

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

3 \* \* \* \* \*

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5  
6 **In the Matter of the Investigation of** )  
7 )  
8 **ARLYN M. VALENCIA, M.D.,** )  
9 **License No. 10340** )

**Case No. 14-26427-1**

**FILED**

**MAR - 9 2015**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

10  
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., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned  
15 matter, by and through Erin L. Albright, Esq., Board General Counsel and attorney for the IC, and  
16 Arlyn M. Valencia, M.D. (Respondent), as follows:

17 **WHEREAS**, on August 21, 2014, the Board's IC filed an Order of Summary Suspension  
18 in the above-captioned matter after reviewing evidence and information which demonstrated that  
19 Respondent presented an imminent risk to the health, safety and welfare of the public. On  
20 September 23, 2014, the parties agreed, by stipulation, that Respondent's license to practice  
21 medicine in the state of Nevada shall remain indefinitely suspended; and

22 **WHEREAS**, Respondent received a copy of the Order of Summary Suspension, reviewed  
23 it, understands it, and has had the opportunity to consult with competent counsel concerning the  
24 nature and significance of the Order of Summary Suspension. Respondent is fully advised  
25 concerning her rights and defenses to the Order of Summary Suspension, as well as the possible  
26 sanctions that may be imposed if the Board finds and concludes that she violated one or more  
27 provisions of the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes (NRS)  
28 Chapter 630 and Nevada Administrative Code Chapter 630; and

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

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

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

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

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

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

26           Respondent acknowledges that she is not represented by counsel and wishes to proceed  
27 towards a resolution of this matter, as set forth in this Agreement, without counsel. Respondent  
28 understands and acknowledges that she may retain and consult counsel prior to entering into this

1 Agreement. Respondent agrees that if counsel is retained for representation in this matter prior to  
2 entering into this Agreement, that counsel for the IC will be informed of such representation prior  
3 to Respondent executing this Agreement. Respondent covenants and agrees that she knowingly,  
4 willingly and intelligently enters into this Agreement.

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

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

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

20 **5. Consent to Entry of Order.** In order to resolve the matter of the summary  
21 suspension currently in place against her without incurring any further costs and expense of providing  
22 a defense to the Order of Summary Suspension: Respondent agrees to allow her license to practice  
23 medicine in the state of Nevada to be revoked, with said revocation stayed and Respondent placed  
24 on probation for a period of sixty (60) months from the date of the Board's acceptance, adoption  
25 and approval of this Agreement, with an obligation to comply with the following terms and  
26 conditions:

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1           a.       The summary suspension of Respondent's license to practice medicine in  
2 the state of Nevada shall be lifted on March 6, 2015 and Respondent's licensure status  
3 shall be reinstated to the appropriate licensing status;

4           b.       Respondent is currently enrolled in the Nevada Professionals Assistance  
5 Program (NPAP) and shall remain enrolled in said program for the duration of her  
6 probation;

7           c.       Within fourteen (14) days the Board's adoption and approval of this  
8 Agreement, Respondent shall execute a HIPAA compliant release in favor of the Board to  
9 allow NPAP to directly provide the Board's Compliance Officer with status reports  
10 regarding Respondent's program;

11          d.       Respondent shall remain in compliance with all terms of her participation  
12 contracts with NPAP during the term her probation;

13          e.       Respondent shall complete in full any participation contract entered into  
14 with NPAP;

15          f.       Respondent shall continue her trauma therapy with Dr. Shiode for the  
16 duration of her probation;

17          g.       Within fourteen (14) days the Board's adoption and approval of this  
18 Agreement, Respondent shall execute a HIPAA compliant release in favor of the Board to  
19 allow Dr. Shiode to directly provide the Board's Compliance Officer with status reports  
20 regarding Respondent's therapy;

21          h.       Respondent shall submit to random hair and urine alcohol and drug screens at  
22 her own expense when requested by an employee of the Board. Any test that is positive for  
23 alcohol, controlled substances or dangerous drugs, other than prescribed by a treating  
24 physician or dentist, shall be considered a violation of this Agreement. Failure to comply  
25 with any such request shall be deemed to be an automatic positive test;

26          i.       Should Respondent be prescribed any controlled substances or dangerous  
27 drugs as defined in NRS 453.3615, by a treating physician or dentist, Respondent shall  
28 provide documentation from the treating physician or dentist to the Board's Compliance

1 Officer with seventy-two (72) hours of the prescription or within ninety-six (96) hours should  
2 the prescription be provided on a weekend;

3 j. For the duration of her probation, Respondent shall attend a 12-step  
4 meeting at least one time per week. On the fifth day of every month, Respondent shall  
5 submit proof of her prior month's attendance at the 12-step meetings directly to the  
6 Board's Compliance Officer;

7 k. Within fourteen (14) days of the Board's acceptance, adoption and approval  
8 of this Agreement, Respondent shall select and actively work with a 12-step sponsor to  
9 support her endeavors at sobriety;

10 l. Respondent shall attend a Caduceus meeting at least one time per month.  
11 On the fifth day of every month, Respondent shall submit proof of her prior month's  
12 attendance at the Caduceus meetings directly to the Board's Compliance Officer;

13 m. Respondent shall inform any and all employers of the terms of this Agreement  
14 during the term of her probation;

15 n. Respondent shall provide to the Board's Compliance Officer the best method  
16 to contact her and shall maintain a current address and phone number with the Compliance  
17 Officer;

18 o. Respondent shall not violate any laws or regulations of the state of Nevada  
19 during the period of her probation and Respondent shall remain in compliance with all  
20 federal laws pertaining to the practice of medicine and the prescribing, administering or  
21 dispensing of any dangerous drug or controlled substance during the term of her probation;

22 p. Respondent shall abstain from any and all mood altering/addictive  
23 substances during the term of his probation, with the exception of mood altering/addictive  
24 substances prescribed by a treating physician or dentist;

25 q. Respondent shall be solely responsible for any costs and fees associated  
26 with her compliance with all terms and conditions of this Agreement;

27 r. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum  
28 of One Thousand Nineteen and 14/100 Dollars (\$1,019.14), the current amount of the costs

1 incurred by the Board to investigate and prosecute this matter, along with the costs to  
2 conclude the matter, if any. The costs shall be paid to the Board within twelve (12)  
3 months of the Board's acceptance, adoption and approval of this Agreement;

4 s. The formal Complaint filed in this matter shall be dismissed without  
5 prejudice and shall only be re-filed if Respondent fails to comply with the terms and  
6 conditions of her probation; and

7 t. If the IC finds that Respondent has violated any terms or conditions of this  
8 Agreement, it may immediately summarily suspend Respondent's license to practice  
9 medicine in Nevada and shall set a date for a hearing to be held within forty-five (45) days  
10 to determine whether the summary suspension of Respondent's license to practice  
11 medicine in the state of Nevada shall remain in effect.

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

20 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall  
21 recommend approval and adoption of the terms, covenants and conditions contained herein by the  
22 Board in resolution of the Order of Summary Suspension pending herein against Respondent. In  
23 the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for  
24 the IC may communicate directly with the Board staff and the adjudicating members of the Board.

25 Respondent acknowledges that such contacts and communication may be made or  
26 conducted ex parte, without notice or opportunity to be heard on her part or on the part of her  
27 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such  
28 contacts and communications may include, but not be limited to, matters concerning this

1 Agreement, the Order of Summary Suspension, and any and all information of every nature  
2 whatsoever related to the Order of Summary Suspension or the proceedings herein against  
3 Respondent. The IC and its counsel agree that Respondent and/or her counsel, if any, may appear  
4 at the Board meeting where this Agreement is discussed, and if requested, respond to any  
5 questions that may be addressed to the IC or its counsel.

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

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

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

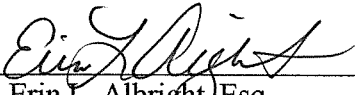
25 **11. Forum Selection Clause.** Respondent covenants and agrees that in the event  
26 either party is required to seek enforcement of this Agreement in the district court, she consents to  
27 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the  
28 Second Judicial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

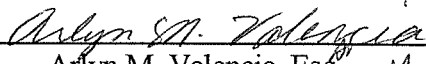
1           **12. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an  
2 action is commenced in the district court to enforce any provision of this Agreement, the  
3 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

4           **13. Failure to Comply With Terms.** Failure to comply with the terms recited herein  
5 may result in additional disciplinary action being initiated against Respondent for a violation of an  
6 order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent  
7 to reimburse the Board for monies agreed to be paid as a condition of this Agreement may subject  
8 Respondent to civil collection efforts.

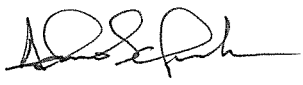
9 Dated this 18<sup>th</sup> day of February, 2015.

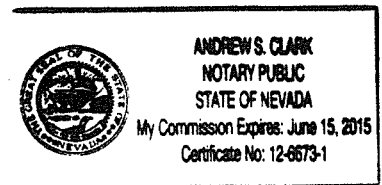
Dated this 17 day of February, 2015.

10 By:   
11 Erin L. Albright, Esq.  
12 Attorney for the Investigative Committee

By:   
Arlyn M. Valencia, Esq. M. D.  
Respondent

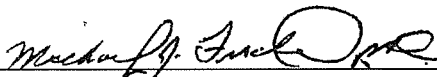
13  
14 STATE OF NEVADA            )  
  :SS.  
15 COUNTY OF CLARK            )  
16 SUBSCRIBED and SWORN to before me  
17 This 17 day of February, 2015.

18  
19   
20 Notary Public





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 March 2015, with the final total amount of  
3 costs due of \$1,019.14.

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

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