


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

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6 **In the Matter of Charges and** ) **Case No. 12-4518-1**  
7 )  
8 **Complaint Against** ) **FILED**  
9 ) **SEP 06 2013**  
10 **THEODORE M. THORP, M.D.,** )  
11 **Respondent.** )  
NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

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 First Amended Complaint of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN,  
16 RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter,  
17 by and through Erin L. Albright, Esq., Board Deputy General Counsel and attorney for the IC, and  
18 Theodore M. Thorp, M.D. (Respondent), by and through his counsel, Matthew J. Peirce, Esq., as  
19 follows:

20 **WHEREAS**, on May 13, 2013, the Board's IC filed a formal First Amended Complaint in  
21 the 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 Nevada  
23 Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC), to wit:  
24 Count I, two counts of failure to adequately supervise a physician assistant, two violations of NAC  
25 630.230(1)(i); Count II, two counts of engaging in unprofessional conduct, two violations of NRS  
26 630.306(16); Count III, one count of failure to adequately supervise a medical assistant, a  
27 violation of NRS 630.306(18); and Count IV, one count of signing a blank prescription form, a  
28 violation of NRS 630.304(4); and

1           **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,  
2 understands it, and consulted with competent above-identified counsel concerning the nature and  
3 significance of the formal Complaint. Respondent is fully advised concerning his rights and  
4 defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the  
5 Board finds and concludes that he violated one or more provisions of the  
6 MPA; and

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

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

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

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

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28 <sup>1</sup> All agreements and 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  
agreements and admissions by Respondent are not intended or made for any other use, such as in the context of

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  
3 state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations  
4 of the MPA, and to impose sanctions as provided by the MPA.

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

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

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

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

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

25          **5.     Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
26 proceedings pending against him without incurring any further costs and expense of providing a  
27 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order

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another state or federal government regulatory agency proceeding, state or federal civil or criminal proceeding, or any  
other state or federal court proceeding, or any credentialing or privileges matter.

1 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA,  
2 and agrees that:

3 a. The Board may find Respondent engaged in conduct that is grounds for  
4 discipline pursuant to the MPA, to wit: one count of failure to adequately supervise a physician  
5 assistant, a violation of NAC 630.230(1)(i), as set forth in Count I of the formal Complaint; one  
6 count of failure to adequately supervise a medical assistant, a violation of NRS 630.306(16), as set  
7 forth in Count III of the formal Complaint; and one count of signing a blank prescription form, a  
8 violation of NRS 630.304(4), as set forth in Count IV of the formal Complaint;

9 b. Respondent shall be issued a public reprimand;

10 c. Respondent shall pay a fine of Five Thousand Dollars and 00/100  
11 (\$5,000.00) to the Board within ninety (90) days of the Board's acceptance, adoption and approval  
12 of this Agreement;

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

19 (10) e. Respondent shall complete ten (10) hours of community service in a  
20 medically related field;

21 f. Pursuant to NRS 622.400, Respondent shall reimburse the sum of  
22 \$2,678.36, the current amount of the costs incurred by the Board to investigate and prosecute this  
23 matter, along with the costs to conclude the matter, if any. A final accounting of the total costs  
24 shall be provided to Respondent in the entry of the Board's order relating to this matter. The costs  
25 shall be paid to the Board within ninety (90) days of the Board's acceptance, adoption and  
26 approval of this Agreement;

27 g. One of the two counts of failure to adequately supervise a physician  
28 assistant as set forth in Count I of the formal Complaint shall be dismissed;

1           h.     One of the two counts of failure to adequately supervise a medical assistant  
2 as set forth in Count III of the formal Complaint shall be dismissed;

3           i.     Count II of the formal Complaint shall be dismissed;

4           j.     Respondent shall remain in compliance with all state and federal laws  
5 pertaining to the practice of medicine and the prescribing, administering or dispensing of any  
6 dangerous drug or controlled substance; and

7           k.     The terms of this Agreement shall be reported as required by law.

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

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

21           Respondent acknowledges that such contacts and communication may be made or  
22 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his  
23 counsel until the public Board meeting where this Agreement is discussed, and that such contacts  
24 and communications may include, but not be limited to, matters concerning this Agreement, the  
25 formal Complaint, and any and all information of every nature whatsoever related to the formal  
26 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that  
27 Respondent and/or his counsel may appear at the Board meeting where this Agreement is

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1 discussed, and if requested, respond to any questions that may be addressed to the IC or its  
2 counsel.

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

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

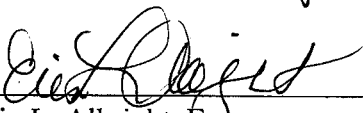
19           **10.   Binding Effect.** If this Agreement is approved by the Board, Respondent  
20 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent  
21 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

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


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

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


9  
10 Dated this 13<sup>th</sup> day of August, 2013.

11  
12 By:   
13 Erin L. Albright, Esq.  
14 Attorney for the Investigative Committee

Dated this 14 day of AUG., 2013.

15 By:  810  
16 Dan Winder, Esq.  
17 Attorney for Respondent

18 **UNDERSTOOD AND AGREED:**

19   
20 Theodore M. Thorp, M.D., Respondent  
21 Dated this 13<sup>th</sup> day of Aug, 2013.

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 September 2013, with the final total  
3 amount of costs due of \$2,678.36.

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