

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

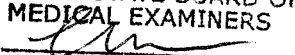
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6 **In the Matter of Charges and**)
7 **Complaint Against**)
8 **JOSEPH C. EMPEY, M.D.,**)
9 **Respondent.**)

Case No. 13-38678-1

FILED

SEP 06 2013

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

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12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of the
14 Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D.,
15 Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., by and through
16 Edward O. Cousineau, Esq., Deputy Executive Director for the Board and counsel for the IC, and
17 Joseph C. Empey, M.D. (Respondent), as follows:

18 **WHEREAS**, on January 10, 2013, the Board's IC filed a formal Complaint in the above-
19 referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to
20 the Medical Practice Act, Nevada Revised Statutes (NRS) Chapter 630, to wit: a one-count violation
21 of NRS 630.301(3), more specifically, any disciplinary action, including, without limitation, the
22 revocation, suspension, modification or limitation of a license to practice any type of medicine by any
23 other jurisdiction; and a one-count violation of NRS 630.306(11), more specifically, the failure by a
24 licensee to report in writing, within 30 days, any disciplinary action taken against the licensee by
25 another state; and

26 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands it, and
27 has been afforded the opportunity to consult with counsel concerning the nature and significance of the
28 Complaint, and Respondent fully understands his rights and defenses regarding the Complaint, as well as

1 the possible sanctions that may be imposed if the Board finds and concludes that he has engaged in
2 conduct that is grounds for discipline pursuant to the Medical Practice Act; and

3 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United States
4 Constitution and the constitution of the state of Nevada, as well as under the Medical Practice Act
5 (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not
6 limited to the right to a formal hearing on the charges against him, the right to representation by counsel in
7 the preparation and presentation of his defense, the right to confrontation and cross-examination of
8 witnesses against him, the right to written findings of fact, 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 adverse to
10 him; and

11 **WHEREAS**, Respondent, based upon his understanding of the relevant facts and circumstances,
12 and subject to the conditions set forth in this Agreement, desires to waive all of his rights under the United
13 States Constitution, the constitution of the state of Nevada, the Medical Practice Act and the Nevada
14 Administrative Procedures Act, including but not limited to the right to a hearing on the charges and a
15 written findings of fact, conclusions of law and order, and he desires to settle and resolve this matter of the
16 formal 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, but that the IC will present this Agreement to
19 the Board for consideration in open session at a regular meeting duly noticed and scheduled, and that the
20 IC will advocate approval of this Agreement by the Board, but that the Board has the right to decide in its
21 own discretion whether or not to approve this Agreement; and

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

25 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the terms,
26 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below
27 shall not be binding and enforceable upon him except the provisions as to disqualification of adjudicating

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1 panel members in paragraph number 8, and he will be provided with an opportunity to defend himself
2 against the charges against him at a regularly scheduled hearing in accordance with all applicable laws.

3 **NOW, THEREFORE**, in order to resolve the pending Complaint and charges brought against him
4 by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
5 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 to
8 jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act and to
9 impose sanctions as provided by the Act.

10 2. **Representation by Counsel**. Respondent is not represented by counsel, but he
11 acknowledges that he is fully advised in these circumstances, and further covenants and agrees that he
12 enters into this Agreement knowingly, willingly and intelligently.

13 3. **Waiver of Rights**. In connection with this Agreement, and the terms, covenants and
14 conditions contained herein, Respondent knowingly, voluntarily and intelligently waives all rights arising
15 under or pursuant to the United States Constitution, the constitution of the state of Nevada,
16 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in
17 connection with the proceedings on the Complaint filed herein, the defense of said Complaint, the
18 adjudication of the charges in said Complaint, and the imposition of sanctions, and Respondent agrees that
19 the matter of the disciplinary action commenced by the Complaint herein may be settled and resolved in
20 accordance with this Agreement without a hearing or any further proceeding, and without the right to
21 judicial review.

22 4. **Consent to Entry of Order**. In order to resolve the matter of these disciplinary
23 proceedings pending against him without any further costs and expense of providing a defense to the
24 Complaint, Respondent hereby agrees, and does not contest, that an order may be entered herein by the
25 Board finding that there is evidence Respondent has engaged in conduct that is grounds for discipline
26 pursuant to the Medical Practice Act, to wit: the disciplinary action related to Respondent's license to
27 practice medicine in the state of Utah, as explained in the underlying Complaint, constitutes a violation
28 of the provisions of NRS 630.301(3). For this violation, Respondent shall be publicly reprimanded.

1 Additionally, Respondent shall reimburse the Board the reasonable costs and expenses incurred in the
2 investigation and prosecution of this case in the current amount of \$842.32, plus any additional costs that
3 may be accrued subsequent in the disposition of this matter. The aforementioned costs are to be paid to
4 the Board within sixty (60) days of the acceptance, adoption and approval of this Agreement by the
5 Board. A final accounting of any additional costs will be provided to Respondent in the entry of the
6 Board's order relating to the matter.

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

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

26 7. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
27 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will enter

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1 an order consistent with the terms noted previously in paragraph number 4, and dismissing the
2 underlying Complaint.

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

13 9. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and
14 enforceable contract upon Respondent and the Board's IC, which contract may be enforced in a court or
15 tribunal having jurisdiction. Further, failure to comply with the terms recited herein may result in
16 additional disciplinary action being initiated against Respondent for violation of an order of the Board
17 in accordance with NRS 630.3065(2)(a). Additionally, failure to pay any cost ordered herein may also
18 result in such legal action as determined to be necessary to collect the unpaid fee or cost.

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 District
22 Court of the state of Nevada in and for the county of Washoe.

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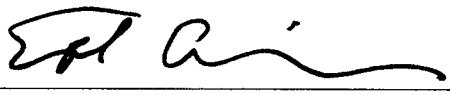
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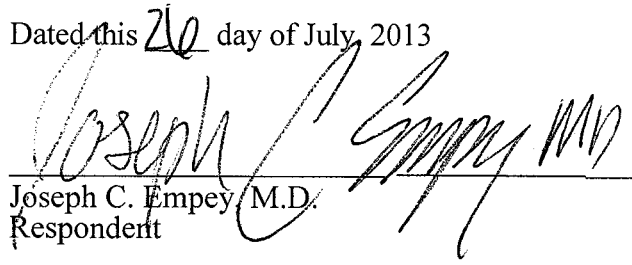
1 11. Attorneys' Fees and Costs. Respondent covenants and agrees that in the event an
2 action is commenced in the district court to enforce any provision of this Agreement, the prevailing
3 party shall be entitled to recover reasonable costs and attorneys' fees.

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5 Dated this 5th August day of August, 2013.

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8 Edward O. Cousineau, Esq.
9 Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners

Dated this 26 day of July, 2013

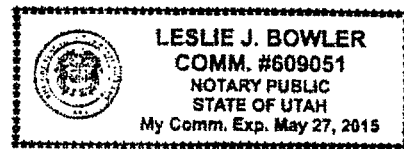


Joseph C. Empey, M.D.
Respondent

SUBSCRIBED and SWORN to before me

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11 this 26 day of July, 2013.

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14 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 6th day of September 2013, with the final total
3 amount of costs due of \$842.32.



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

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