

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) **MUZAFFAR KIRMANI, M.D.,**)
7) **Respondent.**)
8) _____)
9

Case No. 09-10129-1

FILED

MAR 05 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
12 (IC) of the Nevada State Board of Medical Examiners (Board), composed Charles N. Held, M.D.,
13 Ms. Renee West, and Theodore B. Berndt, M.D., by and through Edward O. Cousineau, General
14 Counsel for the Board, and Muzaffar Kirmani, M.D. (Respondent), by and through Maria Nutile,
15 Esq., as follows:

16 **WHEREAS**, on or about July 28, 2009, the IC of the Board filed a formal complaint in the
17 above-referenced matter, charging Respondent with violations of the Medical Practice Act (NRS
18 Chapter 630), to wit: one count of failure to maintain timely, legible accurate, and complete medical
19 records relating to the diagnosis, treatment and care of the patient at issue, a violation of
20 NRS 630.3062(1).

21 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands the
22 nature and significance of the Complaint, and Respondent is fully advised concerning his rights and
23 defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board finds
24 and concludes that he has violated one or more provisions of the Medical Practice Act; and

25 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United
26 States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice
27 Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B),
28 including but not limited to the right to a formal hearing on the charges against him, the right to

1 representation by counsel in the preparation and presentation of his defense, the right to
2 confrontation and cross-examination of witnesses against him, the right to present evidence and
3 witnesses on his own behalf, the right to written findings, conclusions and order regarding a final
4 decision by the Board, and the right to judicial review of any final decision by the Board that is
5 adverse to him; and

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

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

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

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

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

28

1 2. **Representation by Counsel.** Respondent is represented by Maria Nutile, Esq., and
2 agrees that he enters into this Agreement knowingly, willingly, and intelligently after consultation
3 with said counsel.

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

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

15 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
16 proceedings pending against him without any further cost and expense of providing a defense to the
17 complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,
18 finding that Respondent has violated the Medical Practice Act to wit: that in treating the patient
19 referenced in the original complaint filed by the IC, Respondent's associated medical record
20 keeping related to the underlying patient was deficient, and therefore a violation of NRS
21 630.3062(1), that Respondent shall be publicly reprimanded, and that within one year of the
22 acceptance, adoption and approval of this Agreement, Respondent shall complete ten (10) hours
23 of Continuing Medical Education (CME) regarding the subject of medical record keeping, which
24 are to be approved by the IC Chairman in advance of their accomplishment. The aforementioned
25 CME's are to be in addition to any CME requirements that are regularly imposed upon
26 Respondent as a condition of licensure in the State of Nevada. Further, Respondent shall
27 reimburse the Board the reasonable costs and expenses incurred in the investigation and prosecution
28 of this case in the current amount of \$4,364.98, plus any additional costs that may be accrued

1 subsequent in the disposition of this matter. The aforementioned costs are to be paid to the
2 Nevada State Board of Medical Examiners within sixty (60) days of the acceptance, adoption and
3 approval of this Agreement by the Board. A final accounting of the additional costs will be
4 provided to Respondent in the entry of the Board's Order relating to the matter.

5 6. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
6 recommend approval and adoption of the terms, covenants and conditions contained herein by
7 the Board in resolution of the disciplinary proceedings pending herein against Respondent
8 pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or
9 acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff
10 and members of the panel of the Board who would adjudicate this case if it were to go to hearing.
11 Respondent covenants and agrees that such contacts and communication may be made or
12 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
13 counsel, and that such contacts and communications may include, but not be limited to, matters
14 concerning this Agreement, the complaint, the allegations in the complaint, any and all evidence
15 that may exist in support of the complaint, and any and all information of every nature
16 whatsoever related to the complaint against Respondent.

17 7. **Board Approval Required.** This Agreement will be placed on the next available
18 Agenda of a regularly scheduled and duly noticed quarterly Board meeting. It is expressly
19 understood that this Agreement will only become effective if the Board approves the
20 recommendation of the IC for acceptance.

21 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
22 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
23 IC will cause to be entered herein the Board's Order consistent with the terms of paragraph 5
24 above.

25 9. **Effect of Rejection of Agreement by Board.** In the event the Board does not
26 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
27 Agreement shall be null, void, and of no further force and effect except as to the following
28 covenant and agreement regarding disqualification of adjudicating Board panel members.

1 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
2 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
3 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
4 adjudicating panel of the Board from considering the charges against Respondent and
5 participating in the disciplinary proceedings in any role, including adjudication of the case, and
6 Respondent further agrees that he shall not seek to disqualify any such member absent evidence
7 of bad faith.

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

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

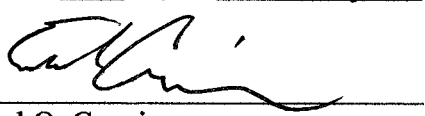
22 12. **Forum Selection Clause.** Respondent covenants and agrees that in the event
23 either party is required to seek enforcement of this Agreement in the district court, he consents to
24 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second
25 Judicial District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

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

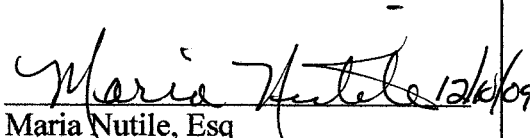
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14. **Failure to comply with terms.** In the event the Board enters its Order approving this Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have grounds, after notice and a hearing, to take disciplinary action against Respondent in addition to that included herein for the subject's violation of an Order of the Board in accordance with NRS 630.3065(2)(a).

Dated this 14th day of December, 2009.




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



Maria Nutile, Esq
Attorney for Muzaffar Kirmani, M.D.

I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent Agreement.

Dated this 9th day of December, 2009.

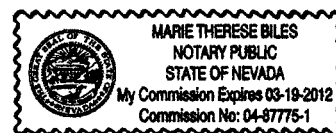


Muzaffar Kirmani, M.D.
Respondent

Signature of Muzaffar Kirmani, M.D.
subscribed and sworn to before me
this 9th day of December 2009



Notary Public



OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

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 5th day of
3 March 2010, with the final total amount of costs due of \$4,364.98.

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6 Javaid Anwar, M.D., Board Member
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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