

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

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4  
5 **Case No. 16-8164-1**

6 **In the Matter of Charges and**  
7 **Complaint Against**  
8 **MARK HOEPFNER, M.D.,**  
9 **Respondent.**

**FILED**

JUN - 7 2016

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

10  
11 **SETTLEMENT AGREEMENT**

12 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners  
13 (Board) and Mark Hoepfner, M.D. (Respondent), a licensed physician in Nevada, represented by  
14 legal counsel, Sean M. Kelly, Esq., of Carroll, Kelly, Trotter, Franzen, McKenna & Peabody,  
15 hereby enter into this Settlement Agreement (Agreement) based on the following:<sup>1</sup>

16 **A. Background**

17 1. Respondent is a physician licensed by the Board, pursuant to Chapter 630 of the  
18 Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC)  
19 (collectively, the Medical Practice Act), to practice medicine in Nevada since July 1, 1988 (License  
20 No. 5680).

21 2. On January 27, 2016, in Case No. 16-8164-1, the IC filed a formal Complaint  
22 (Complaint) charging Respondent with a violation of the Medical Practice Act. Specifically, this  
23 Complaint alleges: one (1) count of violating of NRS 630.301(4) (malpractice). By reason of the  
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25 <sup>1</sup> All agreements and admissions made by Respondent are solely for final disposition of this matter  
26 and any subsequent related administrative proceedings or civil litigation involving the Board and  
27 Respondent. Therefore, Respondent's agreements and admissions are not intended or made for  
28 any other use, such as in the context of another state or federal government regulatory agency  
proceeding, state or federal civil or criminal proceeding, any state or federal court proceeding, or  
any credentialing or privileges matter.

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners  
1105 Terminal Way #301  
Reno, Nevada 89502  
(775) 688-2559

1 foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

2 3. Respondent was properly served with a copy of this Complaint, has reviewed and  
3 understands this Complaint, and has had the opportunity to consult with competent counsel  
4 concerning the nature and significance of this Complaint.

5 4. Respondent is hereby advised of his rights regarding this administrative matter, and his  
6 opportunity to defend against the allegations in the Complaint. Specifically, Respondent has certain  
7 rights in this administrative matter as set out by the United States Constitution, the Nevada  
8 Constitution, the Medical Practice Act and the Nevada Administrative Procedure Act (APA), which is  
9 contained in NRS Chapter 233B. These rights include the right to a formal hearing on the allegations  
10 in the Complaint, the right to representation by counsel, at his own expense, in the preparation and  
11 presentation of his defense, the right to confront and cross-examine the witnesses and evidence against  
12 him, the right to written findings of fact, conclusions of law and order reflecting the final decision of  
13 the Board, and the right to judicial review of the Board's order, if the decision is adverse to him.

14 5. Respondent understands that, under the Board's charge to protect the public by  
15 regulating the practice of medicine, the Board may take disciplinary action against Respondent's  
16 license, including license probation, license suspension, license revocation and imposition of  
17 administrative fines, as well as any other reasonable requirement or limitation, if the Board  
18 concludes that Respondent violated one or more provisions of the Medical Practice Act.

19 6. Respondent understands and agrees that this Agreement, by and between  
20 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the  
21 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent  
22 understands that the IC shall advocate for the Board's approval of this Agreement, but that the  
23 Board has the right to decide in its own discretion whether or not to approve this Agreement.  
24 Respondent further understands and agrees that if the Board approves this Agreement, then the  
25 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

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1 **B. Terms & Conditions**

2 NOW, THEREFORE, in order to resolve the matters addressed herein, i.e., the matters  
3 with regard to the Complaint, Respondent and the IC hereby agree to the following terms and  
4 conditions:

5 1. **Jurisdiction.** Respondent is, and at all times relevant to the Complaint has been, a  
6 physician licensed to practice medicine in Nevada subject to the jurisdiction of the Board as set  
7 forth in the Medical Practice Act.

8 2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement.**  
9 Respondent understands that he may retain and consult counsel prior to entering into this  
10 Agreement at his own expense. Respondent acknowledges he is represented by counsel,  
11 and wishes to resolve the matters addressed herein with counsel. Respondent agrees that if  
12 representation by counsel in this matter materially changes prior to entering into this Agreement  
13 and for the duration of this Agreement, that counsel for the IC will be timely notified of the  
14 material change. Respondent agrees that he knowingly, willingly and intelligently enters into this  
15 Agreement after deciding to have a full consultation with and upon the advice of legal counsel.

16 3. **Waiver of Rights.** In connection with this Agreement, and the associated terms  
17 and conditions, Respondent knowingly, willingly and intelligently waives all rights in connection  
18 with this administrative matter. Respondent hereby knowingly, willingly and intelligently waives  
19 all rights arising under the United States Constitution, the Nevada Constitution, the Medical  
20 Practice Act, the APA and any other legal rights that may be available to him or that may apply to  
21 him in connection with the administrative proceedings resulting from the Complaint filed in this  
22 matter, including defense of the Complaint, adjudication of the allegations set forth in the  
23 Complaint and imposition of any disciplinary actions or sanctions ordered by the Board.  
24 Respondent agrees to settle and resolve the allegations of the Complaint as set out by this  
25 Agreement, without a hearing or any further proceedings and without the right to judicial review.

26 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent acknowledges  
27 that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is  
28 grounds for discipline pursuant to the Medical Practice Act.

1           **5.     Consent to Entry of Order.** In order to resolve this Complaint pending against  
2 Respondent without incurring any further costs or the expense associated with a hearing, Respondent  
3 hereby agrees that the Board may issue an order finding that Respondent engaged in conduct that  
4 is grounds for discipline pursuant to the Medical Practice Act. Accordingly, the following terms  
5 and conditions are hereby agreed upon:

6           A.     Respondent admits to the allegation of one (1) violation of NRS 630.301(4)  
7 (malpractice) on or about January 1, 2012.

8           B.     Respondent will pay the costs and expenses incurred in the investigation and  
9 prosecution of the above-referenced matter within one hundred twenty (120) days of the  
10 Board's acceptance, adoption and approval of this Agreement, the current amount being  
11 \$2534.58, not including any costs that may be necessary to finalize this Agreement.

12          C.     Respondent shall take six (6) hours of continuing medical education (CME) related  
13 to preventing malpractice within twelve (12) months from the date of the Board's  
14 acceptance, adoption and approval of this Agreement. The aforementioned hours of CME  
15 shall be in addition to any CME requirements that are regularly imposed upon Respondent  
16 as a condition of licensure in the state of Nevada and shall be approved by the Board prior  
17 to their completion.

18          D.     This Agreement shall be reported to the appropriate entities and parties as required  
19 by law, including, but not limited to, the National Practitioner Data Bank.

20           **6.     Release From Liability.** In execution of this Agreement, Respondent understands  
21 and agrees that the state of Nevada, the Board, and each of its members, staff, counsel,  
22 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents  
23 are immune from civil liability for any decision or action taken in good faith in response to  
24 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the state of  
25 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,  
26 committees, panels, hearing officers, consultants and agents from any and all manner of actions,  
27 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and  
28 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against

1 any or all of the persons, government agencies or entities named in this paragraph arising out of,  
2 or by reason of, this investigation, this Agreement or the administration of the case referenced  
3 herein.

4 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall  
5 recommend approval and adoption of the terms and conditions of this Agreement by the Board in  
6 resolution of the Complaint. In the course of seeking Board acceptance, approval and adoption of  
7 this Agreement, counsel for the IC may communicate directly with the Board staff and the  
8 adjudicating members of the Board.

9 Respondent acknowledges that such contacts and communications may be made or  
10 conducted ex parte, without notice or opportunity to be heard on his part until the public Board  
11 meeting where the Agreement is discussed, and that such contacts and communications may  
12 include, but not be limited to, matters concerning this Agreement, the Complaint and any and all  
13 information of every nature whatsoever related to this matter. The IC and its counsel agree that  
14 Respondent may appear at the Board meeting where this Agreement is discussed and, if requested,  
15 respond to any questions that may be addressed to the IC or the IC's counsel.

16 **8. Effect of Acceptance of Agreement by Board.** In the event the Board accepts,  
17 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement  
18 an order of the Board.

19 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not  
20 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and  
21 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,  
22 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement  
23 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this  
24 Agreement shall disqualify any member of the adjudicating panel of the Board from considering  
25 this Complaint and from participating in disciplinary proceedings against Respondent, including  
26 adjudication of this case; and (2) Respondent further agrees that he shall not seek to disqualify any  
27 such member absent evidence of bad faith.

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1           **10.    Binding Effect.**  If approved by the Board, Respondent understands that this  
2 Agreement is a binding and enforceable contract upon Respondent and the Board.

3           **11.    Forum Selection Clause.**  The parties agree that in the event either party is  
4 required to seek enforcement of this Agreement in district court, the parties consent to such  
5 jurisdiction and agree that exclusive jurisdiction shall be in the Second Judicial District Court,  
6 state of Nevada, Washoe County.

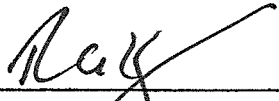
7           **12.    Attorneys' Fees and Costs.**  The parties agree that in the event an action is  
8 commenced in district court to enforce any provision of this Agreement, the prevailing party shall  
9 be entitled to recover reasonable attorneys' fees and costs.

10          **13.    Failure to Comply with Terms.**  Should Respondent fail to comply with any term  
11 or condition of this Agreement once the Agreement has been accepted, approved and adopted by  
12 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice  
13 medicine in Nevada pending an Order To Show Cause Hearing, which will be duly noticed.  
14 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,  
15 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may  
16 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).  
17 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a  
18 condition of this Agreement may subject Respondent to civil collection efforts.


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[SIGNATURE PAGE TO FOLLOW]

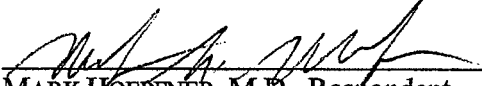
1 Dated this 18<sup>th</sup> day of March, 2016.

2  
3 By:   
4 Robert Kilroy, Esq.  
5 Attorney for the Investigative Committee

6 Dated this 18<sup>th</sup> day of March, 2016.

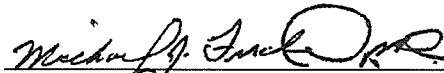
7 By:   
8 Sean M. Kelly, Esq.  
9 Attorney for the Respondent

10 **UNDERSTOOD AND AGREED:**

11   
12 MARK HOEPFNER, M.D., Respondent  
13 Dated this 10 day of March 2016.

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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 third day of June 2016, with the final total amount of  
3 costs due of \$2,534.58.

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Michael J. Fischer, M.D., President

6 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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