

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

3 \* \* \* \* \*

4 **In The Matter of Charges and** )  
5 **Complaint Against** )  
6 **COLLEEN LYONS, M.D.,** )  
7 **Respondent.** )  
8 )  
9 )

Case No. 09-8102-1

**FILED**  
**MAR 05 2010**  
NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of the  
12 Nevada State Board of Medical Examiners (the Board) composed of Benjamin Rodriguez, M.D,  
13 Mr. Van H. Heffner and Beverly Neyland, M.D. by and through counsel Lyn E. Beggs, Esq., and Colleen  
14 Lyons, M.D. (Respondent), by and through her counsel Edward Lemons, Esq., as follows:

15 **WHEREAS**, on September 2, 2009, the Board's IC filed a Complaint in the above referenced  
16 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the  
17 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count of malpractice, a  
18 violation of NRS 630.301(4); and

19 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands it, and  
20 has consulted with competent counsel Edward Lemons, Esq., concerning the nature and significance of the  
21 Complaint and Respondent is fully advised concerning her rights and defenses to the complaint as well as  
22 the possible sanctions that may be imposed if the Board finds and concludes that she has engaged in  
23 conduct that is grounds for discipline pursuant to the Medical Practice Act and after due consideration and  
24 consultation with her counsel, concedes that her care of the patient at issue fell below the standard of care  
25 and accordingly constitutes malpractice as set forth in count I of the Complaint; and

26 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and  
27 between herself and the Board's Investigative Committee, and not with the Board, but that the  
28 Investigative Committee will present this Agreement to the Board for consideration in open session at a

1 Board meeting, appropriately noticed, and that the Investigative Committee shall advocate approval of this  
2 Agreement by the Board, but that the Board has the right to decide in its own discretion whether or not to  
3 approve this Agreement; and

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

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

11 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
12 proceedings pending against her without any further costs and expense of providing a defense to the  
13 Complaint or to any amended complaints, Respondent hereby agrees that an order may be entered herein  
14 by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant to the  
15 Medical Practice Act to wit: one count of malpractice as set forth in count I of the Complaint, a violation  
16 of NRS 630.301(4); and ordering that Respondent shall be ordered to reimburse the Board the reasonable  
17 costs and expenses incurred in the investigation and prosecution of this case, the current amount being  
18 \$4,204.17. The costs shall be paid to the Nevada State Board of Medical Examiners within sixty (60)  
19 days of the acceptance of this Agreement by the Board;

20 2. **Jurisdiction.** Respondent is, and at all times mentioned in the Complaint filed in the  
21 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject to the  
22 jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act  
23 (NRS 630), and to impose sanctions as provided by the Act.

24 3. **Waiver of Rights.** Respondent covenants and agrees that she enters into this Agreement  
25 knowingly, willingly, and intelligently with knowledge that she may consult with counsel prior to entering  
26 into this Agreement. In connection with this Agreement, and the terms, covenants and conditions  
27 contained herein, Respondent knowingly, willingly and intelligently, with the advice of above identified  
28 counsel, waives all rights arising under or pursuant to the United States Constitution, the Constitution of

1 the state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or that  
2 may apply to Respondent in connection with the proceeding regarding the Complaint filed herein, the  
3 defense of said Complaint and the adjudication of the charges in said Complaint, and Respondent further  
4 agrees that the matter of the disciplinary action commenced by the filing of the complaint herein may be  
5 settled and resolved in accordance with this Agreement without a hearing or any further proceeding, and  
6 without the right to judicial review. In the event this Agreement is not approved by the Board, this  
7 Agreement shall have no force and effect and Respondent shall have all rights arising under or pursuant to  
8 the United States Constitution, the Constitution of the State of Nevada, NRS Chapter 630 and  
9 NRS Chapter 233B that may be available to Respondent or that may apply to Respondent in connection  
10 with the proceeding on the complaint filed herein.

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

14 5. **Procedure for Adoption of Agreement.** It is expressly understood that this Agreement  
15 will only become effective if the Board approves the recommendation of the Investigative Committee for  
16 acceptance. The Investigative Committee and counsel for the Investigative Committee shall recommend  
17 approval of the terms, covenants and conditions contained herein by the Board in resolution of the  
18 disciplinary proceedings pending herein against Respondent pursuant to the complaint. In the course of  
19 seeking Board approval of this Agreement, counsel for the Investigative Committee may communicate  
20 directly with the Board staff and members of the panel of the Board who would adjudicate this case if it  
21 were to go to hearing. Respondent covenants and agrees that such contacts and communication may be  
22 made or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his  
23 counsel, until the public Board meeting where this Agreement is discussed, and that such contacts and  
24 communications may include, but not be limited to, matters concerning this Agreement, the Complaint  
25 and the allegations therein, any and all evidence that may exist in support of the Complaint, and any and  
26 all information of every nature whatsoever related to the complaint against Respondent. The  
27 Investigative Committee and its counsel agree that Respondent and his counsel may appear at the Board  
28

1 meeting where this Agreement is discussed in order to respond to any and all questions that may be  
2 addressed to the Investigative Committee or its counsel at such meeting.

3         6.         **Effect of Acceptance of Agreement by Board.** In the event the Board approves the  
4 terms, covenants and conditions set out in this Agreement, counsel for the Investigative Committee will  
5 cause to be entered herein the Board's Order approving this Settlement, Waiver and Consent  
6 Agreement, ordering full compliance with the terms herein and ordering that this case be closed, subject  
7 to the provisions in Paragraph 1.

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

18         8.         **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.

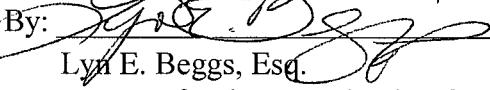
1           9.     **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and  
2 enforceable contract upon Respondent and the Board's Investigative Committee, which contract may be  
3 enforced in a court or tribunal having jurisdiction.

4           10.    **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, she 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.

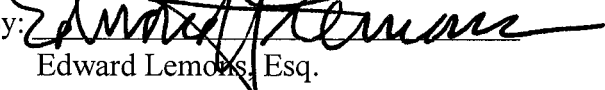
8           11.    **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an  
9 action is commenced in the district court to enforce any provision of this Agreement, the prevailing  
10 party shall be entitled to recover reasonable costs and attorneys' fees.

11           12.    **Failure to comply with terms.** In the event the Board enters its Order approving this  
12 Agreement, upon receipt of credible information that Respondent has failed to comply with any term or  
13 condition of this Order, the Board shall be authorized to immediately suspend Respondent's license  
14 until Respondent complies with the term or condition. Failure to comply with the terms recited herein  
15 may result in additional disciplinary action being initiated against Respondent for a violation of an  
16 Order of the Board in accordance with NRS 630.3065(2)(a). Furthermore, any failure to pay any fine,  
17 fee, or cost ordered herein will also result in such legal action as determined to be necessary to collect  
18 the unpaid fine, fee, or cost.

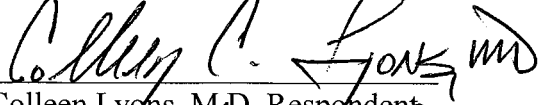
19 Dated this 14<sup>th</sup> day February of 2010.

20 By:   
21     Lyn E. Beggs, Esq.  
22     Attorney for the Investigative Committee  
23     of the Nevada State Board of Medical  
24     Examiners

Dated this 10<sup>th</sup> day of Feb., 2010.

20 By:   
21     Edward Lemons, Esq.  
22     Attorney for Respondent

23 UNDERSTOOD AND AGREED:

24   
25     Colleen Lyons, M.D. Respondent  
26 Dated this 10<sup>th</sup> day of February 2010.

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 5<sup>th</sup> day of March 2010, with the  
3 final total amount of costs due of \$4,134.17.

4 

5 \_\_\_\_\_  
6 Charles N. Held, President  
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