BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

** **

In the Matter of Charges and

Complaint Against

WILLIAM SMITH, M.D.,

Respondent.

) Case No. 10-11398-1

) FILED

) SEP - 5 2014

) By:

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

SETTLEMENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned matter, by and through Bradley O. Van Ry, Esq., Board General Counsel and counsel for the IC, William Smith, M.D. (Respondent), and Keith A. Weaver, Esq., counsel for Respondent, as follows:

WHEREAS, on June 16, 2010, the Board’s IC filed a Complaint in the above-referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630, to wit: Count I, malpractice, the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances, a violation of NRS 630.301(4) and NAC 630.040;

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

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

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

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

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

2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement.** Respondent is represented by above-identified legal counsel in this matter and has had ample opportunity to review this Agreement, the Complaint filed in this matter and the related factual basis with said legal counsel, Keith A. Weaver, Esq. Respondent covenants and agrees that he knowingly, willingly and intelligently enters into this Agreement.

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

4. Consent to Entry of Order. Respondent concedes only that the Board has
sufficient evidence to proceed with its Complaint against him, but does not concede or admit to
such allegations, which he expressly denies, and which, but for his desire to reach this
compromise, he would contest at the formal hearing of this matter. Accordingly, in order to
resolve the matter without incurring further costs and expense of providing a defense to the
Complaint, Respondent hereby agrees¹ that the Board may issue an order finding that Respondent
engaged in conduct that is grounds for discipline pursuant to the MPA, and agrees:

a. The Board may find that Respondent engaged in conduct that is grounds for
discipline pursuant to the MPA, to wit: malpractice, the failure of a physician, in treating a patient,
to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances, a
violation of NRS 630.301(4) and NAC 630.040, as set forth in Count I of the Complaint;

b. Respondent shall make a contribution of $2,500 to an IC pre-approved,
medically-related non-profit entity/organization within thirty (30) days of the Board’s acceptance
and approval of this Agreement;

c. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum
of $6,527.99, the current amount of the costs incurred by the Board to investigate and prosecute
this matter, along with the costs to conclude the matter, if any. The costs shall be paid to the
Board within thirty (30) days of the Board’s acceptance and approval of this Agreement; and,

¹ All 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 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.
d. Respondent shall complete eight (8) hours of Continuing Medical
Education (CME) related to spinal surgery. The eight (8) hours of CME shall be in addition to the
CME requirements that are regularly imposed upon Respondent as a condition of licensure in the
state of Nevada and shall be completed within one (1) year of the Board's acceptance and approval
of this Agreement.

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

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

Respondent acknowledges that such contacts and communication may be made or
conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
counsel until the public Board meeting where this Agreement is discussed, and that such contacts
and communications may include, but not be limited to, matters concerning this Agreement, the
Complaint, and any and all information of every nature whatsoever related to the Complaint or the
proceedings herein against Respondent. The IC and its counsel agree that Respondent and/or his
counsel may appear at the Board meeting where this Agreement is discussed and, if requested,
respond to any questions that may be addressed to the IC or its counsel.
7. **Effect of Acceptance of Agreement by Board.** In the event the Board approves, accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC will cause to be entered herein the Board’s Order accepting, adopting and approving this Settlement Agreement, ordering full compliance with the terms herein and ordering that this case be closed.

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

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

10. **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.

11. **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 costs and reasonable attorneys’ fees.

12. **Failure to Comply with Terms.** In the event the Board enters its order approving this Agreement, should Respondent fail to comply with any term or condition recited herein, the Board shall be authorized to immediately suspend Respondent’s license to practice medicine in the
state of Nevada pending an order to show cause hearing, which will be duly noticed.

Further, failure to comply with the terms recited herein may result in additional 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 16th day of August, 2014. Dated this 19th day of August, 2014.

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

By: Keith A. Weaver, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:

William Smith, M.D. Respondent
IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 5th day of September 2014, with the final total amount of costs due of $6,527.99.

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