

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

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6 In the Matter of Charges and)
7)
8 Complaint Against)
9 **KEVIN R. BUCKWALTER, M.D.,**)
10)
11 Respondent.)

Case No. 08-12069-1

FILED

SEP 11 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
14 the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D.,
15 Ms. Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., by and through its counsel,
16 Edward O. Cousineau, Deputy Executive Director for the Board, and Bradley O. Van Ry, General
17 Counsel for the Board, and Kevin R. Buckwalter, M.D. (Respondent), by and through his counsel,
18 Bryce B. Buckwalter, Esq., and Jacob Hafter, Esq. as follows:

19 **WHEREAS**, on or about November 12, 2008, the Board's IC filed a Complaint and Request
20 for Summary Suspension of Respondent's Ability to Prescribe, Administer, or Dispense Controlled
21 Substances and charging Respondent with engaging in conduct that is grounds for discipline
22 pursuant to Nevada's Medical Practice Act (MPA), (NRS Chapter 630), to wit: a four-count
23 violation of Nevada Revised Statute (NRS) 630.301(4), a four-count violation of NRS 630.3062(1),
24 and a four-count violation of NRS 630.306(3); and

25 **WHEREAS**, Respondent received and reviewed a copy of the Complaint, understands it,
26 and consulted with competent counsel, Bryce B. Buckwalter, Esq. and Jacob Hafter, Esq. concerning
27 the nature and significance of the Complaint, and Respondent is fully advised concerning his rights
28 and defenses to the Complaint as well as the possible sanctions that may be imposed if the Board

1 finds and concludes that he has engaged in conduct that is grounds for discipline pursuant to the
2 Medical Practice Act; and

3 **WHEREAS**, Respondent understands and agrees that he has certain rights under the
4 United States Constitution and the Constitution of the state of Nevada, as well as under the MPA and
5 NRS Chapter 233B (Nevada Administrative Procedures Act) including, but not limited to, the right
6 to a formal hearing on the charges against him, the right to representation by counsel in the
7 preparation and presentation of his defense, the right to confrontation and cross-examination of
8 witnesses against him, the right to written findings, conclusions of law and order regarding a final
9 decision by the Board, and the right to judicial review of any final decision by the Board that is
10 adverse to him; and

11 **WHEREAS**, Respondent, based on his understanding of the relevant facts and
12 circumstances, and subject to the conditions set forth in this Agreement, desires to waive all of his
13 rights under the United States Constitution, the Constitution of the state of Nevada, the MPA and the
14 Nevada Administrative Procedures Act including, but not limited to, the right to a hearing on the
15 charges and written findings of fact, conclusions of law and order, and he desires to settle and resolve
16 the matter of the Complaint against him by way of and in accordance with this Agreement; and

17 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and
18 between himself and the Board's IC, and not with the Board, and that the IC will present this
19 Agreement to the Board for consideration in open session at the regular meeting of the Board, and
20 that the IC shall advocate approval of this Agreement by the Board, but that the Board has the right
21 to decide in its own discretion whether or not to approve this Agreement; and

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

25 **WHEREAS**, Respondent understands and agrees that, if the Board does not approve the
26 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
27 enumerated below shall not be binding and enforceable upon him except the provisions regarding
28 disqualification of adjudicating panel members in paragraph number 9, and he will be provided

1 with an opportunity to defend himself against the charges against him at a regularly scheduled
2 hearing in accordance with all applicable laws.

3 **NOW THEREFORE**, in order to resolve the pending Complaint and charges brought
4 against him by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to
5 the following terms, covenants and conditions:

6 1. **Jurisdiction**. Respondent is, and at all times mentioned in the Complaint filed in the
7 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada, subject
8 to the jurisdiction of the Board to hear and adjudicate charges of violations of the MPA and to
9 impose sanctions as provided by the MPA.

10 2. **Representation by Counsel**. Respondent is represented by above-identified counsel
11 herein, whom Respondent covenants and agrees are fully capable, competent and fully advised in
12 these circumstances, and Respondent further covenants and agrees that he enters into this Agreement
13 knowingly, willingly and intelligently, after full consultation with and upon the advice of said
14 counsel.

15 3. **Waiver of Rights**. In connection with this Agreement and the terms, covenants and
16 conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of
17 above-identified counsel waives all rights arising under or pursuant to the United States Constitution,
18 the Constitution of the state of Nevada, the MPA and the Nevada Administrative Procedures Act that
19 may be available to him or that may apply to him in connection with the proceeding on the
20 Complaint filed herein, the defense of said Complaint, the adjudication of the charges in said
21 Complaint and the imposition of sanctions, and Respondent agrees that the matter of the disciplinary
22 action commenced by the Complaint herein may be settled and resolved in accordance with this
23 Agreement without a hearing or any further proceeding and without the right to judicial review.

24 4. **Consent to Entry of Order**. Respondent concedes only that the Board has
25 sufficient evidence to proceed with its Complaint against him, but does not concede or admit to
26 such allegations, which he expressly denies, and which, but for his desire to reach this
27 compromise, he would contest at the formal hearing of this matter. Further, in recognition of
28 Respondent's significant continuing medical education training since the filing of the underlying

1 Complaint and in order to resolve the matter without incurring further costs and expense of
2 providing a defense to the Complaint or to any other further amended complaint, and in exchange
3 for the waiver of the Respondent's foregoing rights, Respondent has entered into this Agreement¹.

4 Respondent, therefore, agrees that the Board may issue an Order finding that Respondent
5 has engaged in conduct that is grounds for discipline pursuant to the MPA, to wit: three counts of
6 failure to maintain accurate and complete medical records, violations of
7 NRS 630.3062(1), and which encompass Respondent's care and treatment of Patients A, B and D as
8 alleged in the underlying Complaint. The Board agrees that all other counts as alleged in the
9 underlying Complaint will be dismissed with prejudice. For the aforementioned violations,
10 Respondent shall:

11 (a) Receive a public reprimand;

12 (b) Reimburse to the Board \$100,000.00, that amount being a near approximation of the total
13 costs and expenses incurred in the investigation/prosecution of this case and in defending the Board
14 from federal litigation brought by Respondent in this matter. Respondent agrees to reimburse the
15 entire aforementioned costs within thirty-six (36) months of the approval and adoption of the
16 Agreement; additionally, Respondent agrees to reimburse at least \$15,000.00 to the Board within the
17 first twelve (12) months of the approval and adoption of this Agreement, and that \$40,000.00 shall
18 be reimbursed to the Board within the first twenty-four (24) months of the approval and adoption of
19 this Agreement. No prepayment penalty or interest will be assessed on the costs to be paid except as
20 discussed in paragraph number nine (9).

21 (c) Respondent will sign a civil Confession of Judgment in favor of the Board in the amount
22 of \$100,000.00, which is to be tendered to the Board within seven (7) days of the acceptance and
23 adoption of this Agreement by the Board. The Confession of Judgment will be retained by the Board
24 and only enforced in a civil tribunal should Respondent default on the payment obligations
25 enunciated in this Agreement. Further, the failure of Respondent to tender the aforementioned

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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
proceeding, or any credentialing or privileges matter.

1 Confession of Judgment within the indicated time frame will be considered a material breach of this
2 Agreement and will void the Agreement in its entirety. Upon fulfillment of the reimbursement terms
3 by Respondent as outlined above, the Confession of Judgment shall be returned by the Board within
4 a reasonable time to Bryce Buckwalter, Esq.

5 (d) The Board and Respondent will enter into a separate "Mutual Release and Agreement for
6 Settlement" regarding the federal litigation brought by Respondent in this matter prior to the
7 acceptance of this Agreement by the Board. The "Release" will become effective immediately upon
8 the acceptance and adoption of this Agreement by the Board and will cause the associated federal
9 litigation brought by Respondent against the Board to be dismissed with prejudice.

10 (e) The terms of this Agreement shall be reported as required by law. Any required
11 reporting, including information to be posted on the Board's website, will be limited to the language
12 as contained in this settlement agreement and to be reviewed and pre-approved by Respondent and
13 his counsel along with Board counsel.

14 5. **Release From Liability.** In execution of this Agreement, Respondent, for himself,
15 his executors, successors and assigns, hereby releases and forever discharges the state of Nevada,
16 the Board, the Nevada Attorney General, and each of their members, agents and employees, in
17 their individual and representative capacities, from any and all manner of actions, causes of action,
18 suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law
19 or equity, that Respondent ever had, now has, may have or claim to have, against any or all of the
20 persons or entities named in this paragraph arising out of or by reason of this investigation, this
21 disciplinary action, this settlement or its administration. The Board likewise agrees to these same
22 terms and conditions as to release of liability pertaining to Respondent except under any default by
23 Respondent and limited to the remedies contained herein.

24 6. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
25 recommend approval and adoption of the terms, covenants and conditions contained herein by the
26 Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to
27 the Complaint. In the course of seeking Board approval, adoption and/or acceptance of this
28 Agreement, counsel for the IC may communicate directly with the Board staff and members of the

1 panel of the Board that would adjudicate this case if it were to go to hearing. Respondent
2 covenants and agrees that such contacts and communication may be made or conducted ex parte,
3 without notice or opportunity to be heard on his part or on the part of his counsel, and that such
4 contacts and communications may include, but not be limited to, matters concerning this
5 Agreement, the Complaint, the allegations in the Complaint any and all evidence, that may exist in
6 support of the Complaint, and any and all information of every nature whatsoever related to the
7 Complaint or the proceedings herein against Respondent.

8 7. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
9 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will
10 enter herein an order consistent with the terms noted in paragraph 4 above.

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


21 9. **Binding Effect.** Provided that this Agreement is approved by the Board,
22 Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon
23 Respondent and the Board's IC, which contract may be enforced in a court or tribunal having
24 jurisdiction. Further, failure to comply with the terms recited herein may result in additional
25 disciplinary action being initiated against Respondent for a violation of an order of the Board in
26 accordance with NRS 630.3065(2)(a). Additionally, any failure to pay the costs and fees ordered
27 herein may also result in such legal action as determined to be necessary to collect any unpaid
28 costs and fees and any court-authorized award of interest on those costs and fees.


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


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

8 Dated this 5th day of Sept., 2012.

Dated this 31st day of August, 2012.

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10 By: 
11 Edward O. Cousineau, Esq.
12 Deputy Executive Director and
13 Attorney for the Investigative Committee
14 of the Nevada State Board of Medical Examiners

By: 
Bryce B. Buckwalter, Esq.
Attorney for Respondent

15 By: 
16 Bradley O. Van Ry, Esq.
17 General Counsel and
18 Attorney for the Investigative Committee
19 of the Nevada State Board of Medical Examiners

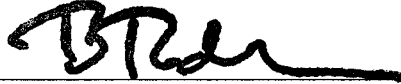
By: 151
Jacob L. Hafter, Esq.
Attorney for Respondent

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21 UNDERSTOOD AND AGREED:

22
23 _____
Kevin R. Buckwalter, M.D., Respondent

24 Dated this _____ day of _____, 2012.
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1 **IT IS HEREBY ORDERED** that the foregoing Settlement Agreement is approved and accepted by the
2 Nevada State Board of Medical Examiners on the 7th day of September 2012, with the final total
3 amount of costs due of \$100,000.00.

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