 malpractice, as defined by and as set forth in Count I of the formal Complaint, a violation of NRS  
17 Section 630.301(4), NAC Section 630.040 by the act of failing to advise Patient A to immediately  
18 seek a reduction of the dislocation at an emergency room; and,

19               b.       Respondent shall be issued a public reprimand; and,

20               c.       Respondent shall complete ten (10) hours of Continuing Medical Education  
21 ("CME") credits in shoulder dislocation, fracture, injuries, reduction and/or treatment, four (4) of  
22 which are to be in person, within one (1) year of approval by the Board and in addition to the those  
23 credits required to maintain licensure. Said CMEs shall be pre-approved by the IC chair; and,

24               d.       Pursuant to NRS §622.400, Respondent shall reimburse the sum of  
25 \$1,158.92, the current amount of the costs incurred by the Board to investigate and prosecute this

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27 <sup>1</sup> 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  
proceeding, or any credentialing or privileges matter.

1 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the Nevada  
2 State Board of Medical Examiners within thirty (30) days of the Board's acceptance and approval  
3 of this Agreement; and,

4 e. The terms of this Agreement shall be reported as required by law.

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

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

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

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

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

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

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


23           11.    **Failure to comply with terms.** In the event the Board enters its Order approving  
24 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would  
25 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in  
26 addition to that included herein for the subject's violation of an Order of the Board in accordance  
27 with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies  
28 agreed to be paid as a condition of settlement, may subject Respondent to civil collection efforts.


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12. 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 11<sup>th</sup> day of April of 2012.

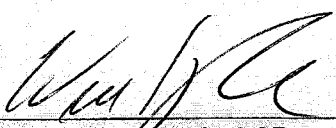
Dated this 9<sup>th</sup> day of April, 2012.

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

By:   
V. Andrew Cass, Esq.  
Attorney for Respondent

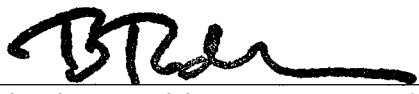
Read and understood by:

Dated this 6<sup>th</sup> day of April, 2012.

By:   
William Shane Kyle, M.D.

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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 8<sup>th</sup> day of June 2012, with the final total amount of costs due of \$1,158.92.



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