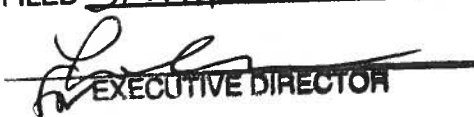


1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

4
5 **In The Matter of Charges and**
6 **Complaint Against**
7 **JAVIER MARTINEZ TORRES, M.D.,**
8 **Respondent.**
9

NO. Case No. 07-11047-1
FILED 31 March 2008

EXECUTIVE DIRECTOR

10
11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee (IC) of
13 the Nevada State Board of Medical Examiners (the Board) composed of Charles N. Held, M.D.,
14 Chairman, Jean Stoess, M.A., and Cindy Lamerson, M.D., by and through counsel, Lyn E. Beggs, Esq.,
15 and Respondent herein Javier Martinez Torres, M.D. (Respondent), representing himself, as follows:

16 **WHEREAS**, on or about October 22, 2007, the Investigative Committee of the Nevada State
17 Board of Medical Examiners filed a formal complaint in the above referenced matter charging Respondent
18 with violations of the Medical Practice Act (NRS Chapter 630) to wit: suspension, modification or
19 limitation of a license to practice medicine in another jurisdiction, a violation of NRS 630.301(3).

20 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands the
21 nature and significance of the Complaint, and Respondent is fully advised concerning his rights and
22 defenses to the Complaint as well as the possible sanctions that may be imposed if the Board finds and
23 concludes that he has violated one or more provisions of the Medical Practice Act; and

24 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United States
25 Constitution and the Constitution of the State of Nevada as well as under the Medical Practice Act
26 (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B) including but not
27 limited to the right to a formal hearing on the charges against him, the right to representation by counsel in
28 the preparation and presentation of his defense, the right to confrontation and cross-examination of

1 witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written
2 findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of
3 any final decision by the Board that is adverse to him; and

4 **WHEREAS**, provided this Agreement is approved by the Board, Respondent agrees to waive all
5 of his rights under the United States Constitution, the Constitution of the State of Nevada, the Medical
6 Practice Act and the Nevada Administrative Procedures Act, including but not limited to the right to a
7 hearing on the charges and written findings of fact, conclusions of law and order, and he agrees to settle
8 and resolve this matter of the formal complaint against him by way of, and in accordance with, this
9 Settlement, Waiver and Consent Agreement; and

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

15 **WHEREAS**, Respondent and the IC each understand and agree that if the Board approves the
16 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
17 below shall be binding and enforceable upon Respondent and the Board's IC; and

18 **WHEREAS**, Respondent has reviewed and understands all the relevant facts and circumstances of
19 this matter and after due consideration concedes that his active license to practice medicine in California
20 and his inactive license to practice medicine in Pennsylvania have been suspended, modified and or
21 limited as outlined in the Complaint filed by the Investigative Committee of the Nevada State Board of
22 Medical Examiners in this case. Respondent also represents and has provided information to verify, that he
23 has completed the terms of his probation in California and his license to practice medicine in California is
24 active with no restrictions or probation.

25 **NOW THEREFORE**, in order to resolve the above captioned case and charges brought against
26 him by the Board's Investigative Committee in said matter and in light of the fact that Respondent has
27 completed his California probation and currently holds an active, unrestricted license to practice medicine
28

1 in California and soon expects the reinstate of his inactive Pennsylvania license, Respondent and the
2 Investigative Committee hereby agree to the following terms, covenants and conditions:

3 1. **Jurisdiction.** Respondent is, and at all times mentioned in the complaint filed in the
4 above-captioned matter was, a physician licensed to practice medicine in the State of Nevada subject to
5 the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act
6 (NRS 630), and to impose sanctions as provided by the Act.

7 2. **Representation by Counsel.** Respondent acknowledges that he is not represented by
8 counsel and wishes to proceed towards resolution in this matter as set forth in this Agreement without
9 counsel. Respondent understands and acknowledges that he may retain and consult counsel prior to
10 entering into this agreement and agrees that if counsel is retained for representation in this matter prior to
11 entering into this agreement, that counsel for the Investigative Committee will be informed of such prior to
12 Respondent executing this Agreement.

13 3. **Waiver of Rights.** Respondent covenants and agrees that he enters into this Agreement
14 knowingly, willingly, and intelligently with knowledge that he may consult with counsel prior to entering
15 into this Agreement. In connection with this Agreement, and the terms, covenants and conditions
16 contained herein, Respondent knowingly, willingly and intelligently, without the advice of counsel, waives
17 all rights arising under or pursuant to the United States Constitution, the Constitution of the State of
18 Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him
19 in connection with the proceeding on the complaint filed herein, the defense of said complaint and the
20 adjudication of the charges in said complaint, and Respondent further agrees that the matter of the
21 disciplinary action commenced by complaint herein may be settled and resolved in accordance with this
22 Agreement without a hearing or any further proceeding, and without the right to judicial review.

23 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and agrees
24 that the Board's Investigative Committee has a reasonable basis to believe that Respondent violated one or
25 more provisions of the Medical Practice Act.

26 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
27 proceedings pending against him without any further cost and expense of providing a defense to the
28 complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,

1 finding that Respondent has violated the Medical Practice Act to wit: suspension, modification or
2 limitation of his California and Pennsylvania licenses to practice medicine, NRS 630.301(3), and
3 ordering that Respondent's Nevada license to practice medicine be suspended for 90 days, said
4 suspension to be stayed on the condition that Respondent be placed on probation for a period of twelve
5 (12) months or until such time as he has complied and completed all the following terms and
6 conditions, if this occurs prior to the end of the twelve month probationary period:

7 a. that Respondent shall pay a fine of \$1000, to be paid within 90 days of the Board's
8 acceptance and approval of this Agreement.

9 b. that Respondent shall notify the Nevada State Board of Medical Examiners at least
10 forty-eight (48) hours prior to initiating any practice of medicine within the state of Nevada.

11 c. that Respondent shall comply with all federal, state and local laws and rules governing
12 the practice of medicine in Nevada at all times he is practicing within the state;

13 d. that Respondent shall contact the Compliance Officer of the Nevada State Board of
14 Medical Examiners within 30 days of the approval and acceptance of this agreement in order to provide
15 information regarding the most expeditious method of contacting him;

16 e. that Respondent shall provided certified copies of any changes in the suspension of his
17 Pennsylvania license including any documentation showing reinstatement of said license;

18 f. that Respondent agrees that if he is charged with professional misconduct in the future,
19 this Agreement, and/or any related Orders, and/or records of his compliance, may be admitted into
20 evidence at a hearing regarding the alleged professional misconduct, at the sole discretion of the
21 Investigative Committee.

22 g. that Respondent agrees to pay the costs of investigation and prosecution of this matter in
23 the current amount of \$370.26, along with the costs to conclude the matter, if any, within 60 days of the
24 Board's acceptance and approval of this Agreement.

25 The terms of probation as set forth above take into consideration the fact that Respondent has
26 successfully completed all terms of his California probation as of October 27, 2007. If Respondent does
27 complete all terms of probation prior to the termination of the twelve month probation period, his
28 probation will be deemed to have been completed.

1 6. Procedure for Adoption of Agreement. The Investigative Committee and counsel for
2 the Investigative Committee shall recommend approval and adoption of the terms, covenants and
3 conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein
4 against Respondent pursuant to the formal complaint. In the course of seeking Board approval,
5 adoption and/or acceptance of this Agreement, counsel for the Investigative Committee may
6 communicate directly with the Board staff and members of the panel of the Board who would
7 adjudicate this case if it were to go to hearing. Respondent covenants and agrees that such contacts and
8 communication may be made or conducted ex parte, without notice or opportunity to be heard on his
9 part or on the part of his counsel, and that such contacts and communications may include, but not be
10 limited to, matters concerning this Agreement, the complaint, the allegations in the complaint, any and
11 all evidence that may exist in support of the complaint, and any and all information of every nature
12 whatsoever related to the complaint against Respondent.

13 7. Board Approval Required. This Agreement will be placed on the next available Agenda
14 of a regularly scheduled and duly noticed quarterly Board meeting. It is expressly understood that this
15 Agreement will only become effective if the Board approves the recommendation of the Investigative
16 Committee for acceptance.

17 8. Effect of Acceptance of Agreement by Board. In the event the Board approves,
18 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
19 Investigative Committee will cause to be entered herein the Board's Order finding Respondent violated
20 NRS 630.301(3), which states that the suspension, modification or limitation of a license to practice
21 medicine by another jurisdiction is grounds for discipline when his California and Pennsylvania licenses
22 to practice medicine were suspended and/or modified.

23 9. Effect of Rejection of Agreement by Board. In the event the Board does not approve,
24 accept and adopt the terms, covenants and conditions set out in this Agreement, this Agreement shall be
25 null, void, and of no further force and effect except as to the following covenant and agreement
26 regarding disqualification of adjudicating Board panel members. Respondent agrees that,
27 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that
28 occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by

1 the Board shall disqualify any member of the adjudicating panel of the Board from considering the
2 charges against Respondent and participating in the disciplinary proceedings in any role, including
3 adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such
4 member absent evidence of bad faith.

5 10. **Release From Liability.** In execution of this Agreement, the Respondent, for himself,
6 his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the
7 Board, the Nevada Attorney General, and each of their members, agents and employees in their
8 representative capacities, and in their individual capacities absent evidence of bad faith, from any and
9 all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
10 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or
11 claim to have, against any or all of the persons or entities named in this paragraph arising out of or by
12 reason of this investigation, this disciplinary action, this settlement or its administration, in connection
13 with the complaint. The Investigative Committee hereby agrees to accept this Agreement in full
14 settlement of all claims related to the complaint, with the understanding that the final decision rests with
15 the Board.

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

19 12. **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 Second Judicial District
22 Court of the State of Nevada in and for the County of Washoe.

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

26 14. **Failure to comply with terms.** In the event the Board enters its Order approving this
27 Agreement, should Respondent fails to comply with the terms recited herein, the Board would then have
28

1 grounds, after notice and a hearing, to take disciplinary action against Respondent in addition to that
2 included herein for the subject's violation of an Order of the Board in accordance with
3 NRS 630.3065(2)(a)

4 Dated this 10th day of January of 2007.

Dated this 8 day of January 2008

5
6 By: Lyn E. Beggs
7 Lyn E. Beggs, Esq.
8 Attorney for the Investigative Committee
9 of the Nevada State Board of Medical
10 Examiners

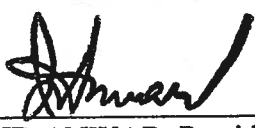
By: Gilbert Geilim
Gilbert Geilim, Esq.
Attorney for Respondent

11 UNDERSTOOD AND AGREED:

12 Javier Torres
13 Javier Torres, M.D., Respondent

14 Dated this 8 day of January, 2008

1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is approved
2 and accepted by the Nevada State Board of Medical Examiners on the 28th day of March 2008, with the
3 final total amount of costs due of \$370.26.



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5 _____
6 JAVAID ANWAR, President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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