

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

3 * * * * *


4
5 **In The Matter of Charges and**)
6 **Complaint Against**)
7 **MARK B. KABINS, M.D.,**)
8 **Respondent.**)

Case No. 10-7510-1

FILED

DEC - 6 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

10
11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
13 (IC) of the Nevada State Board of Medical Examiners (the Board) composed of
14 Charles N. Held, M.D., Theodore B. Berndt, M.D., and Valerie J. Clark, BSN, RHU, LUTCF, at
15 the time the associated Second Amended Complaint filed on March 10, 2010, in the above-
16 captioned matter was authorized, by and through Edward O. Cousineau, Esq., Deputy Executive
17 Director for the Board and counsel for the IC, and Mark B. Kabins, M.D. (Respondent), through
18 his counsel of record, John A. Hunt, Esq., as follows:

19
20 **WHEREAS**, on February 3, 2010, the Board's IC filed a formal Complaint and on
21 March 10, 2010, filed a Second Amended Complaint in the above-referenced matter charging
22 Respondent with engaging in conduct that is grounds for discipline pursuant to the Nevada's
23 Medical Practice Act, i.e., Chapter 630 of the Nevada Revised Statutes (NRS), to wit: a violation
24 of NRS 630.301(9), a violation of NRS 630.301(11)(g), and a violation NRS 630.306(2)(a), when
25 he pled guilty to and was convicted of Misprison of Felony, a violation of 18 U.S.C. § 4, in the
26 United States District Court, and

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1 **WHEREAS**, Respondent has received a copy of the Second Amended Complaint¹,
2 reviewed it, understands it, and has consulted with competent counsel concerning the nature and
3 significance of the Second Amended Complaint, and Respondent is fully advised concerning his
4 rights and defenses to the Second Amended Complaint, including the amendments stated in
5 NRS 630.364, as well as the possible sanctions that may be imposed if the Board finds and
6 concludes that he has violated one or more provisions of the Medical Practice Act, and

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

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

15 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the
16 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
17 enumerated below shall not be binding and enforceable upon him except the provisions as to
18 disqualification of adjudicating panel members in paragraph number 8, and he will be provided
19 with an opportunity to defend himself against the charges against him as alleged in the Second
20 Amended Complaint at a regularly scheduled hearing in accordance with all applicable laws,

21 **NOW THEREFORE**, in order to resolve Case No. 10-7510-1 and charges alleged by the
22 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
23 terms, covenants and conditions.

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

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¹ While a Complaint and Second Amended Complaint were filed and served, the latter is the controlling document
and, as such, only it will be referenced.

1 **2. Representation by Counsel.** Respondent is represented by John A. Hunt, Esq.,
2 whom Respondent covenants and agrees is fully capable, competent, and fully advised in these
3 circumstances, and Respondent further covenants and agrees that he enters into this Agreement
4 knowingly, willingly, and intelligently after full consultation with counsel.

5 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
6 and conditions contained herein, and the understanding that Respondent shall not file a Writ of
7 Mandamus requesting relief pursuant to NRS 630.364, alleging arbitrary and capricious actions by
8 the Board, Respondent knowingly, willingly and intelligently, with the advice of his counsel,
9 waives all rights arising under or pursuant to the United States Constitution, the Constitution of
10 the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may
11 be available to him or that may apply to him in connection with the proceeding on the Second
12 Amended Complaint filed herein, the defense of said Second Amended Complaint and the
13 adjudication of the charges in said Second Amended Complaint, and Respondent further agrees
14 that the matter of the Second Amended Complaint herein may be settled and resolved in
15 accordance with this Agreement without a hearing or any further proceeding, and without the right
16 to judicial review. In the event this Agreement is not approved by the Board, this Agreement shall
17 have no force and effect and shall be *void ab initio*, and Respondent shall have all rights arising
18 under or pursuant to the United States Constitution, the Constitution of the state of Nevada,
19 NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be available to him
20 or that may apply to him in connection with the proceeding on the Second Amended Complaint
21 filed herein.

22 **4. Consent to Entry of Order.** Although Respondent believes that the amendments
23 of NRS 630.364 may preclude the Board from proceeding, Respondent is aware that the trier of
24 fact, the Board, may find a factual basis in support of the Second Amended Complaint against
25 Respondent. Accordingly, in order to resolve the matter without incurring further costs and
26 expense of providing a defense to the Second Amended Complaint or to any other further
27 amended complaint, and in exchange for the waiver of the Respondent's foregoing rights,
28 Respondent has entered into this Agreement, and agrees:

1 a. The Board may find that Respondent has engaged in conduct that is grounds
2 for discipline pursuant to the Medical Practice Act, to wit: Respondent pleading guilty to and
3 being convicted of Misprison of Felony, a violation of 18 U.S.C. § 4, was a violation of
4 NRS 630.301(9);

5 b. Pursuant to NRS 630.352(4)(d), Respondent agrees upon adoption of this
6 Agreement, to accept a stayed suspension of his license to practice medicine in the state of Nevada
7 for a period of six (6) months. If, during the term of Respondent's six (6) months' stayed
8 suspension, the IC receives substantial evidence that Respondent has materially breached the terms
9 and conditions of this Agreement, Respondent agrees the IC, without any further hearing or action
10 by the Board, shall issue an order suspending Respondent's license to practice medicine in the
11 state of Nevada. Thereafter, Respondent may request a hearing before the Board to reinstate his
12 license, which must be heard within forty-five (45) days of the Order of Suspension. However,
13 during the pendency of the hearing before the Board, Respondent waives any right to seek judicial
14 review (state or federal) to reinstate his privilege to practice medicine in the state of Nevada
15 pending a final Board hearing;

16 c. Pursuant to NRS 630.352(4)(b), Respondent agrees the Board shall
17 administer a formal written public reprimand which will include language which is synonymous
18 with the terms of this Agreement;

19 d. Currently Respondent is serving five (5) years of probation pursuant to an
20 Order issued by the United States District Court, Case No. 2:07-cr-000039-JLQ-LRL. Pursuant to
21 NRS 630.352(4)(a), Respondent agrees he shall submit to the Board any and all documentation
22 regarding the terms of his probation entered in the United States District Court,
23 Case No. 2:07-cr-000039-JLQ-LRL.

24 e. Pursuant to NRS 630.352(4)(a), Respondent agrees to being placed on
25 probation with the Nevada State Board of Medical Examiners pursuant to the terms and conditions
26 issued by the United States District Court. Within thirty (30) days of the adoption of this
27 Agreement, Respondent shall provide a copy of this Agreement to his office of Federal Parole and
28 Probation. Respondent shall also execute any documents necessary authorizing the office of

1 Federal Parole and Probation to release any and all reports generated regarding Respondent's
2 compliance with the terms and conditions of Respondent's federal probation. Once respondent is
3 given written notice of his completion of his probation, Respondent shall submit the written notice
4 to the Investigative Committee. Upon receipt of the written notice of completion the IC shall,
5 without any further action of the Board, authorize an Order reinstating Respondent's license to the
6 status of good standing without restriction. If, during the term of Respondent's probation, the IC
7 receives substantial evidence that Respondent has materially breached the terms and conditions of
8 his probation, Respondent agrees the IC, without any further hearing or action by the Board, shall
9 issue an order suspending Respondent's license to practice medicine in the state of Nevada.
10 Thereafter, Respondent may request a hearing before the Board to reinstate his license which must
11 be heard within forty-five (45) days of the Order of Suspension. However, during the pendency of
12 the hearing before the Board, Respondent waives any right to seek judicial review (state or federal)
13 to reinstate his privilege to practice medicine in the state of Nevada pending a final Board hearing;

14 f. Respondent agrees he shall make a donation of \$5,000.00 to a charity to be
15 mutually agreed to by the parties;

16 g. Prior to execution of this Agreement, the Board has confirmed that
17 Respondent attended and completed a twenty-four-(24)-hour ethics course entitled "The PBI
18 Professional Boundaries Course". However, Respondent agrees attendance and completion of the
19 twenty-four (24)-hour ethics course entitled "The PBI Professional Boundaries Course" may not
20 be used by Respondent to fulfill the normal continuing education requirements regarding ethics.

21 h. Pursuant to NRS 630.352(4)(i) Respondent shall perform five hundred
22 (500) hours of community service without compensation pursuant to the terms and conditions set
23 forth in the attached community service proposal.

24 i. Pursuant to NRS 622.400, Respondent shall pay the sum of \$7,973.14, the
25 current amount of the costs incurred by the Board to investigate and prosecute this matter, plus any
26 additional costs incurred by the Board precedent to the acceptance, adoption and approval of this
27 Agreement. Respondent further agrees that these costs to be paid the Board within sixty (60) days
28 of the entry of the Board's order adopting this Agreement.

1 j. Respondent and Board agree that this Agreement does not involve facts or
2 circumstances relating to the delivery of health care to Respondent's former patient,
3 Melodie Simon.

4 k. The terms of this Agreement may be reported as allowed by law.

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

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

27 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
28 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the

1 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
2 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
3 ordering that this case be closed, subject to the provisions of Section 5.

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

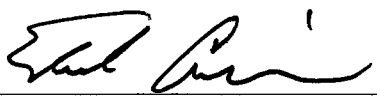
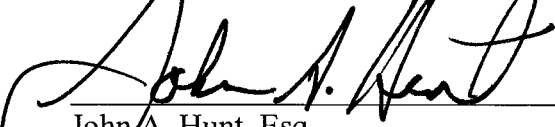
14 **9. Binding Effect.** Providing this Agreement is approved by the Board, Respondent
15 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
16 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

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

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

4 Dated this 15th day of Dec, 2010 Dated this 3 day of Dec, 2010

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7 Edward O. Cousineau, Esq. John A. Hunt, Esq.
8 Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners 3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169

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10 I, Mark B. Kabins, M.D., hereby agree to the foregoing Settlement, Waiver and Consent
11 Agreement as to the Nevada State Board of Medical Examiners' Case Number 10-7510-1 and the
12 Second Amended Complaint filed therein.

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14 Dated this 3rd of Dec, 2010.

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17 Mark B. Kabins, M.D., Respondent

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COMMUNITY SERVICE PROPOSAL
(required hours: 500)

Mark B. Kabins, M.D.
NSBME Case No. 10-7510-1

The following is a non-exhaustive list of the types of community service that may be provided by Dr. Kabins to satisfy the 500 hours of community service requirement which is referenced at paragraph 4.h. of page 5 to the *Settlement, Waiver and Consent Agreement* in Case No. 10-7510-1:

1. Provide free lecture to physician groups and other health care specialists regarding spine surgery or general surgery matters.
2. Provide surgical or non-surgical clinical patient care to indigent patients throughout the State of Nevada, at no cost.
3. Assist rural hospitals to develop new spine surgery or general surgery based services.
4. Provide free public seminars to citizen groups on spine surgery or general surgery related topics.
5. Provide free lectures on spine surgery or general surgical issues to hospitals, clinics, and/or nursing home staff and/or patients.
6. Attend local health fairs, public television or radio shows, telethons, or other similar gathering, events, or shows and provide free lectures, discussions, question and answer sessions, or facilitate discussions on spine surgery, general surgery, or other medical related topics.
7. Provide no cost "case review" for local physicians who are treating indigent patients.
8. Provide surgical and non-surgical patient care to indigent patients in the rural areas of Nevada.
9. Provide second opinions and assistance, without compensation, to other physicians providing free services or services at reduced fees.
10. Provide surgical and non-surgical patient care, without compensation, in disaster relief / emergency situations in Nevada.
11. Volunteering to provide medical/surgical related services with religious/charitable organizations in Nevada.

NOTICE OF INTENT TO PROVIDE AND PROOF OF COMPLIANCE
WITH COMMUNITY SERVICE REQUIREMENTS

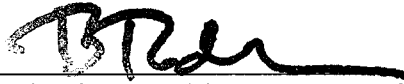
Except as otherwise provided herein, Dr. Kabins agrees to submit written notification, via email, to the Executive Director of the NSBME of any community service that he desires to perform to complete his 500 hours of community service. The Executive Director then has three (3) calendar days to provide any written comment or concerns, via email, to Dr. Kabins pertaining to the proposed community service. If Dr. Kabins does not receive any such written comments or concerns from the Executive Director, Dr. Kabins may proceed to perform the proposed community service.

With regards to the community service referenced in paragraphs 2, 7, 8, 9, 10, and 11 above, prior written notification and pre-approval of the same is not required where time constraints are an issue or prohibit the same, including, but not limited to, emergency care being provided by Dr. Kabins.

With regards to the community service referenced in paragraph 3 (“Assist rural hospitals to develop new spine surgery or general surgery based services”), Dr. Kabins agrees to submit written notification, via email, to the Executive Director of the proposed itinerary/schedule with regards to providing rural hospitals to develop new spine surgery or general surgery based services.

Proof of compliance of any community service required under this community service proposal shall be submitted in writing (can be scanned and emailed) directly to the Executive Director of the NSBME. Such written proof shall contain the following information: a description of what the community service consisted of; identify any organization, group, or individual that was the recipient of the community service; identify when and where the community service was performed; and describe the number of hours provided.

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 \$7,973.14.

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

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