

ORIGINAL

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

**In the Matter of Charges and
Complaint Against
MARYANNE D. PHILLIPS, M.D.,
Respondent.**

Case Nos.: 12-10032-1 & 14-10032-1

FILED

SEP 09 2016

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

SETTLEMENT AGREEMENT

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) and Maryanne D. Phillips, M.D. (Respondent), a licensed physician in Nevada, represented by John A. Hunt, Esq. of the law firm Morris Polich & Purdy, LLP, hereby enter into this Settlement Agreement (Agreement) based on the following:¹

A. Background

1. Respondent is a physician licensed by the Board, pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC) (collectively, the Medical Practice Act), to practice medicine in Nevada since 1995 (License No. 7635).

2. On November 5, 2012, in Case No. 12-10032-1, the IC filed a formal Complaint (Complaint – No. 12-10032-1) charging Respondent with violations of the Medical Practice Act. Specifically, Complaint - No. 12-10032-1 alleges three counts. Count I alleges a violation of

¹ All agreements and 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, Respondent’s agreements and admissions 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 proceeding, any state or federal court proceeding, or any credentialing or privileges matter.

1 NRS 630.301(3), disciplinary action taken by another state. Count II alleges a violation of
2 NRS 630.306(11), failure to report in writing, within 30 days, any disciplinary action taken against the
3 licensee by another state. Count III alleges a violation of NRS 630.306(2)(a), engaging in any conduct
4 that is intended to deceive.

5 3. For purposes of this Agreement, Respondent and the IC further stipulate and agree that
6 that the IC represented it was intending to amend Complaint - No. 12-10032-1 to include additional
7 counts regarding allegations that Respondent failed to report to the Board that the Medical Board of
8 California had taken disciplinary action against Respondent and failed to report to the Board that the
9 Nevada State Board of Pharmacy (BOP) had taken disciplinary action against Respondent. The IC
10 also represented that it was going to amend Complaint - No. 12-10032-1 to include additional counts
11 regarding the disciplinary action taken by The Medical Board of California against Respondent and
12 the disciplinary action taken by the BOP against Respondent. Accordingly, this Agreement addresses,
13 resolves, and takes into consideration any and all claims/counts the Board or IC may have brought
14 against Respondent relative to said matters, including but not necessarily limited to, any count alleging
15 a violation of NRS 630.301(3), disciplinary action taken by another state, any count alleging a
16 violation of NRS 630.306(11), failure to report in writing, within 30 days, any disciplinary action
17 taken against the licensee by another state, or any count alleging a violation of NRS 630.306(2)(a),
18 engaging in any conduct that is intended to deceive. Accordingly, Respondent and the IC agree that
19 any and all allegations or claims regarding Respondent allegedly failing to report to the Board that the
20 Medical Board of California and the BOP had taken disciplinary action against Respondent are hereby
21 waived and/or released by the IC and/or the Board. Again, for ease of reference, reference to
22 "Complaint – No. 12-10032-1" shall also include the matters addressed in this paragraph.

23 4. On April 22, 2014, in Case No. - 14-10032-1, the IC filed a formal Complaint
24 (Complaint – No. 14-10032-1) charging Respondent with violations of the Medical Practice Act.
25 Complaint - No. 14-10032-1 alleges three counts. Count I alleges one violation of NRS 630.3062(1),
26 failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis,
27 treatment and care of a patient. Count II alleges one violation of NRS 630.301(4), malpractice as
28 defined by NAC 630.040. Count III alleges one violation of NRS 630.306(2)(b), engaging in any

1 conduct that the Board has determined is a violation of the standards of practice established by
2 regulation of the Board.

3 5. Respondent was properly served with a copy of Complaint - No. 12-10032-1 and
4 with a copy of Complaint – No. 14-10032-1, and has reviewed both Complaints, understands both
5 Complaints, and has had the opportunity to consult with competent counsel concerning the nature
6 and significance of the Complaints.

7 6. Respondent is hereby advised of her rights regarding this administrative matter, and of
8 her opportunity to defend against the allegations in Complaint - No. 12-10032-1 and in Complaint –
9 No. 14-10032-1. Specifically, Respondent has certain rights in this administrative matter as set out by
10 the United States Constitution, the Nevada Constitution, the Medical Practice Act, and the Nevada
11 Administrative Procedure Act (APA), which is contained in NRS Chapter 233B. These rights include
12 the right to a formal hearing on the allegations in Complaint - No. 12-10032-1 and in Complaint –
13 No. 14-10032-1, the right to representation by counsel, at her own expense, in the preparation and
14 presentation of her defense, the right to confront and cross-examine the witnesses and evidence against
15 her, the right to written findings of fact, conclusions of law, and order reflecting the final decision of
16 the Board, and the right to judicial review of the Board’s order, if the decision is adverse to her.

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

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

1 **B. Terms & Conditions**

2 **NOW, THEREFORE**, in order to resolve the matters addressed herein (i.e., the matters
3 with regards to Complaint - No. 12-10032-1and Complaint – No. 14-10032-1), Respondent and
4 the IC hereby agree to the following terms and conditions:

5 **1. Jurisdiction.** Respondent is, and at all times relevant to Complaint - No. 12-
6 10032-1and Complaint - No. 14-10032-1has been, a physician licensed to practice medicine in
7 Nevada subject to the jurisdiction of the Board as set forth in the Medical Practice Act.

8 **2. Representation by Counsel/Knowing, Willing, and Intelligent Agreement.**
9 Respondent understands that she may retain and consult counsel prior to entering into this
10 Agreement at her own expense. Respondent acknowledges she is represented by counsel,
11 John A. Hunt, Esq. of the law firm Morris Polich & Purdy, LLP, and wishes to resolve the matters
12 addressed herein with counsel. Respondent agrees that if representation by counsel in this matter
13 materially changes prior to entering into this Agreement and for the duration of this Agreement,
14 that counsel for the IC will be timely notified of the material change. Respondent agrees that she
15 knowingly, willingly, and intelligently enters into this Agreement after full consultation with and
16 upon the advice of her counsel.

17 **3. Waiver of Rights.** In connection with this Agreement, and the associated terms
18 and conditions, Respondent knowingly, willingly, and intelligently waives all rights in connection
19 with this administrative matter. Respondent hereby knowingly, willingly, and intelligently waives
20 all rights arising under the United States Constitution, the Nevada Constitution, the Medical
21 Practice Act, the APA, and any other legal rights that may be available to her or that may apply to
22 her in connection with the administrative proceedings resulting from Complaint - No. 12-10032-
23 1and Complaint - No. 14-10032-1filed in this matter, including defense of the Complaints,
24 adjudication of the allegations set forth in the Complaints (in addition, as more fully addressed
25 above, this also includes any anticipated amendments to Complaint 12-10032-1), and imposition
26 of any disciplinary actions or sanctions ordered by the Board. Respondent agrees to settle and
27 resolve the allegations of Complaint - No. 12-10032-1and Complaint - No. 14-10032-1as set out
28 by this Agreement without a hearing or any further proceedings, and without the right to judicial

1 review.

2 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent acknowledges
3 that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is
4 grounds for discipline pursuant to the Medical Practice Act. The Board acknowledges Respondent
5 is not admitting that the Board's claims/counts as alleged in the Complaints have merit and
6 Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential
7 subsequent litigation. Respondent asserts if this matter were to proceed to hearing, she has
8 evidence, witnesses, expert witness(es), and defenses to the counts/claims alleged in Complaint -
9 No. 12-10032-1 and Complaint - No. 14-10032-1, but for the purposes of resolving the matter and
10 for no other purpose, Respondent waives the presentation of evidence, witnesses, expert
11 witnesses, and defenses in order to effectuate this Agreement.

12 **5. Consent to Entry of Order.** In order to resolve Complaint - No. 12-10032-1 and
13 Complaint - No. 14-10032-1 pending against Respondent without incurring any further costs or the
14 expense associated with a hearing, Respondent hereby agrees that the Board may issue an order
15 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the Medical
16 Practice Act, to wit: one count of disciplinary action taken by another state, a violation of
17 NRS 630.301(3), as outlined in Count I of Complaint No. - 12-10032-1 and one count of
18 malpractice, a violation of NRS 630.301(4), as outlined in Count II of Complaint - No. 14-10032-
19 1. Accordingly, the following terms and conditions are hereby agreed upon:

20 A. Respondent agrees to allow her license to practice medicine in the state of Nevada
21 to be placed on probation for a period of 36 months from the date of the Board's
22 acceptance, adoption and approval of this Agreement (probationary period). The following
23 terms and conditions shall apply during Respondent's probationary period:

24 1. During the probationary period, Respondent shall not prescribe any Class II
25 - IV medications. If Respondent obtains a medical license coupled with the
26 authority to prescribe Class II - IV medications in another jurisdiction, the Board
27 will not object to Respondent prescribing Class II - IV medications in the
28 jurisdiction in which Respondent obtained a medical license coupled with the

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authority to prescribe Class II – IV medications. However, if Respondent prescribes any Class II – IV medications in another jurisdiction to any patient from Nevada, the IC shall be authorized to immediately summarily suspend Respondent’s license to practice medicine in Nevada.

2. During the probationary period, Respondent shall not administer drugs to patients except those that are necessary to perform her duties as an anesthesiologist. Accordingly, Respondent shall be able to administer drugs to patients to perform her duties as an anesthesiologist. The only drugs Respondent shall be able to administer to patients to perform her duties as an anesthesiologist are outlined in Exhibit “1.” The IC shall monitor Respondent’s administration of said drugs through reasonable random audits of her profile with the Nevada State Board of Pharmacy’s Prescription Monitoring Program and/or random audits of her patient medical charts. If Respondent administers any drugs outlined in Exhibit “1” to patients, Respondent shall be able to provide documentary proof upon request from a Board investigator that said drugs were administered solely to perform her duties as an anesthesiologist.

3. During the probationary period, Respondent agrees the Board shall have unfettered access to Respondent’s medical records and agrees they may be inspected randomly and without prior notice by investigators of the Board during the probationary period, to ensure that Respondent’s subsequent practice and record-keeping protocols are consistent with Nevada statutes and regulations.

4. During the probationary period, Respondent will be responsible for the costs involved in the ongoing administrative oversight relative to the probationary period and shall reimburse the Board within 30 days of a written request for reimbursement of the same.

5. During the probationary period, Respondent shall not engage, in any manner, in the practice of pain management.

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6. During the probationary period, Respondent shall not be employed in any manner with a pain management clinic/practice.

7. During the probationary period, Respondent shall not have any business interest/ownership in any pain management clinic/practice.

8. During the probationary period, Respondent shall not work at any location where pain management is practiced.

9. During the probationary period, Respondent shall not supervise any physician assistants.

10. During the probationary period, Respondent shall provide the Board with the physical address of each location of employment. If an address of employment changes, Respondent shall notify the Board in writing of the new physical address within five business days of the change.

11. During the probationary period, Respondent shall comply with all laws related to the practice of allopathic medicine, whether state or federal, whether statutory or regulatory, and whether contained in NRS and NAC chapters 629, 630, 453, 454, 585 and 639.

12. Respondent shall allow Board investigators to enter each location where Respondent is practicing medicine at any time during each practice location's normal operating hours, including any room or area therein, to inspect the practice and review any or all of her patient and practice records.

B. Respondent may petition the Board before the probationary period has expired to request that the terms of this Agreement be modified or that the probationary period be terminated before the 36-month probationary period referenced above expires.

C. With regards to Complaint - No. 12-10032-1, Respondent shall pay a fine of five hundred and xx/100 dollars (\$500.00) for Count I within 30 days of the Board's acceptance, adoption and approval of this Agreement.

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1 D. With regards to Complaint – No. 14-10032-1, Respondent shall pay a fine of five
2 hundred and xx/100 dollars (\$500.00) for Count II within 30 days of the Board’s
3 acceptance, adoption and approval of this Agreement.

4 E. With regards to Counts II and III of Complaint - No. 12-10032-1 and Counts I and
5 III of Complaint No. - 14-0032-1, the same shall be dismissed.

6 F. Respondent will pay the costs and expenses incurred in the investigation and
7 prosecution of the above-referenced matters within 30 days of the Board’s acceptance,
8 adoption and approval of this Agreement (i.e., Complaint - No. 12-10032-1 and Complaint
9 – No. 14-10032-1), the current amounts being \$4,567.42 for Complaint - No. 12-10032-1
10 and \$4,360.36 for Complaint – No. 14-10032-1, not including any costs that may be
11 necessary to finalize this Agreement.

12 G. Respondent shall be issued a public letter of reprimand.

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

18 I. 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
23 agents 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). 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 cases 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 Complaint - No. 12-10032-1 and Complaint - No. 14-10032-1. In the course of
7 seeking Board acceptance, approval, and adoption of this Agreement, counsel for the IC may
8 communicate directly with the Board staff and the adjudicating members of the Board.

9 Respondent acknowledges that such contacts and communication may be made or
10 conducted ex parte, without notice or opportunity to be heard on her part until the public Board
11 meeting where this 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 Complaint - No. 12-10032-1 and Complaint - No. 14-10032-1 and from participating in disciplinary
26 proceedings against Respondent, including adjudication of the cases; and (2) Respondent further
27 agrees that she shall not seek to disqualify any such member absent evidence of bad faith.

28 **10. Binding Effect.** If approved by the Board, Respondent understands that this

1 Agreement is a binding and enforceable contract upon Respondent and the Board.

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

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

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

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19 Dated this B day of MARCH, 2016.

Dated this 8 day of MAR, 2016.

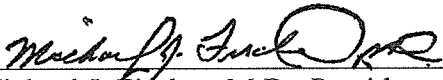
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21 By: RLK
22 Robert Kilroy, Esq.
Attorney for the Investigative Committee

By: [Signature]
John A. Hunt, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:

[Signature]
MARYANNE D. PHILLIPS, M.D., Respondent
Dated this 8 day of MAR, 2016.

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 9th day of September 2016, with the final total
3 amount of costs due of \$8,927.78.

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

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EXHIBIT

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EXHIBIT

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| acetaminophen | heparin | nitroprusside 50 mg injection |
| ademosine | heparin sodium | norepinephrine |
| Adenosine 3 mg/ml 2 ml vial | hetastach 6% 500 ml drip | ocular lubricant |
| albuterol | hydralazine | ondansetron |
| albuterol hfa | hydralazine hcl | ophthalmic lubricant |
| alfentanil | hydrocortisone 100mg/2mL | peinephrine PFS |
| alfentanyl | hydrocortisone 250mg/2mL | phenylephrine 100mcg/1mL |
| aminocaproic acid | hydrocortisone pf | phenylephrine 10mcg/1mL |
| amiodarone | hydromorphone | phenylephrine hcl |
| atracurium | iopamidol | physostigmine |
| atropine | ketamine | promethazine hcl |
| atropine sulfate | ketorolac | propofol 10mg/1mL |
| benzocaine/tetracaine topical | ketorolac tromethamine | propofol 200mg/20mL |
| bivalirudin | labetalol 5 mg/ml 4ml syringe | propofol/benzyl |
| bupivacaine 0.25% epi 1:200K | lidocaine 1% epi 1:100,000 | propranolol |
| bupivacaine | lidocaine 1% MPF | protamine 10mg/1mL |
| calcium chloride | lidocaine 1% pf | protamine 50mg/5mL |
| calcium chloride 10% | lidocaine 2% | protamine sulfate |
| cefazolin | lidocaine 2% 100mg/5mL | rocuronium |
| cefazolin sodium | lidocaine 2% 20 mg/ml 5ml sdv | sodium bicarbonate |
| cefoxitin | lidocaine 2% 5 ml jelly | sodium chloride |
| dexamethasone 10mg/1mL | lidocaine 2% MPF | sodium chloride 10% |
| dexamethasone 4mg/1mL | lidocaine 2% topical | sterile water |
| dexamethasone na phosphate | lidocaine 5% topical | succinylcholine |
| dextrose | lidocaine hcl 2% | succinylcholine chloride |
| dextrose 50% 50 ml syringe | lta kit 4% 4 ml top soln | sufentanil |
| digoxin | meperidine | sufentanil citrate |
| diltiazem | methpredinsolone sodium succ | triamcinolone |
| diphenhydramine | methyiprednisole sod succ | vasopressin |
| diphenhydramine hcl | methylprednisolone NA succ | vecuronium |
| dobutamine | metoclopramide | verapamil |
| doxapram | metoprolol | water for injection, fliptop |
| edrophonium/atropine | midazolam | |
| ephedrine 50mg/1mL | midazolam 2 mg/2mL | |
| ephedrine 5mg/1mL | midazolam 5mg/5mL | |
| ephedrine sulfate | milrinone 20mg/100mL | |
| epinephrine | milrinone 20mg/20mL | |
| epinephrine 10 ml bristojet | milrinone lactate iv | |
| esmolol | morphine | |
| esmolol hcl | morphine 10mg/1mL | |
| etomidate | morphine PF 10mg/10mL | |
| famotidine | naloxone | |
| fentanyl | naloxone 0.4 mg/1 ml inj. | |
| flumazenil | neostigmine | |
| furosemide | neostigmine 10 mg/10 ml vial | |
| gentamycin sulfate | nitroglycerin | |
| glycopyrrolate | nitroglycerin 2% ud | |