

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. 14-5797-1**
7)
8 **Complaint Against**)
9 **KENNETH WESTFIELD, M.D.,**)
10 **Respondent.**)
11 _____)

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 Theodore B. Berndt,
15 M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned
16 matter, by and through Bradley O. Van Ry, Esq., Board General Counsel and counsel for the IC,
17 Kenneth Westfield, M.D. (Respondent), and Marie Ellerton, Esq., counsel for Respondent, as
18 follows:

19 **WHEREAS**, on August 20, 2014, the Board's IC filed a First Amended Complaint in the
20 above-referenced matter charging Respondent with engaging in conduct that is grounds for
21 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes
22 (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630, to wit: Count I, any
23 disciplinary action, including, without limitation, the revocation, suspension, modification or
24 limitation of a license to practice any type of medicine, taken by another state, a violation of NRS
25 630.301(3); Count II, failure to report in writing, within thirty days, any disciplinary action taken
26 against a licensee or applicant by another state, a violation of NRS 630.306(11); and Count III,
27 obtaining, maintaining or renewing or attempting to obtain, maintain or renew a license to practice

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1 medicine by bribery, fraud or misrepresentation or by any false, misleading, inaccurate or
2 incomplete statement, a violation of NRS 630.304(1)¹;

3 **WHEREAS**, Respondent has received a copy of the First Amended Complaint, reviewed
4 it, understands it, and has had ample opportunity to consult with his above-identified counsel
5 concerning the nature and significance of the First Amended Complaint, and Respondent is fully
6 aware concerning his rights and defenses to the First Amended Complaint, as well as the possible
7 sanctions that may be imposed if the Board finds and concludes that he has violated one or more
8 provisions of the MPA;

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

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

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

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

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

25 Respondent is represented by above-identified legal counsel in this matter and has had
26 ample opportunity to review this Agreement, the First Amended Complaint filed in this matter and
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28 ¹ These allegations stem from reciprocal discipline imposed against Respondent by the Arizona Medical Board and the
Medical Board of California, both of which arose from a previous settlement with the Board, and not from new
allegations of malpractice or other MPA violations, except as contained in the First Amended Complaint.

1 the related factual basis with said legal counsel, Marie Ellerton, Esq. Respondent covenants and
2 agrees that he knowingly, willingly and intelligently enters into this Agreement.

3 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
4 and conditions contained herein, and the understanding that Respondent knowingly, willingly, and
5 intelligently waives all rights arising under or pursuant to the United States Constitution, the
6 Constitution of the state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights
7 that may be available to him or that may apply to him in connection with the proceedings on the
8 First Amended Complaint filed herein, the defense of said First Amended Complaint and the
9 adjudication of the charges in said First Amended Complaint. Respondent further agrees that the
10 matter of the First Amended Complaint herein may be settled and resolved in accordance with this
11 Agreement without a hearing or any further proceedings, and without the right to judicial review.
12 In the event this Agreement is not approved by the Board, this Agreement shall have no force and
13 effect and shall be *void ab initio*, and Respondent shall have all rights arising under or pursuant to
14 the United States Constitution, the Constitution of the state of Nevada, the MPA,
15 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply
16 to him in connection with the proceeding on the First Amended Complaint filed herein.

17 **4. Consent to Entry of Order.** Respondent concedes only that the Board has
18 sufficient evidence to proceed with its First Amended Complaint against him, but does not
19 concede or admit to such allegations, which he expressly denies, and which, but for his desire to
20 reach this compromise, he would contest at the formal hearing of this matter. Accordingly, in
21 order to resolve the matter without incurring further costs and the expense of providing a defense
22 to the First Amended Complaint, Respondent hereby agrees² that the Board may issue an order
23 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA,
24 and agrees:

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27 ² 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 a. The Board may find that Respondent engaged in conduct that is grounds for
2 discipline pursuant to the MPA, to wit: any disciplinary action, including, without limitation, the
3 revocation, suspension, modification or limitation of a license to practice any type of medicine,
4 taken by another state, a violation of NRS 630.301(3), as set forth in Count I of the First Amended
5 Complaint;

6 b. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum
7 of \$549.65, the current amount of the costs incurred by the Board to investigate and prosecute this
8 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the
9 Board within thirty (30) days of the Board's acceptance and approval of this Agreement;

10 c. The Board shall dismiss Counts II and III; and,

11 d. Respondent shall fully report all other outstanding state board actions to this
12 Board.

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

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

27 Respondent acknowledges that such contacts and communication may be made or
28 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his

1 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
2 and communications may include, but not be limited to, matters concerning this Agreement, the
3 First Amended Complaint, and any and all information of every nature whatsoever related to the
4 First Amended Complaint or the proceedings herein against Respondent. The IC and its counsel
5 agree that Respondent and/or his counsel may appear at the Board meeting where this Agreement
6 is discussed and, if requested, respond to any questions that may be addressed to the IC or its
7 counsel.

8 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
9 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
10 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
11 Settlement Agreement, ordering full compliance with the terms herein and ordering that this case
12 be closed.

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

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

26 **10. Forum Selection Clause.** Respondent covenants and agrees that in the event either
27 party is required to seek enforcement of this Agreement in the district court, he consents to such

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1 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
2 Second Judicial District Court of the state of Nevada in and for the county of Washoe.


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

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

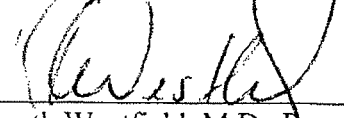
1 Dated this 20th day of August, 2014.

Dated this 20th day of August, 2014.

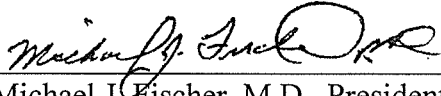
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1 By: 
3 Bradley O. Van Ry, Esq.
Attorney for the Investigative Committee

By: 
Marie Ellerton, Esq.
Attorney for Respondent

4 UNDERSTOOD AND AGREED:

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1 Kenneth Westfield, 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 September 2014, with the final total
3 amount of costs due of \$549.65.

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

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