

ORIGINAL

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and
Complaint Against
VANESSA BENES, P.A.-C.,
Respondent.

Case No. 08-338-1

FILED

AUG 11 2009

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is 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, Benjamin Rodriguez, M.D, member, and Jean Stoess, M.A., member, by and through counsel Lyn E. Beggs, Esq., and Vaness Benes, P.A.-C. (Respondent), by and through her counsel David Mortensen, Esq., as follows:

WHEREAS, on January 22, 2008, the Board's IC filed a formal complaint in the above referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: two counts of malpractice; and

WHEREAS, Respondent has received and reviewed a copy of the complaint, understands it, and has consulted with competent counsel David Mortensen, Esq., concerning the nature and significance of the complaint, and Respondent is fully advised concerning her 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 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act; and

WHEREAS, Respondent understands and agrees that she 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 her, the right to representation by counsel in the preparation and presentation of her defense, the right to confrontation and cross-examination of

1 witnesses against her, the right to present evidence and witnesses on her 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 her; and

4 **WHEREAS**, provided this Agreement is approved by the Board, Respondent agrees to waive all
5 of her 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 she agrees to settle
8 and resolve this matter of the complaint filed against her by way of, and in accordance with, this
9 Settlement, Waiver and Consent Agreement (Agreement); and

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

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

20 **WHEREAS**, Respondent has reviewed, understands and has discussed with counsel, all the
21 relevant facts and circumstances of this matter and after due consideration, recognizes that the Board has
22 evidence to proceed with the allegations set forth in counts I and II of the complaint against her and make
23 a finding that she has violated the Medical Practice Act.

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

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

1 subject 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 is represented by counsel, David Mortensen
4 Esq., whom Respondent covenants and agrees is fully capable, competent, and fully advised in these
5 circumstances, and Respondent further covenants and agrees that she enters into this Agreement
6 knowingly, willingly, and intelligently after full consultation with and upon the advice of counsel.

7 3. **Waiver of Rights.** Respondent covenants and agrees that she enters into this Agreement
8 knowingly, willingly, and intelligently with knowledge that she may consult with counsel prior to entering
9 into this Agreement. In connection with this Agreement, and the terms, covenants and conditions
10 contained herein, Respondent knowingly, willingly and intelligently, with the advice of above identified
11 counsel, waives all rights arising under or pursuant to the United States Constitution, the Constitution of
12 the state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to her or that may
13 apply to her in connection with the proceeding regarding the complaint filed herein, the defense of said
14 complaint and the adjudication of the charges in said complaint, and Respondent further agrees that the
15 matter of the disciplinary action commenced by the filing of the complaint herein may be settled and
16 resolved in accordance with this Agreement without a hearing or any further proceeding, and without the
17 right to judicial review. In the event this Agreement is not approved by the Board, this Agreement shall
18 have no force and effect and Respondent shall have all rights arising under or pursuant to the United States
19 Constitution, the Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may
20 be available to her or that may apply to her in connection with the proceeding on the complaint filed
21 herein.

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

25 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
26 proceedings pending against her without any further costs and expense of providing a defense to the
27 complaint, or to an amended complaint, Respondent does not wish to contest the allegations as set forth in
28 counts I and II of the complaint and recognizes that the Board has evidence to proceed with its complaint

1 and that an order may be entered herein by the Board finding that Respondent engaged in conduct that is
2 grounds for discipline pursuant to the Medical Practice Act, to wit; two counts of malpractice as set forth
3 in counts I and II of the complaint; and ordering that she be issued a public reprimand. It shall be further
4 ordered that Respondent shall complete six (6) credits of continuing medical education (CME) regarding
5 her focus of practice. Said CME course to be pre-approved by the Investigative Committee Chair and to
6 be completed within twelve (12) months of the adoption and approval of this Agreement by the Board.
7 Said CME shall be in addition to any other continuing medical education required as a condition of
8 licensure. Finally, it shall be ordered that Respondent shall reimburse the Board the reasonable costs and
9 expenses incurred in the investigation and prosecution of this case, the current amount being \$3034.94 to
10 be paid to the Nevada State Board of Medical Examiners within one hundred eighty days (180) days of
11 the acceptance, adoption and approval of this Agreement by the Board.

12 6. **Procedure for Adoption of Agreement.** The Investigative Committee and counsel for
13 the Investigative Committee shall recommend approval and adoption of the terms, covenants and
14 conditions contained herein by the Board in resolution of the disciplinary proceedings pending herein
15 against Respondent pursuant to the complaint. In the course of seeking Board approval, adoption and/or
16 acceptance of this Agreement, counsel for the Investigative Committee may communicate directly with
17 the Board staff and members of the panel of the Board who would adjudicate this case if it were to go to
18 hearing. Respondent covenants and agrees that such contacts and communication may be made or
19 conducted ex parte, without notice or opportunity to be heard on her part or on the part of her counsel,
20 until the public Board meeting where this Agreement is discussed, and that such contacts and
21 communications may include, but not be limited to, matters concerning this Agreement, the complaint
22 and the allegation therein, any and all evidence that may exist in support of the complaint, and any and
23 all information of every nature whatsoever related to the complaint against Respondent. The IC and its
24 counsel agree that Respondent and her counsel may appear at the Board meeting where this Agreement
25 is discussed in order to respond to any and all questions that may be addressed to the IC or its counsel at
26 such meeting.

27 7. **Board Approval Required.** This Agreement will be placed on the next available Agenda
28 of a regularly-scheduled and duly-noticed quarterly Board meeting. It is expressly understood that this

1 Agreement will only become effective if the Board approves the recommendation of the Investigative
2 Committee for acceptance.

3 8. **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 Investigative Committee will cause to be entered herein the Board's Order, accepting, adopting and
6 approving this Settlement, Waiver and Consent Agreement, ordering full compliance with the terms
7 herein and ordering that this case be closed, subject to the provisions in Section 5.

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

18 10. **Release From Liability.** In execution of this Agreement, the Respondent, for herself,
19 her executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the
20 Board, the Nevada Attorney General, and each of their members, agents and employees in their
21 representative capacities, and in their individual capacities absent evidence of bad faith, from any and
22 all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
23 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or
24 claim to have, against any or all of the persons or entities named in this paragraph arising out of or by
25 reason of this investigation, this disciplinary action, this settlement or its administration, in connection
26 with the complaint. The Investigative Committee hereby agrees to accept this Agreement in full
27 settlement of all claims related to the complaint, with the understanding that the final decision rests with
28 the Board.

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


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

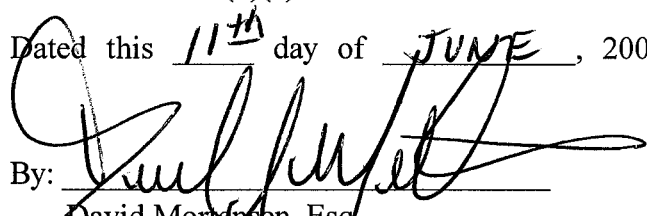
8 13. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
9 action is commenced in the district court to enforce any provision of this Agreement, the prevailing
10 party shall be entitled to recover reasonable costs and attorneys' fees.

11 14. **Failure to comply with terms.** In the event the Board enters its Order approving this
12 Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have
13 grounds, after notice and a hearing, to take disciplinary action against Respondent for the subject's
14 violation of an Order of the Board in accordance with NRS 630.3065(2)(a).

15 Dated this 3rd day June of 2009.

Dated this 11th day of JUNE, 2009.

17 By: 
18 Lyn E. Beggs, Esq.
19 Attorney for the Investigative Committee
20 of the Nevada State Board of Medical
21 Examiners

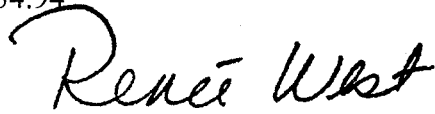
By: 
David Mortensen, Esq.
Attorney for Respondent

21 UNDERSTOOD AND AGREED:

22 
23 Vanessa Benes, P.A.-C. Respondent

24 Dated this 11 day of June, 2009

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 7th day of August 2009, with the
3 final total amount of costs due of \$3,034.94

4 

5 _____
6 RENEE WEST, Secretary-Treasurer
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28