

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 **Complaint Against**    )  
8 **FRED J. FRICKE, JR., M.D.,**                                    )  
9    )  
10                                   **Respondent.**    )

Case No. 13-4742-1

**FILED**

**DEC 11 2013**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

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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 Erin L. Albright, Esq., Board General Counsel and attorney for the IC, and  
18 Fred J. Fricke, JR., M.D. (Respondent), as follows:

19                                   **WHEREAS**, on June 25, 2013, the Board's IC filed a formal Complaint in the above-  
20 captioned matter charging Respondent with engaging in conduct that is grounds for discipline  
21 pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the Nevada Revised  
22 Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC), to wit: Count I, one  
23 count of failure to maintain timely, legible, accurate and complete medical records relating to the  
24 diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1), and Count II, one  
25 count of malpractice as defined by NAC 630.040, a violation of NRS 630.301(4); and

26                                   **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,  
27 understands it, and has had the opportunity to consult with competent counsel concerning the

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OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners  
1105 Terminal Way #301  
Reno, Nevada 89502  
(775) 688-2559

1 nature and significance of the formal Complaint. Respondent is fully advised concerning his  
2 rights and defenses to the formal Complaint, as well as the possible sanctions that may be imposed  
3 if the Board finds and concludes that he violated one or more provisions of the MPA; and

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

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

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

21       **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the  
22 Board's IC in the above-captioned matter, Respondent and the IC hereby agree<sup>1</sup> to the following  
23 terms, covenants and conditions:

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27 <sup>1</sup> All agreements and admissions made by Respondent are solely for final disposition of this matter and any  
28 subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said  
agreements and 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 proceeding, any  
other state or federal court proceeding, or any credentialing or privileges matter.

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

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

6           Respondent acknowledges that he is not represented by counsel and wishes to proceed  
7 towards a resolution of this matter, as set forth in this Agreement, without counsel. Respondent  
8 understands and acknowledges that he may retain and consult counsel prior to entering into this  
9 Agreement. Respondent agrees that if counsel is retained for representation in this matter prior to  
10 entering into this Agreement, that counsel for the IC will be informed of such representation prior  
11 to Respondent executing this Agreement. Respondent covenants and agrees that he enters into  
12 this Agreement knowingly, willingly and intelligently.

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

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

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

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1           **5.     Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
2 proceedings pending against him without incurring any further costs and expense of providing a  
3 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order  
4 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA,  
5 and agrees that:

6           a.     The Board may find Respondent engaged in conduct that is grounds for  
7 discipline pursuant to the MPA, to wit: one count of failure to maintain timely, legible, accurate  
8 and complete medical records relating to the diagnosis, treatment and care of a patient, a violation  
9 of NRS 630.3062(1), as set forth in Count I of the formal Complaint;

10          b.     Respondent shall pay a fine of Two Thousand Five Hundred and 00/100  
11 Dollars (\$2,500.00) to the Board within sixty (60) days of the Board's acceptance, adoption and  
12 approval of this Agreement;

13          c.     Respondent shall complete ten (10) hours of Continuing Medical Education  
14 (CME), in person, regarding the subject of septic shock and/or acute renal failure, within one year  
15 of the acceptance, adoption and approval of this Agreement by the Board. The aforementioned  
16 hours of CME shall be in addition to any CME requirements that are regularly imposed upon  
17 Respondent as a condition of licensure in the state of Nevada and shall be approved by the Board  
18 prior to their completion;

19          d.     Pursuant to NRS 622.400, Respondent shall reimburse the sum of  
20 \$1,667.17 the current amount of the fees and costs incurred by the Board to investigate and  
21 prosecute this matter, along with the costs to conclude the matter, if any. The costs shall be paid  
22 to the Board within sixty (60) days of the Board's acceptance, adoption and approval of this  
23 Agreement;

24          e.     Count II of the formal Complaint shall be dismissed;

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

26           **6.     Release From Liability.** In execution of this Agreement, the Respondent, for  
27 himself, his executors, successors and assigns, hereby releases and forever discharges the state of  
28 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and

1 employees in their representative capacities, and in their individual capacities, from any and all  
2 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands  
3 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have  
4 or claim to have, against any or all of the persons or entities named in this paragraph arising out  
5 of, or by reason of, this investigation, this Agreement or its administration.

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

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

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

25       9.     **Effect of Rejection of Agreement by Board.** In the event the Board does not  
26 accept, approve and adopt the terms, covenants and conditions set out in this Agreement, this  
27 Agreement shall be null, void, and of no further force and effect except as to the following  
28 covenant and agreement regarding disqualification of adjudicating Board panel members.

1 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing  
2 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek  
3 acceptance and adoption of this Agreement by the Board shall disqualify any member of the  
4 adjudicating panel of the Board from considering the charges against Respondent and  
5 participating in the disciplinary proceedings in any role, including adjudication of the case.  
6 Respondent further agrees that he shall not seek to disqualify any such member absent evidence of  
7 bad faith.

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

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

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

18       **13. Failure to Comply With Terms.** In the event the Board enters its order approving  
19 this Agreement, should Respondent fail to comply with any term or condition recited herein, the  
20 Board shall be authorized to immediately suspend Respondent's license to practice medicine in  
21 the state of Nevada pending an order to show cause hearing, which will be duly noticed.  
22 Further, failure to comply with the terms recited herein may result in additional disciplinary action  
23 being initiated against Respondent for a violation of an order of the Board in accordance with

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OFFICE OF THE GENERAL COUNSEL,  
Nevada State Board of Medical Examiners  
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Reno, Nevada 89502  
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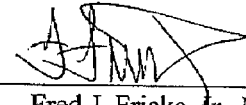
NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

Dated this 19<sup>th</sup> day of November, 2013.

Dated this 19<sup>th</sup> day of November, 2013.

UNDERSTOOD AND AGREED:

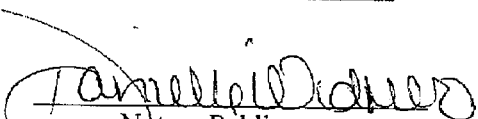
By:   
Erin L. Albright, Esq.  
Attorney for the Investigative Committee

By:   
Fred J. Fricke, Jr., M.D.  
Respondent

STATE OF NEVADA            )  
                                  E1120            :ss.  
COUNTY OF WASHOE        )

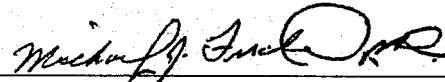
SUBSCRIBED and SWORN to before me  
by Fred J. Fricke, Jr., M.D.

This 19<sup>th</sup> day of November, 2013.

  
Notary Public



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 6<sup>th</sup> day of December 2013, with the final total amount  
3 of costs due of \$1,667.17.

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6 Michael J. Fischer, M.D., President  
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS  
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