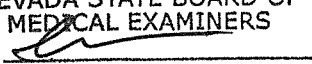


1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

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6 **In the Matter of Charges and**) **Case No. 10-11398-1**
7)
8 **Complaint Against**) **FILED**
9 **WILLIAM SMITH, M.D.,**) **SEP - 5 2014**
10) **NEVADA STATE BOARD OF**
11 **Respondent.**) **MEDICAL EXAMINERS**
12) **By: **

13 **SETTLEMENT AGREEMENT**

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

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

26 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands
27 it, and has had ample opportunity to consult with his above-identified counsel concerning the
28 nature and significance of the Complaint, and Respondent is fully aware concerning his rights and

1 defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board
2 finds and concludes that he has violated one or more provisions of the MPA;

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

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

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

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

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

23 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
24 and conditions contained herein, and the understanding that Respondent knowingly, willingly, and
25 intelligently waives all rights arising under or pursuant to the United States Constitution, the
26 Constitution of the state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights
27 that may be available to him or that may apply to him in connection with the proceedings on the
28 Complaint filed herein, the defense of said Complaint and the adjudication of the charges in said

1 Complaint. Respondent further agrees that the matter of the Complaint herein may be settled and
2 resolved in accordance with this Agreement without a hearing or any further proceedings, and
3 without the right to judicial review. In the event this Agreement is not approved by the Board, this
4 Agreement shall have no force and effect and shall be *void ab initio*, and Respondent shall have all
5 rights arising under or pursuant to the United States Constitution, the Constitution of the state of
6 Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be available to him
7 or that may apply to him in connection with the proceeding on the Complaint filed herein.

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

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

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

22 c. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum
23 of \$6,527.99, the current amount of the costs incurred by the Board to investigate and prosecute
24 this matter, along with the costs to conclude the matter, if any. The costs shall be paid to the
25 Board within thirty (30) days of the Board's acceptance and approval of this Agreement; and,
26

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

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

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

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

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

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

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


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

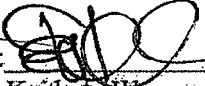
23 11. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
24 action is commenced in the district court to enforce any provision of this Agreement, the
25 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

26 12. **Failure to Comply with Terms.** In the event the Board enters its order approving
27 this Agreement, should Respondent fail to comply with any term or condition recited herein, the
28 Board shall be authorized to immediately suspend Respondent's license to practice medicine in the

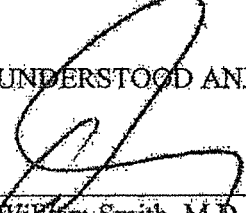
1 state of Nevada pending an order to show cause hearing, which will be duly noticed.
2 Further, failure to comply with the terms recited herein may result in additional disciplinary action
3 being initiated against Respondent for a violation of an order of the Board in accordance with
4 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
5 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

6 Dated this 19th day of August, 2014. Dated this 19th day of August, 2014.

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

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

11 UNDERSTOOD AND AGREED:


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14 William Smith, 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 5th day of September 2014, with the final total
3 amount of costs due of \$6,527.99.

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

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