

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

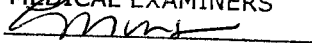
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In The Matter of Charges and)
Complaint Against)
CARLOS INOCENCIO, M.D.,)
Respondent.)

09
Case No. ~~10~~-22388-1

FILED

SEP 13 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

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 (Board), composed of Charles N. Held, M.D., Theodore B. Berndt, M.D., and Valerie J. Clark, BSN, RHU, LUTCF, by and through Edward Cousineau, Deputy Executive Director for the Nevada State Board of Medical Examiners, and Carlos Inocencio, M.D. (Respondent), by and through his counsel, L. Kristopher Rath, Esq., as follows

WHEREAS, on or about December 23, 2009, the IC of the Board filed a formal complaint in the above-referenced matter, charging Respondent with violations of Nevada's Medical Practice Act (Chapter 630 of the Nevada Revised Statute (NRS) and Nevada Administrative Code (NAC)), to wit: a two-count violation of NRS 630.301(4) and a two-count violation of NAC 630.230(1)(l).

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),

1 including but not limited to the right to a formal hearing on the charges against him, the right to
2 representation by counsel in the preparation and presentation of his defense, the right to
3 confrontation and cross-examination of witnesses against him, the right to present evidence and
4 witnesses on his own behalf, the right to written findings, conclusions and order regarding a final
5 decision by the Board, and the right to judicial review of any final decision by the Board that is
6 adverse to him; and

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

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

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

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

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

2. **Representation by Counsel.** Respondent is represented by counsel named herein, whom Respondent covenants and agrees is fully capable, competent and fully advised in these circumstances, and Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and intelligently after full consultation with and upon the advice of said counsel.

3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and conditions contained herein, Respondent knowingly, willingly and intelligently, waives all rights arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in connection with the proceeding on the complaint filed herein, the defense of said complaint and the adjudication of the charges in said complaint, and Respondent further agrees that the matter of the disciplinary action commenced by complaint herein may be settled and resolved in accordance with this Agreement without a hearing or any further proceeding, and without the right to judicial review.

4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and agrees that the Board's IC had a reasonable basis to believe that Respondent engaged in one or more instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice Act. All 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, said admissions by 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. Should the Board not approve this agreement, Respondent reserves the right to fully defend against the allegations in the complaint at a formal hearing. Respondent fully reserves his rights to defend against the allegations in the complaint, should they be raised in any civil suit to which the Board is not a party.

5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary proceedings pending against him without any further cost and expense of providing a defense to the 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: that in treating the patients
2 referenced in the original complaint filed by the IC, Respondent's associated medical treatment
3 related to the underlying patients was deficient and in violation of the standards of practice
4 established in NAC 630.230(1)(1). As a result, Respondent is to be found guilty of two counts of
5 NRS 630.306(2)(b), that Respondent shall be publicly reprimanded, that within one year of the
6 acceptance, adoption and approval of this Agreement, Respondent shall complete ten (10) hours
7 of Continuing Medical Education (CME) regarding the subject of controlled substance
8 prescribing, the content of which are to be approved by the IC Chairman in advance of their
9 accomplishment and which are to be in addition to any CME requirements that are regularly
10 imposed upon Respondent as a condition of licensure in the state of Nevada. That Respondent is
11 to be fined in the amount of \$1,500.00. And that, Respondent shall reimburse the Board the
12 reasonable costs and expenses incurred in the investigation and prosecution of this case in the
13 current amount of \$6,259.23, plus any additional costs that may be accrued subsequent in the
14 disposition of this matter. The aforementioned fine and costs are to be paid to the Board within
15 one-hundred and twenty (120) days of the acceptance, adoption and approval of this Agreement
16 by the Board. A final accounting of the additional costs will be provided to Respondent in the
17 entry of the Board's Order relating to the matter.

18 6. **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 7. **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 8. **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 consistent with the terms of paragraph 5
10 above.

11 9. **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 proceedings in any role, including adjudication of the case, and
20 Respondent further agrees that he shall not seek to disqualify any such member absent evidence
21 of bad faith.

22 10. **Release From Liability.** In execution of this Agreement, the Respondent, for
23 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
24 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
25 employees in their representative capacities, and in their individual capacities absent evidence of
26 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
27 executions, claims and demands whatsoever, known and unknown, in law or equity, that
28 Respondent ever had, now has, may have or claim to have, against any or all of the persons or

1 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
2 action, this settlement or its administration, in connection with the complaint. The IC hereby
3 agrees to accept this Agreement in full settlement of all claims related to the complaint, with the
4 understanding that the final decision rests with the Board.

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

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

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

15 14. **Failure to comply with terms.** In the event the Board enters its Order approving
16 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would
17 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in
18 addition to that included herein for the subject's violation of an Order of the Board in accordance
19 with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for
20 monies agreed to be paid as a condition of settlement, may subject Respondent to civil collection
21 efforts.

22 Dated this 7th day of July, 2010.

Dated this 29th day of June, 2010.

24 By: 

25 Edward O. Cousineau
26 Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners

By: 

L. Kristopher Rath, Esq.
Attorney for Respondent

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OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners

1105 Terminal Way #301

Reno, Nevada 89502

(775) 688-2559

1 UNDERSTOOD AND AGREED:

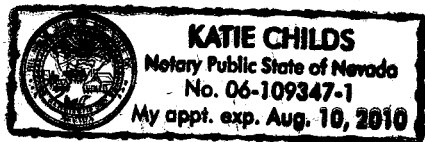
2 Carlos Inocencio

3 Carlos Inocencio, M.D., Respondent

4 Dated this 29th day of June, 2010.

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7 Signature of Carlos Inocencio, M.D.
8 subscribed and sworn to before me

9 this 29th day of June, 2010.



Katie Childs
Notary Public

1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is
2 approved and accepted by the Nevada State Board of Medical Examiners on the 10th day of
3 September, 2010, with the final total amount of costs due of \$6,259.23.

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5 Benjamin J. Rodriguez, M.D., Vice President
6 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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