

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 **KATHLEEN D. SMITH, M.D.,**)
9 **Respondent.**)

Case No. 13-28205-1

FILED

JUN - 6 2014

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

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11 **SETTLEMENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
13 (IC) of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt,
14 M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and Michael J. Fischer, M.D.,
15 Member, in the above-captioned matter, by and through Erin L. Albright, Esq., Board General
16 Counsel and attorney for the IC, and Kathleen D. Smith, M.D. (Respondent), by and through her
17 counsel, Kenneth Long, Esq., as follows:

18 **WHEREAS**, on October 17, 2013, the Board's IC filed a formal Complaint in the above-
19 captioned matter charging Respondent with engaging in conduct that is grounds for discipline
20 pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the Nevada Revised
21 Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC), to wit: Count I, one
22 (1) count of failure to maintain timely, legible, accurate and complete medical records relating to
23 the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1), and Count II, one
24 (1) count of malpractice as defined by NAC 630.040, a violation of NRS 630.301(4); and

25 **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,
26 understands it, and consulted with above-identified counsel concerning the nature and significance

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1 of the formal Complaint. Respondent is fully advised concerning her rights and defenses to the
2 formal Complaint, as well as the possible sanctions that may be imposed if the Board finds and
3 concludes that she violated one or more provisions of the MPA; and

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

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

18 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
19 covenants and conditions of the Agreement, then the terms, covenants and conditions enumerated
20 below shall be binding and enforceable upon her.

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

24 **1. Jurisdiction.** Respondent is, and at all times mentioned in the formal Complaint
25 filed in the above-captioned matter was, a physician licensed to practice medicine in the state of
26 Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the
27 MPA, and to impose sanctions as provided by the MPA.

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

2 Respondent is represented by above-identified counsel herein, whom Respondent
3 covenants and agrees is capable, competent and advised in these circumstances, and Respondent
4 further covenants and agrees that she knowingly, willingly and intelligently enters into the
5 Agreement after full consultation with and upon advice of above-identified counsel.

6 **3. Waiver of Rights.** In connection with the Agreement, and the terms, covenants
7 and conditions contained herein, Respondent knowingly, willingly and intelligently waives all
8 rights in connection with the Agreement, and the terms, covenants and conditions contained
9 herein, and with the understanding that Respondent knowingly, willingly and intelligently waives
10 all rights arising under or pursuant to the United States Constitution, the Constitution of the
11 state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be
12 available to her or that may apply to her in connection with the proceedings on the formal
13 Complaint filed herein, the defense of said formal Complaint, the adjudication of the charges in
14 said formal Complaint, and the imposition of sanctions.

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

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

21 **5. Consent to Entry of Order.** In order to resolve the matter of these disciplinary
22 proceedings pending against her without incurring any further costs and expense of providing a
23 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order
24 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA,
25 and agrees that:

26 a. The Board may find Respondent engaged in conduct that is grounds for
27 discipline pursuant to the MPA, to wit: one count of malpractice as defined by NAC 630.040, one
28 violation of NRS 630.301(4), as set forth in Count II of the formal Complaint;

- 1 b. Count I of the formal Complaint shall be dismissed;
- 2 c. Respondent shall pay a fine of Two Thousand Five Hundred and 00/100
- 3 Dollars (\$2,500.00) to the Board within sixty (60) days of the Board's acceptance, adoption and
- 4 approval of the Agreement;
- 5 d. Respondent shall complete fifteen (15) hours of Continuing Medical
- 6 Education (CME), in person, regarding the subject of liposuction and/or cosmetic procedures,
- 7 within one (1) year of the acceptance, adoption and approval of the Agreement by the Board. The
- 8 aforementioned hours of CME shall be in addition to any CME requirements that are regularly
- 9 imposed upon Respondent as a condition of licensure in the state of Nevada and shall be approved
- 10 by the Board prior to their completion;
- 11 e. Pursuant to NRS 622.400, Respondent shall reimburse the sum of Three
- 12 Thousand Five Hundred Sixty-Seven and 31/100 Dollars (\$3,567.31), the current amount of the
- 13 fees and costs incurred by the Board to investigate and prosecute the matter, along with the costs
- 14 to conclude the matter, if any. The costs shall be paid to the Board within sixty (60) days of the
- 15 Board's acceptance, adoption and approval of the Agreement; and
- 16 f. The terms of the Agreement shall be reported as required by law.

17 **6. Release From Liability.** In execution of the Agreement, the Respondent, for
18 herself, her executors, successors and assigns, hereby releases and forever discharges the state of
19 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
20 employees in their representative capacities, and in their individual capacities, from any and all
21 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
22 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have
23 or claim to have, against any or all of the persons or entities named in the paragraph arising out of,
24 or by reason of, the investigation, the Agreement or its administration.

25 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
26 recommend approval and adoption of the terms, covenants and conditions contained herein by the
27 Board in resolution of the formal Complaint pending herein against Respondent. In the course of

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1 seeking Board approval, adoption and/or acceptance of the Agreement, counsel for the IC may
2 communicate directly with the Board staff and the adjudicating members of the Board.

3 Respondent acknowledges that such contacts and communication may be made or
4 conducted ex parte, without notice or opportunity to be heard on her part or on the part of her
5 counsel, until the public Board meeting where the Agreement is discussed, and that such contacts
6 and communications may include, but not be limited to, matters concerning the Agreement, the
7 formal Complaint, and any and all information of every nature whatsoever related to the formal
8 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
9 Respondent and/or her counsel may appear at the Board meeting where the Agreement is
10 discussed, and if requested, respond to any questions that may be addressed to the IC or its
11 counsel.

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

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

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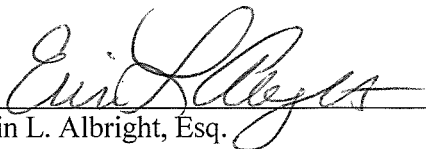
1 **10. Binding Effect.** If the Agreement is approved by the Board, Respondent
2 covenants and agrees that the Agreement is a binding and enforceable contract upon Respondent
3 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

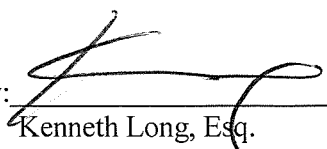
4 **11. Forum Selection Clause.** Respondent covenants and agrees that in the event
5 either party is required to seek enforcement of the Agreement in the district court, she consents to
6 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
7 Second Judicial District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


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

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

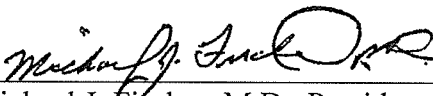
19 Dated this 1 day of May, 2014. Dated this 29 day of April, 2014.

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

By: 
Kenneth Long, Esq.
24 Attorney for Respondent

UNDERSTOOD AND AGREED:
25 
Kathleen D. Smith, M.D., Respondent
26 Dated this 29 day of April, 2014.
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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 6th day of June 2014, with the final total amount of
3 costs due of \$3,567.31.

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