

COPY

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

* * * * *

In the Matter of Charges and)
Complaint Against)
ELY ZASLOW, M.D.,)
Respondent.)

Case No. 09-32802-1

FILED

MAY 12 2009

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board), composed of Charles N. Held, M.D., Chairman, Jean Stoess, M.A., Member, and Benjamin J. Rodriguez, M.D., Member, by and through counsel, Edward O. Cousineau, Esq., and Ely Zaslow, M.D. (Respondent), as follows:

WHEREAS, on or about February 2, 2009, the IC of the Board filed a formal complaint in the above-referenced matter, charging Respondent with violations of the Medical Practice Act (NRS Chapter 630), to wit: revocation, suspension, modification or limitation of a license to practice medicine in another jurisdiction, a violation of NRS 630.301(3).

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

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

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

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

4 **WHEREAS**, provided this Agreement is approved by the Board, Respondent agrees to
5 waive all of his rights under the United States Constitution, the Constitution of the state of Nevada,
6 the Medical Practice Act, and the Nevada Administrative Procedures Act, including but not limited
7 to the right to a hearing on the charges and written findings of fact, conclusions of law and order,
8 and he agrees to settle and resolve this matter of the formal complaint against him by way of, and in
9 accordance with, this 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
12 Agreement to the Board for consideration in open session at a regularly-scheduled quarterly
13 meeting, duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but
14 that the Board has the right to decide in its own discretion whether or not to approve this Agreement;
15 and

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

19 **WHEREAS**, Respondent has reviewed and understands all the relevant facts and
20 circumstances of this matter and after due consideration concedes that his active license to practice
21 medicine in California has been suspended, modified and or limited as outlined in the Complaint
22 filed by the IC of the Board in this case.

23 **NOW THEREFORE**, in order to resolve the above-captioned case and charges brought
24 against him by the Board's Investigative Committee in said matter, Respondent and the IC hereby
25 agree to the following terms, covenants and conditions:

26 1. **Jurisdiction**. Respondent is, and at all times mentioned in the complaint filed in the
27 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject

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1 to the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical
2 Practice Act (NRS 630), and to impose sanctions as provided by the Act.

3 2. **Representation by Counsel.** Respondent acknowledges that he understands that he
4 has the right to consult with counsel prior to entering into this Agreement.

5 3. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
6 Agreement knowingly, willingly, and intelligently and that he has consulted with out-of-state
7 counsel prior to entering into this Agreement. In connection with this Agreement, and the terms,
8 covenants and conditions contained herein, Respondent knowingly, willingly and intelligently,
9 waives all rights arising under or pursuant to the United States Constitution, the Constitution of the
10 state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may
11 apply to him in connection with the proceeding on the complaint filed herein, the defense of said
12 complaint and the adjudication of the charges in said complaint, and Respondent further agrees that
13 the matter of the disciplinary action commenced by complaint herein may be settled and resolved in
14 accordance with this Agreement without a hearing or any further proceeding, and without the right
15 to judicial review.

16 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
17 agrees that the Board's IC has a reasonable basis to believe that Respondent violated one or more
18 provisions of the Medical Practice Act.

19 5. **Underlying Facts.** The facts underlying this Settlement, Waiver and Consent
20 Agreement are summarized in the consent order by the North Carolina Medical Board, which is
21 attached hereto as Exhibit 1 and is incorporated by reference.

22 6. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
23 proceedings pending against him without any further cost and expense of providing a defense to the
24 complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,
25 finding that Respondent has violated Nevada's Medical Practice Act to wit: the disciplinary action
26 related to Respondent's license to practice medicine in the state of North Carolina constitutes a
27 violation of the provisions of NRS 630.301(3), and that based upon the same, that Respondent

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1 shall be publicly reprimanded and that Respondent shall agree to the following terms and
2 conditions:

3 a. that Respondent has complied with all the terms and conditions set forth by the
4 North Carolina Medical Board in its Consent Order which became effective on July 18, 2008,
5 (see Exhibit 1);

6 b. that Respondent shall contact the Compliance Officer of the Board (hereinafter
7 "Compliance Officer") within thirty (30) days of the approval and acceptance of this Agreement
8 in order to provide information regarding the most expeditious method of contacting him;

9 c. that Respondent shall sign a release of information allowing the Board to
10 communicate with the North Carolina Medical Board regarding Respondent's compliance with
11 the terms of his North Carolina Consent Order and to obtain proof of completion of said
12 probation and reinstatement of his license without restrictions;

13 d. that Respondent shall cooperate fully with the Compliance Officer, or any other
14 designated person, in the administration and enforcement of this Agreement;

15 e. that Respondent agrees to pay the costs of investigation and prosecution of this
16 matter in the current amount of \$1,141.53, along with the costs to conclude the matter, if any,
17 within sixty (60) days of the Board's acceptance and approval of this Agreement;

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

3 8. **Board Approval Required.** This Agreement will be placed on the next available
4 Agenda of a regularly scheduled and duly noticed quarterly Board meeting. It is expressly
5 understood that this Agreement will only become effective if the Board approves the
6 recommendation of the IC for acceptance.

7 9. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
8 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
9 IC will cause to be entered herein the Board's Order finding Respondent violated
10 NRS 630.301(3), which states that the revocation, suspension, modification or limitation of a
11 license to practice medicine by another jurisdiction is grounds for discipline, when his North
12 Carolina license to practice medicine was suspended.

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

24 11. **Release From Liability.** In execution of this Agreement, the Respondent, for
25 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
26 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
27 employees in their representative capacities, and in their individual capacities absent evidence of
28 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,

1 executions, claims and demands whatsoever, known and unknown, in law or equity, that
2 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
3 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
4 action, this settlement or its administration, in connection with the complaint. The IC hereby
5 agrees to accept this Agreement in full settlement of all claims related to the complaint, with the
6 understanding that the final decision rests with the Board.

7 12. **Binding Effect.** Respondent covenants and agrees that this Agreement is a
8 binding and enforceable contract upon Respondent and the Board's IC, which contract may be
9 enforced in a court or tribunal having jurisdiction.

10 13. **Forum Selection Clause.** Respondent covenants and agrees that in the event
11 either party is required to seek enforcement of this Agreement in the district court, he consents to
12 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second
13 Judicial District Court of the State of Nevada in and for the County of Washoe.

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

17 15. **Failure to comply with terms.** In the event the Board enters its Order approving
18 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would
19 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in
20 addition to that included herein for the subject's violation of an Order of the Board in accordance
21 with NRS 630.3065(2)(a).

22 Dated this 3rd day of March, 2009.

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24 _____
25 Edward O. Cousineau, Esq.
26 Attorney for the Investigative Committee
27 of the Nevada State Board of Medical Examiners

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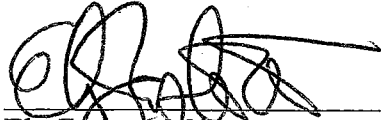
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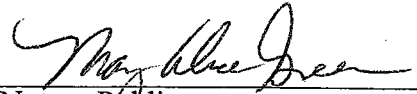
I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent Agreement signed on the 3rd day of March, 2009, by Edward O. Cousineau, Esq., Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners.

Dated this 10th day of March 2009.



Ely Zaslow, M.D.
Respondent

Signature of Ely Zaslow, M.D.
subscribed and sworn to before me
this 10 day of March, 2009



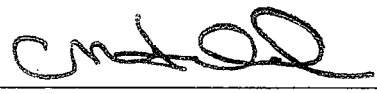
Notary Public Mary Alice Green



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

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IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 8th day of May, 2009, with the final total amount of costs due of \$1,141.53.



CHARLES N. HELD, President
NEVADA STATE BOARD OF MEDICAL EXAMINERS

EXHIBIT

1

BEFORE THE
NORTH CAROLINA MEDICAL BOARD

In re:)
)
Ely D. Zaslow, M.D.,) CONSENT ORDER
)
Respondent.)
)

This matter is before the North Carolina Medical Board (hereinafter Board) regarding information that Ely David Zaslow, M.D., (hereafter Dr. Zaslow) issued a limited number of prescriptions to patients without first performing a physical exam. Dr. Zaslow admits and the Board finds and concludes, the following:

Whereas the Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Article 1 of Chapter 90 of the North Carolina General Statutes, and

Whereas Dr. Zaslow is a physician first licensed by the Board on December 2, 1986, license No. 30885, and

Whereas during the times relevant herein, Dr. Zaslow practiced medicine in North Carolina, and

Whereas in or about May 2007, Dr. Zaslow, as an independent contractor, provided medical services for a period of three days through Secure Telemedicine, a business corporation located in Miami, Florida that renders medical services in North Carolina,

including prescriptions, via telephone conferences between physicians and patients, and

Whereas Dr. Zaslow issued a limited number of prescriptions over a three day period only, including a few prescriptions for controlled substances, for patients without a physical examination and without any prior physician-patient relationship between Dr. Zaslow and the patients that might have permitted, depending on good medical practice, issuing a prescription without a physical examination, and

Whereas Dr. Zaslow also denied prescriptions over this three day period to patients seeking medication, referred patients to the Emergency Department or to other providers, issued prescriptions only for chronic conditions for which the patients had prior prescriptions through their primary or other care providers, and Dr. Zaslow did evaluate the patients' presenting set of symptoms through a telephone conference to determine the source of the problem and the need for a particular drug, and

Whereas because of his reliance on certain representations made by Secure Telemedicine, Dr. Zaslow believed that a telephone patient evaluation and subsequent prescriptions were consistent with the Board's position, and professional standards generally, and

Whereas Dr. Zaslow ceased his participation with Secure Telemedicine by his own initiative after a three day period, over Secure Telemedicine's objection, and without any contact or threat of discipline by the Board, and

Whereas during May 2007, Secure Telemedicine billed patients for medical services rendered by Dr. Zaslow, and a portion of the fees collected from such patients was used to pay Dr. Zalow's compensation in a total amount not exceeding \$250.00 while the remainder was used to pay other expenses of Secure Telemedicine, and

Whereas during May 2007, Secure Telemedicine, through Dr. Zaslow, rendered medical care in North Carolina to patients, and, thus, Secure Telemedicine engaged in the unauthorized practice of medicine, and

Whereas, Dr. Zaslow, as an independent contractor, provided medical services through CallMD, a business corporation located in Frisco, TX that renders medical services, including prescriptions, via telephone conferences between physicians and patients, for a limited number of patients, and

Whereas as an independent contractor for CallMD, Dr. Zaslow issued prescriptions for a limited number of patients, without a physical examination and without any prior physician-patient relationship between Dr. Zaslow and the patients that might have

permitted, depending on good medical practice, issuing a prescription without a physical examination, and

Whereas Dr. Zaslow also denied prescriptions to these patients, referred patients to the Emergency Department or to other providers, issued prescriptions only for non-controlled substances to treat chronic and non-acute conditions for which the patients had prior prescriptions through their primary or other care providers, and Dr. Zaslow did evaluate the patients' presenting set of symptoms through a telephone conference to determine the source of the problem and the need for a particular drug, and

Whereas because of his reliance on certain representations made by CallMD, Dr. Zaslow believed that a telephone patient evaluation and subsequent prescriptions were consistent with the Board's position, and professional standards generally, and

Whereas Dr. Zaslow has now ceased his participation with CallMD, and

Whereas CallMD billed patients for medical services rendered by Dr. Zaslow, and a portion of the fees collected from such patients was used to pay Dr. Zaslow a consulting fee in a total amount of less than \$200, while the remainder was used to pay other expenses of CallMD, and

Whereas CallMD, through Dr. Zaslow, rendered medical care to

patients in North Carolina, and, thus, CallMD engaged in the unauthorized practice of medicine, and

Whereas by prescribing medications to patients without a physical examination and in the absence of a prior physician-patient relationship, Dr. Zaslow engaged in unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

Whereas by assisting in the unauthorized practice of medicine by Secure Telemedicine and CallMD, Dr. Zaslow engaged in unprofessional conduct, within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

Whereas by splitting with Secure Telemedicine and CallMD the fees he generated from practicing medicine, Dr. Zaslow engaged and is engaging in unprofessional conduct, within the meaning of N.C. Gen. Stat. § 90-14(a)(6), and

Whereas Dr. Zaslow acknowledges that he has an obligation to ensure that his medical practice, including but not limited to his prescribing practices, conforms to the accepted and prevailing standard of practice in North Carolina, and

Whereas Dr. Zaslow acknowledges he has read this entire document and understands it, and

Whereas Dr. Zaslow would like to resolve this matter without the need for more formal proceedings such that he enters into this consent order freely and voluntarily, and

Whereas Dr. Zaslow has enjoyed a full and unrestricted medical license since 1986 and no other complaints have been filed with the Board against him, and

Whereas Dr. Zaslow communicated openly and cooperated fully with the Board in its investigation of this matter, and

Whereas the Board has not found that Dr. Zaslow's conduct, as described above, resulted in harm to any patient, and

Whereas Dr. Zaslow understands that this Consent Order is subject to the approval of the Board and Dr. Zaslow agrees that he will not raise any objection or advance any argument that the Board or any of its members are disqualified from further participation in this case by reason of the review and consideration of this Consent Order, and

Whereas the Board determined it to be in the public interest to resolve this matter as set forth below;

NOW, THEREFORE, with Dr. Zaslow's consent, the Board enters the following Order:

1. Dr. Zaslow's license to practice medicine in North Carolina is SUSPENDED for thirty (30) days; however, such suspension is STAYED upon the following PROBATIONARY terms and conditions:

a. Dr. Zaslow shall strictly comply with the Board's Position Statements entitled "Writing of Prescriptions" and "Contact with Patients before Prescribing".

b. Within 12 (twelve) months of the date of this consent order, Dr. Zaslow shall attend a prescription writing continuing medical education course acceptable to the Board, and he shall provide proof of satisfactory completion of the course to the Investigations Department of the North Carolina Medical Board within thirty (30) days of completing the course.

c. Dr. Zaslow shall not prescribe medication for any person without first physically examining that person, unless such prescription is consistent with the Board's position statement titled "Contact with Patients before Prescribing".

d. Dr. Zaslow shall not split fees with a business corporation; that is, he shall not share fees generated from the practice of medicine with a business corporation on a percentage basis.

e. Dr. Zaslow shall obey all laws and all regulations related to the practice of medicine.

f. Dr. Zaslow shall notify the Board in writing of any change in his residence or practice addresses within 30 days of the change.

g. Dr. Zaslow shall appear before the Board as such times as requested by the Board.

2. If Dr. Zaslow fails to comply with any of the terms of this Consent Order, that failure shall constitute unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and shall be grounds, after any required notice and hearing, for the Board to suspend or revoke his license, or to activate the stayed portion of the suspension, or to deny any application he might make in the future or then have pending for a license.

3. Dr. Zaslow hereby waives any requirement under any law or rule that this Consent Order be served on him.

4. Upon execution by Dr. Zaslow and the Board, this Consent Order shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof. Additionally, the existence of this Consent Order will be reported to person, entities, agencies, and clearing houses, as required by law, including the Healthcare Integrity and Protection Data Bank.

5. No provision of this consent order shall constitute an admission by Dr. Zaslow for any purpose other than for this and any other proceedings before the North Carolina Medical Board, and shall not be admissible against Dr. Zaslow in any proceeding

outside of Board proceedings.

By order of the North Carolina Medical Board this the 18th
day of JULY, 2008.

NORTH CAROLINA MEDICAL BOARD

By: *George Saunders*
~~Janelle Rhyno, MD~~
George L. Saunders, III, MD

Consented to this the 18th day of July, 2008.

Ely D. Zaslow MD
Ely D. Zaslow, M.D.

State of NORTH CAROLINA
WAKE County

I, WANDA A. LONG, a Notary Public for the
above named County and State, do hereby certify that Ely D.
Zaslow, M.D., personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal
This the 18th day of July, 2008.

Wanda A. Long
Notary Public
(SEAL)

My Commission expires: 4-18-2010