

1 *Before the Board of Medical Examiners*
2 *of the State of Nevada*

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6 **In The Matter of Charges and**
7 **Complaint Against**
8 **JOHN THALGOTT, M.D.,**
9 **Respondent.**

Case No. 08-9484-1

FILED
MAR 05 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

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12 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee (IC) of
14 the Nevada State Board of Medical Examiners (the Board) composed of Charles N. Held, M.D. and Jean
15 Stoess, M.A., at the time the associated Complaint was authorized, by and through General Counsel,
16 Edward O. Cousineau and John Thalgott, M.D., (Respondent), through his counsel of record, George
17 Kelesis, Esq., as follows:

18 **WHEREAS**, on June 2008, the Board's IC filed a formal Complaint in the above-referenced
19 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
20 Medical Practice Act (NRS Chapter 630), to wit: one count of engaging in conduct that brings the medical
21 profession into disrepute, a violation of NRS 630.301(9), and one count of engaging in conduct which is
22 intended to deceive, a violation of NRS 630.306(2)(a) ; and

23 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands it, and
24 has consulted with competent counsel George Kelesis, Esq., concerning the nature and significance of the
25 complaint, and Respondent is fully advised concerning his rights and defenses to the complaint, including
26 the amendments stated in AB10, as well as the possible sanctions that may be imposed if the Board finds
27 and concludes that he has violated one or more provisions of the Medical Practice Act; and

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

6 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms, covenants
7 and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be
8 binding and enforceable upon him, and

9 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the terms,
10 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below
11 shall not be binding and enforceable upon him except the provisions as to disqualification of adjudicating
12 panel members in paragraph number 9, and he will be provided with an opportunity to defend himself
13 against the charges against him at a regularly scheduled hearing in accordance with all applicable laws;

14 **NOW THEREFORE**, in order to resolve Case No. 08-9819-1 and charges alleged by the Board's
15 IC in the above captioned matter, Respondent and the IC hereby agree to the following terms, covenants
16 and conditions:

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

21 2. **Representation by Counsel.** Respondent is represented by counsel herein, whom
22 Respondent covenants and agrees is fully capable, competent, and fully advised in these circumstances and
23 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and
24 intelligently after full consultation with counsel.

25 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and
26 conditions contained herein, and the understanding that Respondent shall not file a Writ of Mandamus
27 requesting relief pursuant to AB 10 and alleging arbitrary, capricious actions by the Board, Respondent
28 knowingly, willingly and intelligently, with the advice of above identified counsel, waives all rights

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

12 4. **Consent to Entry of Order.** Although Respondent believes that the amendments of AB
13 10 preclude the Board from proceeding, Respondent is aware that the trier of fact, the Board, may find a
14 factual basis in support of the Complaint against Respondent. Accordingly, in order to resolve the
15 matter without incurring further costs and expense of providing a defense to the Complaint or to an
16 amended complaint, and in exchange for the waiver of the Respondent's foregoing rights, Respondent
17 has entered into this agreement, and agrees: that the Board may find that Respondent may have engaged
18 in conduct that is grounds for discipline pursuant to the Medical Practice Act to wit: that his deposition
19 testimony was not complete as explained in the underlying Complaint, in violation of NRS 630.301(9);
20 that Respondent shall make a donation of \$5,000.00 to a charity to be mutually agreed to between the
21 parties; that Respondent shall, at his own expense, provide proof Respondent attended six (6) hours of
22 continuing medical education specifically on the issue of medical ethics in the fiscal years 2008-2009,
23 which were in addition to any other continuing medical education credits required as a condition of
24 licensure; and, that Respondent shall pay the sum of \$9,500.00 to defray the costs incurred by the Board
25 and to be allocated in the sole discretion of the Board, payable to the Nevada State Board of Medical
26 Examiners within sixty (60) days of acceptance, adoption and approval of this Agreement by the Board.
27 Respondent and Board agree that the terms of this Agreement may be reported to other state and federal
28 entities as required by law.

1 **5. Release From Liability.** In execution of this Settlement Agreement, the Respondent,
2 for himself, his executors, successors and assigns, hereby releases and forever discharges the state of
3 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and employees in
4 their representative capacities, and in their individual capacities, from any and all manner of actions,
5 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
6 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against any
7 or all of the persons or entities named in this paragraph arising out of or by reason of this investigation,
8 this settlement or its administration.

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

22 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
23 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC
24 will cause to be entered herein the Board's Order accepting, adopting and approving this Settlement,
25 Waiver and Agreement, ordering full compliance with the terms herein and ordering that this case be
26 closed, subject to the provisions of Section 5.

27 **8. Effect of Rejection of Agreement by Board.** In the event the Board does not approve,
28 accept and adopt the terms, covenants and conditions set out in this Agreement, this Agreement shall be

1 null, void, and of no further force and effect except as to the following covenant and agreement
2 regarding disqualification of adjudicating Board panel members. Respondent agrees that,
3 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that
4 occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by
5 the Board shall disqualify any member of the adjudicating panel of the Board from considering the
6 charges against Respondent and participating in the disciplinary proceedings in any role, including
7 adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such
8 member absent evidence of bad faith.

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

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

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

19 Dated this 25th day of January, 2010.

Dated this 18 day of JANUARY, 2010.


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22 Edward O. Cousineau
23 Attorney for the Investigative Committee of the
24 Nevada State Board of Medical Examiners

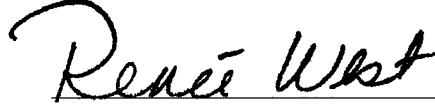
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21 
22 George Kelesis, Esq.
23 Attorney for Respondent

1 I, John Thalgott, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to the
2 complaint in Nevada State Board of Medical Examiners Case No. 08-9484-1

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4 Dated this 12 day of JANUARY, 2010.

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8 John Thalgott, M.D., Respondent
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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 5th day of
3 March 2010, with the final total amount of costs due of \$9,500.00.

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6 RENEE WEST, Secretary-Treasurer

7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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