

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. 12-4879-1**  
7 **Complaint Against** )  
8 **JOHN JOSEPH DUDEK, JR., M.D.,** )  
9 **Respondent.** )  
10 \_\_\_\_\_ )  
11 )

**FILED**  
**JUN - 6 2014**  
NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: \_\_\_\_\_

12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the  
14 Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed  
15 of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and  
16 Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through  
17 Bradley O. Van Ry, Esq., Board General Counsel and counsel for the IC, and  
18 John Joseph Dudek, Jr., M.D. (Respondent), by and through William Maupin, Esq., counsel for  
19 Respondent, as follows:

20 **WHEREAS**, on June 3, 2014 the Board's IC filed a Second Amended Complaint in the  
21 above-referenced matter charging Respondent with engaging in conduct that is grounds for  
22 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes  
23 (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630, to wit: Count I, aiding,  
24 assisting, employing or advising, directly or indirectly, any unlicensed person to engage in the  
25 practice of medicine, a violation of NRS 630.305(1)(e); Count II, administering, dispensing or  
26 prescribing a controlled substance or dangerous drug except as authorized by law, a violation of  
27 NRS 630.306(3) and NRS 454.213; Count III, administering, dispensing or prescribing a  
28 controlled substance or dangerous drug except as authorized by law, a violation of

1 NRS 630.306(3) and NRS 454.215; Count IV, administering, dispensing or prescribing a controlled  
2 substance or dangerous drug except as authorized by law, a violation of  
3 NRS 630.306(3) and NAC 639.742(3)(a); Count V, administering, dispensing or prescribing a  
4 controlled substance or dangerous drug except as authorized by law, a violation of  
5 NRS 630.306(3) and NAC 639.742(3)(b); Count VI, administering, dispensing or prescribing a  
6 controlled substance or dangerous drug except as authorized by law, a violation of  
7 NRS 630.306(3) and NAC 639.742(3)(c); Count VII, administering, dispensing or prescribing a  
8 controlled substance or dangerous drug except as authorized by law, a violation of  
9 NRS 630.306(3) and NAC 639.742(3)(e); Count VIII, administering, dispensing or prescribing a  
10 controlled substance or dangerous drug except as authorized by law, a violation of  
11 NRS 630.306(3) and NAC 639.742(4)(a); Count IX, administering, dispensing or prescribing a  
12 controlled substance or dangerous drug except as authorized by law, a violation of  
13 NRS 630.306(3) and NAC 639.742(4)(b); Count X, practicing or offering to practice beyond the  
14 scope permitted by law or performing services which the licensee knows or has reason to know that  
15 he is not competent to perform or which are beyond the scope of his training, a violation of NRS  
16 630.306(5); Count XI, the failure to maintain timely, legible, accurate and complete medical records  
17 relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1);

18       **WHEREAS**, Respondent has received a copy of the Second Amended Complaint, reviewed  
19 it, understands it, and has had ample opportunity to consult with his above-identified counsel  
20 concerning the nature and significance of the Second Amended Complaint, and Respondent is fully  
21 aware concerning his rights and defenses to the Second Amended Complaint, as well as the possible  
22 sanctions that may be imposed if the Board finds and concludes that he has violated one or more  
23 provisions of the MPA;

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

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

4           **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the Board's  
5 IC in the above-captioned matter, Respondent and the IC hereby agree to the following terms,  
6 covenants and conditions:

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

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

12           Respondent is represented by above-identified legal counsel in this matter and has had ample  
13 opportunity to review this Agreement, the Second Amended Complaint filed in this matter and the  
14 related factual basis with said legal counsel, William Maupin, Esq. Respondent covenants and  
15 agrees that he knowingly, willingly and intelligently enters into this Agreement.

16           **3.       Waiver of Rights.** In connection with this Agreement, and the terms, covenants and  
17 conditions contained herein, and the understanding that Respondent knowingly, willingly, and  
18 intelligently waives all rights arising under or pursuant to the United States Constitution, the  
19 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory  
20 rights that may be available to him or that may apply to him in connection with the proceedings on  
21 the Second Amended Complaint filed herein, the defense of said Second Amended Complaint and  
22 the adjudication of the charges in said Second Amended Complaint. Respondent further agrees that  
23 the matter of the Second Amended Complaint herein may be settled and resolved in accordance with  
24 this Agreement without a hearing or any further proceedings, and without the right to judicial  
25 review. In the event this Agreement is not approved by the Board, this Agreement shall have no  
26 force and effect and shall be *void ab initio*, and Respondent shall have all rights arising under or  
27 pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter  
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1 630, NRS Chapter 233B, and any other statutory rights that may be available to him or that may  
2 apply to him in connection with the proceeding on the Second Amended Complaint filed herein.

3 **4. Consent to Entry of Order.** Respondent concedes only that the Board has  
4 sufficient evidence to proceed with its formal Second Amended Complaint against him, but does not  
5 concede or admit to such allegations, which he expressly denies, and which, but for his desire to  
6 reach this compromise, he would contest at the formal hearing of this matter. Accordingly, in order  
7 to resolve the matter without incurring further costs and expense of providing a defense to the  
8 formal Second Amended Complaint, Respondent hereby agrees<sup>1</sup> that the Board may issue an order  
9 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, and  
10 agrees:

11 a. The Board may find that Respondent engaged in conduct that is grounds for  
12 discipline pursuant to the MPA, to wit: the failure to properly supervise Ms. Frey, and others, in  
13 connection with the removal of Botox, Dysport, Radiesse, Restylane, Juvederm and Latisse from  
14 stock on numerous occasions, a violation of NAC 639.742(4)(b), as set forth in Count IX of the  
15 Second Amended Complaint;

16 b. Respondent shall be issued a public reprimand;

17 c. Respondent shall complete eight (8) hours of Continuing Medical Education  
18 (CME) in cosmetic medicine, pre-approved by the Board, in addition to the normal amount of  
19 CMEs required for licensure, within one (1) year of the Board's acceptance and approval of this  
20 Agreement;

21 d. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the  
22 negotiated sum of \$6,500.00, the amount of the costs incurred by the Board to investigate and  
23 prosecute this matter, along with the costs to conclude the matter, if any. The costs shall be paid to  
24 the Board<sup>e</sup> within thirty (30) days of the Board's acceptance and approval of this Agreement;

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

1 e. All remaining counts of the Second Amended Complaint shall be dismissed;  
2 and,

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

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

12 **6. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall  
13 recommend approval and adoption of the terms, covenants and conditions contained herein by the  
14 Board in resolution of the Second Amended Complaint pending herein against Respondent. In the  
15 course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC  
16 may communicate directly with the Board staff and members of the panel of the Board who would  
17 adjudicate this case if it were to go to hearing.

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

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, counsel for the IC  
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1 will cause to be entered herein the Board's Order accepting, adopting and approving this Settlement  
2 Agreement, ordering full compliance with the terms herein and ordering that this case be closed.

3 **8. 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 covenant  
6 and agreement regarding disqualification of adjudicating Board panel members. Respondent agrees  
7 that, notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing  
8 that occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this  
9 Agreement by the Board shall disqualify any member of the adjudicating panel of the Board from  
10 considering the charges against Respondent and participating in the disciplinary proceeding in any  
11 role, including adjudication of the case. Respondent further agrees that he shall not seek to  
12 disqualify any such member absent evidence of bad faith.

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


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


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

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

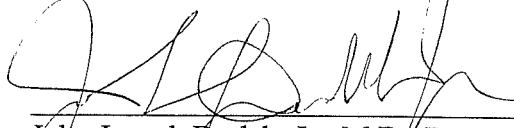
1 NRS 630.3065(2)(a). In the event of a dispute over this paragraph, the waivers in paragraph 3  
2 above would not apply. Moreover, the failure of Respondent to reimburse the Board for monies  
3 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

4 Dated this 3<sup>rd</sup> day of June, 2014. Dated this 29 day of May, 2014.

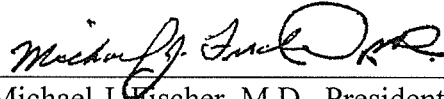
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6 By:   
7 Bradley O. Van Ry, Esq.  
8 Attorney for the Investigative Committee

  
By: William Maupin, Esq.  
Attorney for Respondent

9 UNDERSTOOD AND AGREED:

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11 John Joseph Dudek, Jr., M.D., Respondent  
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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 June 2014, with the final total amount of  
3 costs due of \$6,500.00.

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Michael J. Fischer, M.D., President

6 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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