

ORIGINAL

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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In the Matter of Charges and)
)
Complaint Against)
)
SIMMON L. WILCOX, M.D.,)
)
Respondent.)
_____)

Case No. 16-30572-1
FILED
JUN - 7 2016

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: _____

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is hereby entered into by and between the Investigative Committee (“IC”) of the Nevada State Board of Medical Examiners (“Board”), composed of Wayne Hardwick, M.D., Theodore B. Berndt, M.D., and M. Neil Duxbury, Public Member, in the above-captioned matter, by and through Robert Kilroy, Esq., General Counsel for the IC, and Simmon L. Wilcox, M.D. (“Respondent”), by and through John A. Hunt, Esq., counsel for Respondent:

WHEREAS, an Indictment was filed on October 23, 2013 (“Indictment”), in the matter of United States of America v. Simmon Lee Wilcox, Benjamin David Grisel, Brenda Ann Grisel, Jeron Scott Hales, Jeremy Daniel Perkins, and Randal David Ayrton, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW.¹ Respondent provided the Board with timely notice of the Indictment.

WHEREAS, following a jury trial involving Respondent only, a *Verdict Form* was filed on January 28, 2015, in the matter of United States of America v. Simmon Lee Wilcox, United District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, which notes the jury found

¹Each Defendant, with the exception of the Respondent, reached a plea deal with the Government wherein they each plead guilty to Count 1 of the Indictment (i.e., Conspiracy to Distribute Oxycodone, 21 U.S.C. §§ 841(a)(1) and 846).

1 Respondent guilty as to Count 1 of the Indictment (i.e., Conspiracy to Distribute Oxycodone, 21
2 U.S.C. §§ 841(a)(1) and 846) and guilty as to Count 2 of the Indictment (i.e., Distribution of
3 Oxycodone, 21 U.S.C. § 841(a)(1)).

4 Moreover, the *Verdict Form* reflects the jury found Respondent not guilty as to Count 8
5 (i.e., Distribution of Hydrocodone, 21 U.S.C. § 841(a)(1)), Count 9 (i.e., Distribution of
6 Hydrocodone, 21 U.S.C. § 841(a)(1)), and Count 10 (i.e., Distribution of Hydrocodone, 21 U.S.C.
7 § 841(a)(1)).

8 **WHEREAS**, following the filing of the *Verdict Form*, a sentencing hearing for
9 Respondent in the matter of United States of America v. Simmon Lee Wilcox, United States
10 District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, was set for
11 April 18, 2016.

12 **WHEREAS**, Respondent has received a copy of the Complaint in the above-captioned
13 matter (Case No. 16-30572-1), has reviewed it, understands it, has had ample opportunity to
14 consult with his above-identified counsel concerning the nature and significance of the Complaint
15 in Case No. 16-30572-1, and Respondent is fully aware concerning his rights and defenses to the
16 Complaint, as well as the possible sanctions that may be imposed if the Board finds and concludes
17 that he has violated one or more provisions of the Medical Practice Act (“MPA”), Nevada Revised
18 Statutes (“NRS”) Chapter 630 and Nevada Administrative Code Chapter 630.

19 **WHEREAS**, Respondent has received a copy of the Indictment and a copy of the *Verdict*
20 *Form*, has reviewed them, understands them, and has had ample opportunity to consult with his
21 above-identified counsel concerning the nature and significance of the same with regards to
22 possible sanctions that may be imposed if the Board finds and concludes that he has violated one
23 or more provisions of the MPA as a result of the Indictment and/or *Verdict Form*.

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

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

4 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
5 Board's IC in the Complaint in Case No. 16-30572-1 and any and all matters relating to and any
6 and all matters that may be charged by the Board or the Board's IC by virtue of or in connection
7 with the above-referenced Indictment, the *Verdict Form*, and/or any sentencing/judgment
8 following the sentencing hearing currently scheduled for April 18, 2016, Respondent and the IC
9 hereby agree to the following terms, covenants and conditions:

10 **1. Jurisdiction.** Respondent is, and at all times mentioned in the Complaint in Case
11 No. 16-30572-1, and at all times relevant with respect to the filing of the above-referenced
12 Indictment, the *Verdict Form* and/or any sentencing/judgment following the sentencing hearing
13 currently scheduled for April 18, 2016, Respondent was, a physician licensed to practice medicine
14 in the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of
15 violations of the MPA and to impose sanctions as provided by the MPA.

16 **2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.**
17 Respondent is represented by above-identified legal counsel in this matter and has had
18 ample opportunity to review this Agreement, the Complaint in Case No. 16-30572-1, the above-
19 referenced Indictment and the *Verdict Form* (as well as consider the sentencing hearing currently
20 scheduled for April 18, 2016), and the related factual basis with regards to the same with said
21 legal counsel, John A. Hunt, Esq. Respondent covenants and agrees that he knowingly, willingly
22 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, Respondent knowingly, willingly and intelligently waives all
25 rights arising under or pursuant to the United States Constitution, the Constitution of the state of
26 Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be
27 available to him or that may apply to him in connection with the proceedings on the Complaint in
28 Case No. 16-30572-1, the Indictment, the *Verdict Form*, and/or any sentencing/judgment

1 following the sentencing hearing currently scheduled for April 18, 2016, the defense of said
2 Complaint in Case No. 16-30572-1, and the adjudication of the charges in said Complaint in Case
3 No. 16-30572-1.

4 In connection with this Agreement, and the terms, covenants, and conditions contained
5 herein, Respondent knowingly, willingly, and intelligently waives all rights arising under or
6 pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter
7 630, NRS Chapter 233B, and any other statutory rights that may be available to him or that may
8 apply to him in connection with the proceedings herein and/or any and all matters relating to and
9 any and all matters that may be charged by the Board or the Board's IC by virtue of or in
10 connection with the above-referenced Indictment, the *Verdict Form*, any sentencing/judgment
11 following the sentencing hearing currently scheduled for April 18, 2016, and the defense of the
12 same in this administrative context.

13 **4. Consent to Entry of Order.** Respondent concedes only that the Board has
14 sufficient evidence to proceed with its formal Complaint in Case No. 16-30572-1 against him, and
15 that by virtue of the Indictment, the *Verdict Form* and the sentencing/judgment following the
16 sentencing hearing currently scheduled for April 18, 2016, the Board also has sufficient evidence
17 to bring additional allegations against Respondent, but does not concede or admit to such
18 allegations, which he expressly denies, and which, but for his desire to reach this compromise, he
19 would contest at a formal hearing of these matters (i.e., the Complaint in Case No. 16-30572-1 as
20 well as any and all matters that could be alleged by the Board or the IC with regards to the
21 Indictment, the *Verdict Form* and the sentencing/judgment following the sentencing hearing
22 currently scheduled for April 18, 2016). Accordingly, in order to resolve these matters without
23 incurring further costs and expense of providing a defense to the Complaint, Case No. 16-30572-
24 1, Respondent hereby agrees² that the Board may issue an order finding that Respondent engaged
25 in conduct that is grounds for discipline pursuant to the MPA, and agrees:

26 ²All admissions made by Respondent are solely for final disposition of this matter and any subsequent related
27 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by
28 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 a. The Board may find that Respondent engaged in conduct that is grounds for
2 discipline pursuant to the MPA, to wit: Respondent being found guilty as to Count 1 of the
3 Indictment (i.e., Conspiracy to Distribute Oxycodone, 21 U.S.C. §§ 841(a)(1) and 846) and guilty
4 as to Count 2 of the Indictment (i.e., Distribution of Oxycodone, 21 U.S.C. § 841(a)(1)), which are
5 violations of NRS 630.301(9).

6 b. Pursuant to NRS 630.352(4)(d), Respondent agrees that **if he is sentenced**
7 **to probation and/or supervised release** at the sentencing hearing currently scheduled for April
8 18, 2016, in the matter of United States of America v. Simmon Lee Wilcox, United States District
9 Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, that effective on said
10 date, the following shall apply³:

11 1. Respondent agrees to accept a stayed suspension of his license to
12 practice medicine in the state of Nevada for a period of six (6) months. If, during the term of
13 Respondent's six (6) months' stayed suspension, the IC receives substantial evidence that
14 Respondent has materially breached the terms and conditions of this Agreement, Respondent
15 agrees the IC, without any further hearing or action by the Board, shall issue an order suspending
16 Respondent's license to practice medicine in the state of Nevada. Thereafter, Respondent may
17 request a hearing before the Board to reinstate his license, which must be heard within forty-five
18 (45) days of the Order of Suspension. However, during the pendency of the hearing before the
19 Board, Respondent waives any right to seek judicial review (state or federal) to reinstate his
20 privilege to practice medicine in the state of Nevada pending a final Board hearing;

21 2. Pursuant to NRS 630.352(4)(a), Respondent agrees to being placed
22 on probation with the Nevada State Board of Medical Examiners pursuant to the terms and
23 conditions issued by the United States District Court in the matter of United States of America v.
24 Simmon Lee Wilcox, United States District Court, District of Utah, Central Division, Case No.
25 2:13-cr-00717-TS-PMW. Within thirty (30) days of the sentencing hearing, Respondent shall

26 ³So there is no misunderstanding, Respondent, the Board, and the IC recognize and agree the terms and conditions of
27 **Paragraph 4.b.** and all of its subparts shall apply and be applicable **only** if Respondent is sentenced to probation
28 and/or supervised release in the matter of United States of America v. Simmon Lee Wilcox, United States District
Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, and, accordingly, if Respondent is
sentenced to probation and/or supervised release, the terms and conditions of **Paragraph 4.c.** (and its subparts) shall
not apply and shall not be effective.

1 provide a copy of this Agreement to the office of Federal Parole and Probation and/or any other
2 applicable office/department. Respondent shall also execute any documents necessary authorizing
3 the office of Federal Parole and Probation and/or any other applicable office/department to release
4 any and all reports generated regarding Respondent's compliance with the terms and conditions of
5 Respondent's federal probation and/or supervised release. Once Respondent is given written
6 notice of his completion of his federal probation and/or supervised release, Respondent shall
7 submit the written notice to the Investigative Committee. Upon receipt of the written notice of
8 completion of Respondent's federal probation and/or supervised release, the Board shall issue an
9 Order reinstating Respondent's license to the status of "active" without restriction. If, during the
10 term of Respondent's federal probation and/or supervised release, the IC receives substantial
11 evidence that Respondent has materially breached the terms and conditions of his federal
12 probation and/or supervised release, Respondent agrees the IC, without any further hearing or
13 action by the Board, shall issue an order suspending Respondent's license to practice medicine in
14 the state of Nevada. Thereafter, Respondent may request a hearing before the Board to reinstate
15 his license, which must be heard within forty-five (45) days of the Order of Suspension.
16 However, during the pendency of the hearing before the Board, Respondent waives any right to
17 seek judicial review (state or federal) to reinstate his privilege to practice medicine in the state of
18 Nevada pending a final Board hearing.

19 3. Pursuant to NRS 622.400, Respondent shall reimburse to the Board
20 the sum of \$998.46, the amount of the costs incurred by the Board to investigate and prosecute
21 this matter, along with the costs to conclude the matter, if any. Respondent further agrees that
22 these costs shall be paid to the Board within ninety (90) days of the sentencing in the federal
23 matter of United States of America v. Simmon Lee Wilcox, United States District Court, District
24 of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW.

25 c. Pursuant to NRS 630.352(4)(e), Respondent agrees that **if he is sentenced**
26 **to incarceration/custody** at the sentencing hearing currently scheduled for April 18, 2016, in the
27 matter of United States of America v. Simmon Lee Wilcox, United States District Court, District
28

1 of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, that effective on the date that he
2 presents to begin his incarceration/custody sentence, the following shall apply⁴:

3 1. Respondent's license to practice medicine in the state of Nevada
4 shall be revoked, pursuant to the terms and conditions set forth below.

5 a. Following his release from incarceration/custody,
6 Respondent may petition the Board to reinstate Respondent's license to practice medicine in the
7 state of Nevada pursuant to the following terms and conditions:

8 i. Pursuant to NRS 622.400, Respondent shall
9 reimburse to the Board the sum of \$998.46, the amount of the costs incurred by the Board to
10 investigate and prosecute this matter, along with the costs to conclude the matter, if any.
11 Respondent must pay these costs prior to petitioning the Board for reinstatement of Respondent's
12 license to practice medicine in the state of Nevada;

13 ii. Respondent must submit proof that Respondent has
14 complied with required continuing education requirements while incarcerated/in-custody;

15 iii. Pursuant to NRS 630.352(4)(a) in addition to any
16 additional terms the Board deems appropriate in the event the Board reinstates Respondent's
17 license to practice medicine in the state of Nevada, Respondent shall be placed on probation for a
18 period of one (1) year. Respondent shall also comply with any terms and conditions of parole and
19 probation and/or supervised release which may follow the incarceration/custody period, if any,
20 related to the case of United States of America v. Simmon Lee Wilcox, United States District
21 Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW. Within thirty (30)
22 days of Respondent's release from incarceration/custody, Respondent shall provide a copy of this
23 Agreement to the office of Federal Parole and Probation and/or any other applicable
24 office/department. Respondent shall also execute any documents necessary authorizing the office
25 of Federal Parole and Probation and/or any other applicable office/department to release any and

26 _____
27 ⁴So there is no misunderstanding, Respondent, the Board, and the IC recognize and agree the terms and conditions of
28 **Paragraph 4.c.** and all of its subparts shall apply and be applicable **only** if Respondent is sentenced to
incarceration/custody in the matter of United States of America v. Simmon Lee Wilcox, United States District Court,
District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, and, accordingly, if Respondent is sentenced to
incarceration/custody, the terms and conditions of **Paragraph 4.b.** (and its subparts) shall **not** apply and shall not be
effective.

1 all reports generated regarding Respondent's compliance with the terms and conditions of
2 Respondent's federal probation and/or supervised release following his incarceration/custody.
3 Once Respondent is given written notice of his completion of his federal probation and/or
4 supervised release following his incarceration/custody, Respondent shall submit the written notice
5 to the Investigative Committee. Upon receipt of the written notice of completion of federal
6 probation and/or supervised release following his incarceration/custody and Respondent's
7 completion of the one (1) year of probation relative to Respondent's Nevada medical license, the
8 Board shall issue an Order reinstating Respondent's license to the status of "active" without
9 restriction. If, during the term of Respondent's federal probation and/or supervised release
10 following his incarceration/custody or Respondent's Nevada medical license probation, the IC
11 receives substantial evidence that Respondent has materially breached the terms and conditions of
12 either probation and/or supervised release following his incarceration/custody, Respondent agrees
13 the IC, without any further hearing or action by the Board, shall issue an order suspending
14 Respondent's license to practice medicine in the state of Nevada. Thereafter, Respondent may
15 request a hearing before the Board to reinstate his license, which must be heard within forty-five
16 (45) days of the Order of Suspension. However, during the pendency of the hearing before the
17 Board, Respondent waives any right to seek judicial review (state or federal) to reinstate his
18 privilege to practice medicine in the state of Nevada pending a final Board hearing.

19 iv. Respondent agrees he shall submit to the Board any
20 and all documentation regarding any of the terms and conditions of parole and probation and/or
21 supervised release following his incarceration/custody related to the case of United States of
22 America v. Simmon Lee Wilcox, United States District Court, District of Utah, Central Division,
23 Case No. 2:13-cr-00717-TS-PMW upon Respondent's release from incarceration/custody.

24 d. Pursuant to NRS 630.352(4)(b), Respondent agrees the Board shall
25 administer a formal written public reprimand which will include language which is synonymous
26 with the terms of this Agreement.

27 e. Respondent and the Board agree that this Agreement does not involve facts
28 or circumstances relating to the delivery of health care to Respondent's former patients.

1 f. This Agreement fully and completely resolves all matters contained in the
2 Complaint in Case No. 16-30572-1.

3 g. This Agreement fully and completely resolves all matters that have or may
4 be alleged by the Board or the Board's IC against Respondent with regards to the Indictment, the
5 *Verdict Form* and/or any sentencing/judgment following the sentencing hearing currently
6 scheduled for April 18, 2016.

7 h. The terms of this Agreement shall be reported as required by law.

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

16 **6. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
17 recommend approval and adoption of the terms, covenants and conditions contained herein by the
18 Board in resolution of the matters referenced herein and above. In the course of seeking Board
19 approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate
20 directly with the Board staff and members of the panel of the Board who would adjudicate this
21 case if it were to go to hearing. Respondent acknowledges that such contacts and communication
22 may be made or conducted ex parte, without notice or opportunity to be heard on his part or on the
23 part of his counsel until the public Board meeting where this Agreement is discussed, and that
24 such contacts and communications may include, but not be limited to, matters concerning this
25 Agreement, the Complaint in Case No. 16-30572-1, the Indictment, the *Verdict Form*, the
26 sentencing hearing currently scheduled for April 18, 2016, and any and all information of every
27 nature whatsoever related to the same or the proceedings herein against Respondent. The IC and
28 its counsel agree that Respondent and/or his counsel may appear at the Board meeting where this

1 Agreement is discussed, and if requested, respond to any questions that may be addressed to the
2 IC or its counsel.

3 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
4 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
5 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
6 Agreement, ordering full compliance with the terms herein (as may be applicable relative to
7 Paragraphs 4.b. or 4.c. and their respective subparts – see discussion above), and ordering that this
8 case involving the Complaint in Case No. 16-30572-1, as well as any matter involving the
9 Indictment, the *Verdict Form* and the sentencing hearing currently scheduled for April 18, 2016,
10 be closed.

11 **8. Effect of Rejection of Agreement by Board.** In the event the Board does not
12 approve, accept 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 against Respondent and
19 participating in the disciplinary proceeding 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 **9. Binding Effect.** Providing 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.

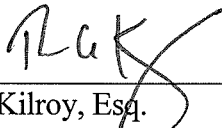
25 **10. Forum Selection Clause.** The parties agree that in the event either party is
26 required to see enforcement of this Agreement in district court, the parties consent to such
27 jurisdiction and agree that exclusive jurisdiction shall be in the Second Judicial District court, state
28 of Nevada, Washoe County.

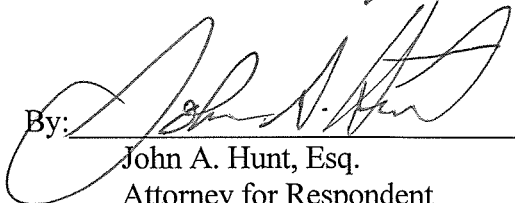
1 **11. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
2 action is commenced in the district court to enforce any provision of this Agreement, the
3 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

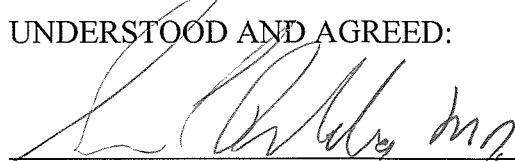
4 **12. Failure to Comply with Terms.** In the event the Board enters its order approving
5 this Agreement, should Respondent fail to comply with any term or condition recited herein, the
6 Board shall be authorized to immediately suspend Respondent's license to practice medicine in
7 the state of Nevada pending an order to show cause hearing, which will be duly noticed.
8 Further, failure to comply with the terms recited herein may result in additional disciplinary action
9 being initiated against Respondent for a violation of an order of the Board in accordance with
10 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
11 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

12
13 Dated this 13 day of April, 2016.

Dated this 12 day of April, 2016.

14
15 By: 
16 Robert Kilroy, Esq.
General Counsel for the Investigative Committee

By: 
John A. Hunt, Esq.
Attorney for Respondent

17
18 UNDERSTOOD AND AGREED:
19
20 
21 Simmon Lee Wilcox, 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 third day of June 2016, with the final total amount of
3 costs due of \$998.46.

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

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