BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

Case No. 08-12069-1

FILED
SEP 11 2012
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By: ________

SETTLEMENT AGREEMENT

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

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

WHEREAS, Respondent received and reviewed a copy of the Complaint, understands it, and consulted with competent counsel, Bryce B. Buckwalter, Esq. and Jacob Hafter, Esq. concerning the nature and significance of the Complaint, and Respondent is fully advised concerning his rights and defenses to the Complaint as well as the possible sanctions that may be imposed if the Board
finds and concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act; and

WHEREAS, Respondent understands and agrees that he has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the MPA and NRS Chapter 233B (Nevada Administrative Procedures Act) including, but not limited to, the right to a formal hearing on the charges against him, the right to representation by counsel in the preparation and presentation of his defense, the right to confrontation and cross-examination of witnesses against him, the right to written findings, conclusions of law 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

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

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, and that the IC will present this Agreement to the Board for consideration in open session at the regular meeting of the Board, and that the IC shall advocate approval of this Agreement by the Board, but that the Board has the right to decide in its own discretion whether or not to approve this Agreement; and

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

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

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

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

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

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

4. **Consent to Entry of Order.** Respondent concedes only that the Board has sufficient evidence to proceed with its Complaint against him, but does not concede or admit to such allegations, which he expressly denies, and which, but for his desire to reach this compromise, he would contest at the formal hearing of this matter. Further, in recognition of Respondent’s significant continuing medical education training since the filing of the underlying
Complaint and in order to resolve the matter without incurring further costs and expense of providing a defense to the Complaint or to any other further amended complaint, and in exchange for the waiver of the Respondent’s foregoing rights, Respondent has entered into this Agreement.

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

(a) Receive a public reprimand;

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

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

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

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

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

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

6. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall recommend approval and adoption of the terms, covenants and conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the Complaint. In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff and members of the
panel of the Board that would adjudicate this case if it were to go to hearing. Respondent
covenants and agrees that such contacts and communication may be made or conducted ex parte,
without notice or opportunity to be heard on his part or on the part of his counsel, and that such
contacts and communications may include, but not be limited to, matters concerning this
Agreement, the Complaint, the allegations in the Complaint any and all evidence, that may exist in
support of the Complaint, and any and all information of every nature whatsoever related to the
Complaint or the proceedings herein against Respondent.

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

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

9. **Binding Effect.** Provided that this Agreement is approved by the Board,
Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon
Respondent and the Board’s IC, which contract may be enforced in a court or tribunal having
jurisdiction. Further, failure to comply with the terms recited herein may result in additional
disciplinary action being initiated against Respondent for a violation of an order of the Board in
accordance with NRS 630.3065(2)(a). Additionally, any failure to pay the costs and fees ordered
herein may also result in such legal action as determined to be necessary to collect any unpaid
costs and fees and any court-authorized award of interest on those costs and fees.
10. **Forum Selection Clause.** Respondent covenants and agrees that in the event either party is required to seek enforcement of this Agreement in the district court, he consents to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

11. **Attorney’s 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 reasonable costs and attorneys’ fees.

Dated this 5th day of September, 2012. Dated this 31st day of August, 2012.

By: [Signature]
Edward O. Cousineau, Esq.
Deputy Executive Director and Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners

By: [Signature]
Bryce B. Buckwalter, Esq.
Attorney for Respondent

By: [Signature]
Bradley O. Van Ry, Esq.
General Counsel and Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners

By: [Signature]
Jacob L. Hafter, Esq.
Attorney for Respondent

**UNDERSTOOD AND AGREED:**

Kevin R. Buckwalter, M.D., Respondent

Dated this _____ day of ______________, 2012.
10. **Forum Selection Clause.** Respondent covenants and agrees that in the event either party is required to seek enforcement of this Agreement in the district court, he consents to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District Court of the State of Nevada in and for the County of Washoe.

11. **Attorney’s 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 reasonable costs and attorneys’ fees.

Dated this ___ day of ____________, 2012. Dated this ___ day of ____________, 2012.

By: ___________________________________________ By: ________________________________
Deputy Executive Director and Attorney for the Investigative Committee
Attorney for the Nevada State Board of Medical Examiners

By: ___________________________________________ By: ________________________________
Bradley O. Van Ry, Esq. Jacob L. Hafter, Esq.
General Counsel and Attorney for the Investigative Committee
Attorney for the Nevada State Board of Medical Examiners

UNDERSTOOD AND AGREED:

Kevin R. Buckwalter, M.D., Respondent

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

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