

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

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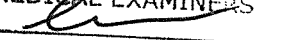
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6 **In the Matter of Charges and** )  
7 **Complaint Against** )  
8 **BRIAN E. GRACE, PA-C,** )  
9 **Respondent.** )  
10 \_\_\_\_\_ )  
11

Case No. 14-25576-1

**FILED**

SEP - 5 2014

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 of Beverly A. Neyland,  
15 M.D., Mrs. Sue Lowden, and Bashir Chowdhry, M.D., by and through Edward O. Cousineau, Esq.,  
16 Deputy Executive Director for the Board, and Brian E. Grace, PA-C (Respondent), by and through  
17 his counsel, Marie Ellerton, Esq., as follows:

18 **WHEREAS**, on or about May 20, 2014, the IC filed a formal Complaint in the above-  
19 referenced matter, charging Respondent with violations of Nevada's Medical Practice Act (Chapters  
20 630 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code), to wit: a three-count  
21 violation of NRS 630.3062(1); and

22 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands the  
23 nature and significance of the Complaint, and Respondent is fully advised concerning his rights and  
24 defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board finds  
25 and concludes that he has violated one or more provisions of the Medical Practice Act; and

26 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United  
27 States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice  
28 Act and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to

1 the right to a formal hearing on the charges against him, the right to representation by counsel in the  
2 preparation and presentation of his defense, the right to confrontation and cross-examination of  
3 witnesses against him, the right to present evidence and witnesses on his own behalf, the right to  
4 written findings, conclusions and order regarding a final decision by the Board, and the right to  
5 judicial review of any final decision by the Board that is adverse to him; and

6         **WHEREAS**, provided this Agreement is approved by the Board, Respondent agrees to waive  
7 all of his rights under the United States Constitution, the Constitution of the state of Nevada, the  
8 Medical Practice Act, and the Nevada Administrative Procedures Act, including but not limited to the  
9 right to a hearing on the charges and written findings of fact, conclusions of law and order, and he  
10 agrees to settle and resolve this matter of the formal Complaint against him by way of, and in  
11 accordance with, this Settlement Agreement; and

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

17         **WHEREAS**, Respondent and the IC each understand and agree that if the Board approves  
18 the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions  
19 enumerated below shall be binding and enforceable upon Respondent and the Board's IC.

20         **NOW THEREFORE**, in order to resolve the above-captioned case and the charges brought  
21 against Respondent by the Board's IC in said matter, Respondent and the IC hereby agree to the  
22 following terms, covenants and conditions:

23         1.         **Jurisdiction.** Respondent is, and at all times mentioned in the Complaint filed in the  
24 above-captioned matter was, a physician assistant licensed to practice medicine in the state of Nevada  
25 subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical  
26 Practice Act (NRS 630), and to impose sanctions as provided by the Act.

27         2.         **Representation by Counsel.** Respondent is represented by counsel named herein,  
28 whom Respondent covenants and agrees is fully capable, competent and fully advised in these

1 circumstances, and Respondent further covenants and agrees that he enters into this Agreement  
2 knowingly, willingly, and intelligently, after full consultation with and upon the advice of said  
3 counsel.

4 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and  
5 conditions contained herein, Respondent knowingly, willingly and intelligently waives all rights  
6 arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada,  
7 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in  
8 connection with the proceeding on the Complaint filed herein, the defense of said Complaint and the  
9 adjudication of the charges in said Complaint, and Respondent further agrees that the matter of the  
10 disciplinary action commenced by the Complaint herein may be settled and resolved in accordance  
11 with this Agreement without a hearing or any further proceeding, and without the right to judicial  
12 review.

13 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and  
14 agrees that the Board's IC had a reasonable basis to believe that Respondent engaged in one or more  
15 instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice  
16 Act. All admissions made by Respondent are solely for final disposition of this matter and any  
17 subsequent related administrative proceedings or civil litigation involving the Board and  
18 Respondent. Therefore, said admissions by Respondent are not intended or made for any other  
19 use, such as in the context of another state or federal government regulatory agency proceeding,  
20 state or federal civil or criminal court proceeding, or any other state or federal court proceeding.  
21 Should the Board not approve this Agreement, Respondent reserves the right to fully defend  
22 against the allegations in the Complaint at a formal hearing. Respondent fully reserves his rights  
23 to defend against the allegations in the Complaint, should they be raised in any subsequent civil  
24 suit to which the Board is not a party.

25 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
26 proceedings pending against him without any further cost and expense of providing a defense to the  
27 Complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,  
28 finding that Respondent has violated the Medical Practice Act, to wit: that in treating the patients

1 referenced in the original Complaint filed by the IC, Respondent's associated medical record  
2 keeping related to the underlying patients was deficient in multiple regards and, as a result,  
3 Respondent committed three violations of NRS 630.3062(1). For these violations, Respondent  
4 shall be publicly reprimanded and reimburse the Board the reasonable costs and expenses incurred in  
5 the investigation and prosecution of this case in the current amount of \$1,822.29, plus any additional  
6 costs that may be accrued subsequent in the disposition of this matter. The aforementioned costs  
7 are to be paid to the Board within ninety (90) days of the acceptance, adoption and approval of  
8 this Agreement by the Board. A final accounting of the additional costs will be provided to  
9 Respondent in the entry of the Board's Order relating to the matter.

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

22         7.         **Board Approval Required.** This Agreement will be placed on the next available  
23 Agenda of a regularly-scheduled and duly-noticed quarterly Board meeting. It is expressly  
24 understood that this Agreement will only become effective if the Board approves the  
25 recommendation of the IC for acceptance.

26         8.         **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, counsel for the  
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1 IC will cause to be entered herein the Board's Order consistent with the terms of paragraph 5  
2 above.

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

14 10. **Release From Liability.** In execution of this Agreement, the Respondent, for  
15 himself, his executors, successors and assigns, hereby releases and forever discharges the state of  
16 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and  
17 employees in their representative capacities, and in their individual capacities, absent evidence of  
18 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,  
19 executions, claims and demands whatsoever, known and unknown, in law or equity, that  
20 Respondent ever had, now has, may have or claim to have, against any or all of the persons or  
21 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary  
22 action, this settlement or its administration, in connection with the Complaint. The IC hereby  
23 agrees to accept this Agreement in full settlement of all claims related to the Complaint, with the  
24 understanding that the final decision rests with the Board.

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

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

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

14. **Failure to Comply With Terms.** In the event the Board enters its Order approving this Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have grounds, after notice and a hearing, to take disciplinary action against Respondent in addition to that included herein for 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 13<sup>th</sup> day of ~~July~~ <sup>August</sup>, 2014.

Dated this 14<sup>th</sup> day of July, 2014.

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

By: Marie Ellerton  
Marie Ellerton, Esq.  
Attorney for Respondent

UNDERSTOOD AND AGREED:

Brian E. Grace  
Brian E. Grace, PA-C, Respondent

Dated this 14<sup>th</sup> day of July, 2014.

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 September 2014, with the final total  
3 amount of costs due of \$1,822.29.

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

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