

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

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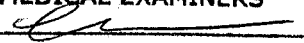
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6 **In the Matter of Charges and**)
7 **Complaint Against**)
8 **ALFREDO A. HIBBERT, P.A.-C,**)
9 **Respondent.**)

Case No. 12-287-1

FILED

MAR 11 2013

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

11
12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
14 (IC) of the Nevada State Board of Medical Examiners (Board), composed at the time of filing the
15 formal Complaint of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF,
16 Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through
17 its counsel, Erin L. Albright, Esq., Board Deputy General Counsel and attorney for the IC, and
18 Alfredo A. Hibbert, P.A.-C. (Respondent), by and through his counsel, Maria Nutile, Esq., as
19 follows:

20 **WHEREAS**, on September 20, 2012, the Board's IC filed a formal Complaint in the
21 above-captioned matter charging Respondent with engaging in conduct that is grounds for
22 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the
23 Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), to wit: Count I:
24 thirteen (13) counts of falsifying health care records, thirteen (13) violations of NAC
25 630.230(1)(a); Count II: thirteen (13) counts of administering, dispensing or possessing any
26 controlled substance otherwise than in the course of legitimate medical services or as authorized
27 by law and the supervising physician, thirteen (13) violations of NAC 630.380(1)(h); Count III:
28 thirteen (13) counts of engaging in conduct that is intended to deceive and/or violates a regulation

1 adopted by the State Board of Pharmacy, thirteen (13) violations of NRS 630.306(2)(a) and (c);
2 Count IV: thirteen (13) counts of disobeying any provision of the State Board of Pharmacy or
3 NAC 630.010 et seq., thirteen (13) violations of NAC 630.380(1)(g); and Count V: thirteen (13)
4 counts of prescribing a drug to a patient with whom the prescribing practitioner does not have a
5 bona fide therapeutic relationship, thirteen (13) violations of NRS 630.306(2)(c) referencing NAC
6 639.945(1)(o) & (3); and

7 **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,
8 understands it, and consulted with competent counsel, Maria Nutile, Esq., concerning the nature
9 and significance of the formal Complaint. Respondent is fully advised concerning his rights and
10 defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the
11 Board finds and concludes that he violated one or more provisions of the
12 MPA; and

13 **WHEREAS**, Respondent understands and agrees that he has certain rights under the
14 United States Constitution and the Constitution of the state of Nevada, as well as under the MPA
15 and the Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to,
16 the right to a formal hearing on the charges against him, the right to representation by counsel in
17 the preparation and presentation of his defense, the right to confront and cross-examine the
18 witnesses against him, the right to written findings, conclusions and an order regarding a final
19 decision by the Board, and the right to judicial review of any final decision by the Board that is
20 adverse to him; and

21 **WHEREAS**, Respondent understands and agrees that this Settlement Agreement
22 (Agreement) is entered into by and between himself and the Board's IC, and not with the Board,
23 but that the IC will present this Agreement to the Board for consideration in open session at a
24 meeting duly noticed and scheduled. Respondent understands that the IC shall advocate approval
25 of this Agreement by the Board, but that the Board has the right to decide in its own discretion
26 whether or not to approve this Agreement; and

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

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

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

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

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

16 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
17 and conditions contained herein, Respondent knowingly, willingly and intelligently, with the
18 advice of above-identified counsel, waives all rights in connection with this Agreement, and the
19 terms, covenants and conditions contained herein, and with the understanding that Respondent
20 knowingly, willingly and intelligently waives all rights arising under or pursuant to the
21 United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter 233B,
22 and any other statutory rights that may be available to him or that may apply to him in connection
23 with the proceedings on the formal Complaint filed herein, the defense of said formal Complaint,
24 the adjudication of the charges in said formal Complaint, and the imposition of sanctions.

25 Respondent agrees that the matter of the formal Complaint herein may be settled and
26 resolved in accordance with this Agreement without a hearing or any further proceedings, and
27 without the right to judicial review.

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1 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
2 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or
3 more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

4 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
5 proceedings pending against him without incurring any further costs and expense of providing a
6 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order
7 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, to
8 wit: thirteen (13) counts of falsifying health care records, thirteen (13) violations of
9 NAC 630.230(1)(a), as set forth in Count I of the formal Complaint, and thirteen (13) counts of
10 administering, dispensing or possessing any controlled substance otherwise than in the course of
11 legitimate medical services or as authorized by law and the supervising physician, thirteen (13)
12 violations of NAC 630.380(1)(h), as set forth in Count II of the formal Complaint.

13 For the aforementioned violations, Respondent shall:

14 a. Allow his license to be suspended, with said suspension stayed and that
15 Respondent shall be placed on probation for a period of thirty-six (36) months from the date of the
16 Board's acceptance, adoption and approval of this Agreement, with an obligation to comply with
17 the following terms and conditions:

18 (1) Respondent shall be prohibited from dispensing controlled
19 substances for a period of twelve (12) months from the date of the Board's
20 acceptance, adoption and approval of this Agreement;

21 (2) Respondent shall remain in compliance with all state and federal
22 laws pertaining to the practice of medicine and the prescribing, administering or
23 dispensing of any dangerous drug or controlled substance;

24 (3) Respondent shall obtain, if necessary, and maintain all appropriate
25 registrations and licenses with the DEA and the Nevada State Board of Pharmacy
26 to prescribe, administer or dispense any dangerous drugs or controlled substances;

27 (4) Respondent shall be required to report this Agreement to all of his
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1 supervising physicians during the period of probation and provide proof of such to
2 the Board;

3 b. Receive a public reprimand;

4 c. Pay a fine in the amount of Five Thousand Two Hundred Dollars and
5 00/100 (\$5,200.00) to the Board within twelve (12) months of the Board's acceptance, adoption
6 and approval of this Agreement;

7 d. Pursuant to NRS 622.400, Respondent shall reimburse the sum of
8 \$3,231.99, the current amount of the costs incurred by the Board to investigate and prosecute this
9 matter, along with the costs to conclude the matter, if any. A final accounting of the total costs
10 shall be provided to Respondent in the entry of the Board's Order relating to this matter. The
11 costs shall be paid to the Board within twelve (12) months of the Board's acceptance, adoption
12 and approval of this Agreement;

13 e. Counts III, IV, and V of the formal Complaint shall be dismissed; and

14 f. The terms of this Agreement shall be reported as required by law.

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

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

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1 Respondent acknowledges that such contacts and communication may be made or
2 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
3 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
4 and communications may include, but not be limited to, matters concerning this Agreement, the
5 formal Complaint, and any and all information of every nature whatsoever related to the formal
6 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
7 Respondent and/or his counsel may appear at the Board meeting where this Agreement is
8 discussed, and if requested, respond to any questions that may be addressed to the IC or its
9 counsel.

10 **8. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
11 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
12 IC will cause the Board's order accepting, adopting and approving this Agreement to be entered
13 herein, ordering full compliance with the terms herein and ordering that this case be closed,
14 subject to the provisions in Paragraph 5.

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

26 **10. Binding Effect.** If this Agreement is approved by the Board, Respondent
27 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
28 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.


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

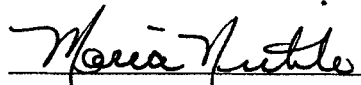
6 **12. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
7 action is commenced in the district court to enforce any provision of this Agreement, the
8 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

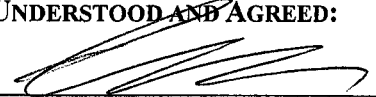
9 **13. Failure to Comply With Terms.** In the event the Board enters its order
10 approving, accepting and adopting this Agreement, should Respondent fail to comply with any
11 term or condition recited herein, the Board shall be authorized to immediately suspend
12 Respondent's license to practice medicine in the state of Nevada pending an order to show cause
13 hearing, which will be duly noticed and scheduled. Further, failure to comply with the terms
14 recited herein may result in additional disciplinary action being initiated against Respondent for a
15 violation of an order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure
16 of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement
17 may subject Respondent to civil collection efforts.

18 Dated this 17th day of February, 2013.

Dated this 13th day of February, 2013.

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20 By: 
21 Erin L. Albright, Esq.
22 Attorney for the Investigative Committee

By: 
23 Maria Nutile, Esq.
24 Attorney for Respondent

UNDERSTOOD AND AGREED:

25 Alfredo A. Hibbert, P.A.-C, Respondent
26 Dated this 13 day of 2, 2013.
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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 8th day of March 2013, with the final total amount of
3 costs due of \$3,231.99.

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