

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

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6 **In the Matter of the Investigation of**)

Case No. 14-30193-1

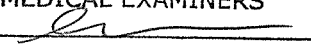
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7 **FILED**

8 **ANDREW S. MARTIN, M.D.,**)

)
9 **DEC - 8 2014**

10 **License No. 11416**)

)
11 **NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

12 **By:** 

13 **SETTLEMENT AGREEMENT**

14 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
15 (IC) of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt,
16 M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned
17 matter, by and through Erin L. Albright, Esq., Board General Counsel and attorney for the IC, and
18 Andrew S. Martin, M.D. (Respondent), by and through his counsel, John H. Cotton, Esq., as
19 follows:

20 **WHEREAS**, on September 23, 2014, the Board's IC filed an Order of Summary
21 Suspension pursuant to Nevada Revised Statute (NRS) section 630.326 in the above-captioned
22 matter after reviewing evidence and information which demonstrated that on or about September
23 20, 2014, Las Vegas Metropolitan Police Department executed a search warrant on Respondent's
24 personal residence, which resulted in the following illicit drugs being confiscated: cocaine,
25 hallucinogenic mushrooms and methylenedioxymethamphetamine. Pursuant to the Order of
26 Summary Suspension, Respondent underwent an alcohol and drug evaluation performed by Peter
27 Mansky, M.D. Based on the evaluation, Respondent enrolled in in-patient treatment at the Betty
28 Ford Center in California. On or about November 7, 2014, Respondent was discharged from the
Betty Ford Center with the recommendation that he enroll in a medical professionals monitoring
program, enroll in intensive outpatient treatment, abstain from mood altering/addictive substances,

1 attend daily 12-step meetings for (90) days with a minimum of three (3) meetings a week
2 thereafter, select and actively work with a 12-step sponsor, attend caduceus meetings, participate
3 in International Doctors in Alcoholics Anonymous and active participation in Respondent's Betty
4 Ford Center Continuing Care program; and

5 **WHEREAS**, Respondent received a copy of the Order of Summary Suspension, reviewed
6 it, understands it, and consulted with competent, above-identified counsel concerning the nature
7 and significance of the Order of Summary Suspension. Respondent is fully advised concerning
8 his rights and defenses to the Order of Summary Suspension; and

9 **WHEREAS**, Respondent understands and agrees that had the IC filed a complaint alleging
10 any violation of the Nevada Medical Practice Act (MPA), i.e., NRS Chapter 630 and Nevada
11 Administrative Code (NAC) Chapter 630, he would have certain rights under the United States
12 Constitution and the Constitution of the state of Nevada, as well as under the MPA and the
13 Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to, the
14 right to a formal hearing on the allegations against him, the right to representation by counsel in
15 the preparation and presentation of his defense, the right to confront and cross-examine the
16 witnesses against him, the right to written findings, conclusions and an order regarding a final
17 decision by the Board, and the right to judicial review of any final decision by the Board that is
18 adverse to him; and

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

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

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1 **NOW THEREFORE**, in order to resolve this matter and all charges, if any, alleged by the
2 Board's IC in the above-captioned matter, Respondent and the IC hereby agree¹ to the following
3 terms, covenants and conditions:

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

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

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

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

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

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27 _____
28 ¹ 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
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 **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 may be grounds for discipline pursuant to the provisions of the
4 MPA.

5 **5. Consent to Entry of Order.** In order to resolve the matter of the summary
6 suspension currently in place against him without incurring any further costs and expense of
7 providing a defense to the Order of Summary Suspension,; Respondent agrees to allow his license
8 to practice medicine in the state of Nevada to be suspended, with said suspension stayed and
9 Respondent placed on probation for a period of twenty-four (24) months from the date of the
10 Board's acceptance, adoption and approval of this Agreement, with an obligation to comply with
11 the following terms and conditions:

12 a. The summary suspension of Respondent's license to practice medicine in
13 the state of Nevada shall be lifted on December 5, 2014 and Respondent's licensure status
14 shall be reinstated to the appropriate licensing status;

15 b. Respondent shall enroll in a medical professionals' monitoring program and
16 intensive outpatient treatment program within fourteen (14) days of the Board's
17 acceptance, adoption and approval of this Agreement;

18 c. Within fourteen (14) days of his enrollment in a medical professionals'
19 monitoring program and an intensive outpatient treatment program, Respondent shall
20 execute a HIPAA compliant release in favor of the Board to allow the medical
21 professionals monitoring program and the intensive outpatient treatment program to
22 directly provide the Board's Compliance Officer with status reports regarding
23 Respondent's program;

24 d. Respondent shall remain in compliance with all terms of his participation
25 contracts with the medical professionals' monitoring program and the intensive outpatient
26 program during the term his probation;

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1 e. Respondent shall complete in full any participation contract entered into
2 with a medical professionals' monitoring program and an intensive outpatient treatment
3 program;

4 f. Respondent shall submit to random hair and urine screens at his own expense
5 when requested by an employee of the Board. Any test that is positive for alcohol, controlled
6 substances or dangerous drugs, other than prescribed by a treating physician or dentist, shall
7 be considered a violation of this Agreement. Failure to comply with any such request shall be
8 deemed to be an automatic positive test;

9 g. Should Respondent be prescribed any controlled substances or dangerous
10 drugs as defined in NRS 453.3615, by a treating physician or dentist, Respondent shall
11 provide documentation from the treating physician or dentist to the Board's Compliance
12 Officer with seventy-two (72) hours of the prescription or within ninety-six (96) hours should
13 the prescription be provided on a weekend;

14 h. Respondent shall inform any and all employers of the terms of this Agreement
15 during the term of his probation;

16 i. Respondent shall complete forty (40) hours of community service related to
17 the practice of medicine, preferably within the school system or a community clinic, within
18 six (6) months of the date of acceptance of this Agreement by the Board. Respondent shall
19 submit a plan outlining his intended community service and shall submit said plan for
20 approval to the Compliance Officer within thirty (30) days of the date of acceptance of this
21 agreement;

22 j. Respondent shall provide to the Board's Compliance Officer the best method
23 to contact him and shall maintain a current address and phone number with the Compliance
24 Officer;

25 k. Respondent shall not violate any laws or regulations of the state of Nevada
26 during the period of his probation and Respondent shall remain in compliance with all
27 federal laws pertaining to the practice of medicine and the prescribing, administering or
28 dispensing of any dangerous drug or controlled substance during the term of his probation;

1 l. Respondent shall abstain from any and all mood altering/addictive
2 substances during the term of his probation, with the exception of mood altering/addictive
3 substances prescribed by a treating physician or dentist;

4 m. For ninety (90) days after the Board's acceptance, adoption and approval of
5 this Agreement, Respondent shall attend daily 12-step meetings. After ninety (90) days,
6 Respondent shall attend a minimum of three (3) meetings per week. On the fifth day of
7 every month, Respondent shall submit proof of his prior month's attendance at 12-step
8 meetings directly to the Board's Compliance Officer;

9 n. Within fourteen (14) days of the Board's acceptance, adoption and approval
10 of this Agreement, Respondent shall select and actively work with a 12-step sponsor to
11 support his endeavors at sobriety;

12 o. Respondent shall attend a Caduceus meeting at least two (2) times per
13 month. On the fifth day of every month, Respondent shall submit proof of his prior
14 month's attendance at the Caduceus meetings directly to the Board's Compliance Officer;

15 p. Within fourteen (14) days of the Board's acceptance, adoption and approval
16 of this Agreement, Respondent shall join and participate in International Doctors in
17 Alcoholics Anonymous;

18 q. Respondent shall comply with the terms of his continuing care program
19 outlined by the Betty Ford Center. Within fourteen (14) days of the Board's acceptance,
20 adoption and approval of this Agreement, Respondent shall provide the Board's
21 Compliance Officer with a copy of his continuing care program outlined by the Betty Ford
22 Center;

23 r. Respondent shall be solely responsible for any costs and fees associated
24 with his compliance with all terms and conditions of this Agreement;

25 s. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum
26 of One Thousand Four Hundred Fifty-Seven and 10/100 Dollars (\$1,457.19), the current
27 amount of the costs incurred by the Board to investigate and prosecute this matter, along
28 with the costs to conclude the matter, if any. The costs shall be paid to the Board within

1 twelve (12) months of the Board's acceptance, adoption and approval of this Agreement;
2 and

3 t. If the IC finds that Respondent has violated any terms or conditions of this
4 Agreement, it may immediately summarily suspend Respondent's license to practice
5 medicine in Nevada and shall set a date for a hearing to be held within forty-five (45) days
6 to determine whether the summary suspension of Respondent's license to practice
7 medicine in the state of Nevada shall remain in effect.

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 for 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 Order of Summary Suspension currently in effect against Respondent.
19 In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel
20 for the IC may communicate directly with the Board staff and the adjudicating members of the
21 Board.

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

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

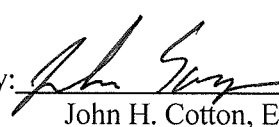
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13. Failure to Comply With Terms. Failure to comply with the terms recited herein may result in disciplinary action being initiated against Respondent for a violation of an order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure 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 1st day of December, 2014.

Dated this 25th day of November, 2014.

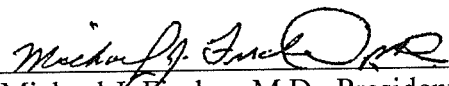
By: 
Erin L. Albright, Esq.
Attorney for the Investigative Committee

By:  #11455 for
John H. Cotton, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:
Dated this 25 day of NOV, 2014.


Andrew S. Martin, M.D., Respondent

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 5th day of December 2014, with the final total
3 amount of costs due of \$1,457.19.

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