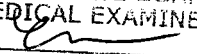


1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

3 * * * * *

4 **In The Matter of Charges and**) **Case No. 09-33089-1**
5)
6 **Complaint Against**)
7 **JAMES G. BOYLE, R.R.T.**)
8 **Respondent.**)
9 _____)

FILED
DEC - 6 2010
NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
12 the Nevada State Board of Medical Examiners (the Board) composed of
13 Benjamin J. Rodriguez, M.D, Mr. Van V. Heffner, and Beverly Neyland, M.D. by and through
14 counsel, Lyn E. Beggs, Esq., and James G. Boyle, R.R.T. (Respondent), by and through his
15 counsel Hal Taylor, Esq., as follows:

16 **WHEREAS**, on November 19, 2009, the Board's IC filed a First Amended Complaint in
17 the above referenced matter charging Respondent with engaging in conduct that is grounds for
18 discipline pursuant to the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit:
19 one count of willfully and intentionally making a false or fraudulent statement in applying for or
20 renewing a license to practice respiratory care, a violation of NAC 630.540(1) and one count of
21 having a license to practice respiratory care revoked in any other jurisdiction, a violation of
22 NAC 630.540(12); and

23 **WHEREAS**, Respondent has received and reviewed a copy of the First Amended
24 Complaint, understands it, and has consulted with competent counsel Hal Taylor, Esq., concerning
25 the nature and significance of the First Amended Complaint and Respondent is fully advised
26 concerning his rights and defenses to the complaint as well as the possible sanctions that may be
27 imposed if the Board finds and concludes that he has engaged in conduct that is grounds for
28 discipline pursuant to the Medical Practice Act and after due consideration and consultation with

1 his counsel concedes that his license to practice respiratory care was revoked by default in the state
2 of California in 1999 as set forth in count II of the First Amended Complaint; and

3 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by
4 and between himself and the Board's Investigative Committee, and not with the Board, but that the
5 Investigative Committee will present this Agreement to the Board for consideration in open
6 session at a Board meeting, appropriately noticed, and that the Investigative Committee shall
7 advocate approval of this Agreement by the Board, but that the Board has the right to decide in its
8 own discretion whether or not to approve this Agreement; and

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

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

16 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
17 proceedings pending against him without any further costs and expense of providing a defense to
18 the First Amended Complaint or to any other amended complaints, Respondent hereby agrees that
19 an order may be entered herein by the Board finding that Respondent engaged in conduct that is
20 grounds for discipline pursuant to the Medical Practice Act to wit: having a license to practice
21 respiratory care revoked in any other jurisdiction as set forth in count II of the First Amended
22 Complaint, a violation of NAC 630.540(12) and ordering that Respondent be issued a public
23 reprimand. Furthermore, Respondent shall be ordered to reimburse the Board the reasonable costs
24 and expenses incurred in the investigation and prosecution of this case, the current amount being
25 \$1619.34. The costs and fines shall be paid to the Nevada State Board of Medical Examiners
26 within ninety (90) days of the acceptance of this Agreement by the Board. Furthermore, count I
27 of the Complaint shall be dismissed.

28 ///

1 2. **Jurisdiction.** Respondent was at all times mentioned in the First Amended
2 Complaint filed in the above-captioned matter was a Registered Respiratory Therapist, licensed to
3 practice respiratory care in the state of Nevada subject to the jurisdiction of the Board to hear and
4 adjudicate charges of violations of the Medical Practice Act (NRS and NAC 630), and to impose
5 sanctions as provided by the Act.

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

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

25 5. **Procedure for Adoption of Agreement.** It is expressly understood that this
26 Agreement will only become effective if the Board approves the recommendation of the
27 Investigative Committee for acceptance. The Investigative Committee and counsel for the
28 Investigative Committee shall recommend approval of the terms, covenants and conditions

1 contained herein by the Board in resolution of the disciplinary proceedings pending herein
2 against Respondent pursuant to the First Amended Complaint. In the course of seeking Board
3 approval of this Agreement, counsel for the Investigative Committee may communicate directly
4 with the Board staff and members of the panel of the Board who would adjudicate this case if it
5 were to go to hearing. Respondent covenants and agrees that such contacts and communication
6 may be made or conducted ex parte, without notice or opportunity to be heard on his part or on
7 the part of his counsel, if any, until the public Board meeting where this Agreement is discussed,
8 and that such contacts and communications may include, but not be limited to, matters
9 concerning this Agreement, the First Amended Complaint and the allegations therein, any and
10 all evidence that may exist in support of the First Amended Complaint, and any and all
11 information of every nature whatsoever related to the complaint against Respondent. The
12 Investigative Committee and its counsel agree that Respondent and his counsel, if any, may
13 appear at the Board meeting where this Agreement is discussed in order to respond to any and
14 all questions that may be addressed to the Investigative Committee or its counsel at such
15 meeting.

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

21 7. **Effect of Rejection of Agreement by Board.** In the event the Board does not
22 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be
23 null, void, and of no further force and effect except as to the following covenant and agreement
24 regarding disqualification of adjudicating Board panel members. Respondent agrees that,
25 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing
26 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance
27 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating
28 panel of the Board from considering the charges against Respondent and participating in the

1 disciplinary proceedings in any role, including adjudication of the case, and Respondent further
2 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

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

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

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

24 12. **Failure to comply with terms.** In the event the Board enters its Order approving
25 this Agreement, upon receipt of credible information that Respondent has failed to comply with
26 any term or condition of this Order, the Board shall be authorized to immediately suspend
27 Respondent's license until Respondent complies with the term or condition. Failure to comply
28 with the terms recited herein may result in additional disciplinary action being initiated against

1 Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).
2 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in such legal
3 action as determined to be necessary to collect the unpaid fine, fee, or cost.

4 Dated this 2nd day of November 2010.

Dated this 27th day of October, 2010.

5
6 By: Lyn E. Beggs
7 Lyn E. Beggs, Esq.
8 Attorney for the Investigative Committee

By: Hal Taylor
Hal Taylor, Esq.
Attorney for Respondent

9 UNDERSTOOD AND AGREED:

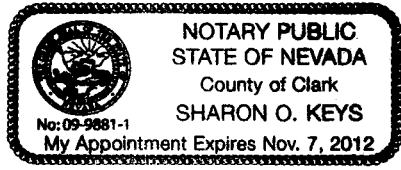
10 James G. Boyle
11 James G. Boyle, R.R.T., Respondent

12 Dated this 19 day of OCTOBER, 2010.

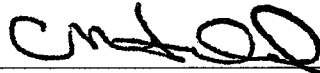
13 Subscribed and sworn to before me
14 this 25 day of October 2010.

STATE OF NEVADA
COUNTY OF CLARK

15
16 Sharon O. Keys
17 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 3rd day of
3 December 2010, with the final total amount of costs due of \$1,619.34. Count I of the First
4 Amended Complaint is dismissed.

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6 _____
7 Charles N. Held, M.D., President
8 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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