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

In The Matter of Charges and)
)
Complaint Against)
)
MARYANNE PHILLIPS, M.D.,)
)
Respondent.)
_____)

Case No. 09-10032-1

FILED

JAN 10 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: _____

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed of Charles N. Held, M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Theodore B. Berndt, M.D., by and through Edward Cousineau, Deputy Executive Director for the Board and counsel for the IC, and Maryanne Phillips, M.D. (Respondent), by and through her counsel, Alan Mulliner, Esq., as follows:

WHEREAS, on or about December 23, 2009, the Board's IC filed a formal complaint against Respondent for engaging in conduct which is grounds for discipline pursuant to Nevada's Medical Practice Act (NRS Chapter 630), to wit: a one count violation of NRS 630.301(3), a one count violation of NRS 630.304(1); and

WHEREAS, Respondent understands and agrees that she has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to the right to a formal hearing on the charges against her, the right to representation by counsel in the preparation and presentation of her defense, the right to confrontation and cross-examination of witnesses against her, the right to written findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of any final decision by the Board that is adverse to her; and

1 **WHEREAS**, Respondent, based on her understanding of the relevant facts and
2 circumstances, and subject to the conditions set forth in this Agreement, desires to waive all of her
3 rights under the United States Constitution, the Constitution of the state of Nevada, the Medical
4 Practice Act and the Nevada Administrative Procedures Act, including but not limited to the right to
5 a hearing on the charges and written findings of fact, conclusions of law and order, and she desires
6 to settle and resolve the matter of the formal complaint against her by way of and in accordance with
7 this Settlement, Waiver and Consent Agreement; and

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

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

16 **WHEREAS**, Respondent understands and agrees that, if the Board does not approve the
17 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
18 enumerated below shall not be binding and enforceable upon her except the provisions as to
19 disqualification of adjudicating panel members in paragraph number 9, and she will be provided
20 with an opportunity to defend herself against the charges against her at a regularly scheduled hearing
21 in accordance with all applicable laws.

22 **NOW THEREFORE**, in order to resolve the pending complaint and charges brought
23 against her by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to
24 the following terms, covenants and conditions:

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

1 2. Representation by Counsel. Respondent is represented by above-identified
2 counsel, whom Respondent covenants and agrees is fully capable, competent and fully advised in
3 these circumstances and Respondent further covenants and agrees that she enters into this
4 Agreement knowingly, willingly, and intelligently after full consultation with and upon the advice of
5 counsel.

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

15 4. Acknowledgement of Reasonable Basis to Proceed. Respondent covenants and
16 agrees that the Board's IC had a reasonable basis to believe that Respondent engaged in one or more
17 instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice
18 Act.

19 5. Consent to Entry of Order. In order to resolve the matter of these disciplinary
20 proceedings pending against her without any further costs and expense of providing a defense to the
21 complaint, Respondent hereby agrees, and does not contest, for the sole purpose of this Settlement
22 Agreement, that an order may be entered herein by the Board against her finding that Respondent
23 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act, to wit: that
24 Respondent shall be found in violation of NRS 630.301(3), which is related to Count I in the
25 underlying complaint; and that Respondent shall be found in violation of NRS 630.304(1), which
26 related to Count II in the underlying complaint;

27 For the aforementioned violations, Respondent shall:

28 (1) Receive a public reprimand;

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(2) Pay a fine in the amount of \$5,000.00;

(3) Allow her license to be revoked, with that revocation stayed, and that Respondent shall be placed on probation until April 6, 2012, with an obligation to comply with the following terms and conditions:

(a) That Respondent agrees that the Board shall have unfettered access to Respondent's medical records, and agrees that they may be inspected randomly and unannounced to her, up and through April 6, 2012, to ensure that Respondent's subsequent practice and record-keeping protocols are consistent with Nevada statutes and regulations.

(b) That Respondent will be responsible for the costs involved in this on-going administrative oversight and shall reimburse the Board within thirty (30) days of a request for reimbursement of the same.

(c) That Respondent remain compliant with the probationary terms put forth by the Medical Board of California, Case Number 09-2004-161866, and which was adopted on April 6, 2009.

(d) That Respondent keep the Board apprised of her current mailing and practice addresses as required by Nevada statutes and regulations.

(4) Pay the costs and expenses incurred in the investigation and prosecution of this case, the current amount being \$3,447.98. This amount does not include any further costs that may be incurred by the Board to conclude adjudication of the matter. Respondent agrees to pay the aforementioned fine and costs, within ninety (90) days of the approval and adoption of this Agreement.

6. **Release From Liability.** In execution of this Agreement, the Respondent, for herself, her executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and employees in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have,

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1 against any or all of the persons or entities named in this paragraph arising out of or by reason of
2 this investigation, this disciplinary action, this settlement or its administration.

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

15 8. Effect of Acceptance of Agreement by Board. In the event the Board approves,
16 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will
17 enter herein an order consistent with the terms noted in paragraph 5 above.

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

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1 10. Binding Effect. Respondent covenants and agrees that this Agreement is a
 2 binding and enforceable contract upon Respondent and the Board’s IC, which contract may be
 3 enforced in a court or tribunal having jurisdiction. Additionally, upon receipt of credible
 4 information that Respondent has failed to comply with any term or condition of the
 5 aforementioned order, the Board shall be authorized to immediately suspend Respondent’s
 6 license to practice medicine. The Board acknowledges and Respondent recognizes that she
 7 would still maintain all statutory and regulatory due process rights available to her after the
 8 suspension except that the suspension shall not be considered to be a summary suspension
 9 subject to the provisions of either NRS 233B.170 or 630.326. Further, failure to comply with the
 10 terms recited herein could result in additional disciplinary action being initiated against
 11 Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).
 12 And, any failure to pay any fine, fee, or cost ordered herein may also result in such legal action as
 13 determined to be necessary to collect the unpaid fine, fee, or cost.

14 11. Forum Selection Clause. Respondent covenants and agrees that in the event
 15 either party is required to seek enforcement of this Agreement in the district court, she consents
 16 to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second
 17 Judicial District Court of the State of Nevada in and for the County of Washoe.

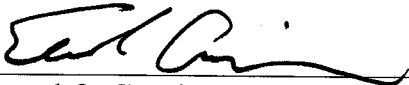
18 12. Attorneys Fees and Costs. Respondent covenants and agrees that in the event an
 19 action is commenced in the district court to enforce any provision of this Agreement the
 20 prevailing party shall be entitled to recover reasonable costs and attorneys’ fees.

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Dated this 10th day of January, 2010.

Dated this 7 day of January, 2010.


By: 

By: 

Edward O. Cousineau, Esq.
Counsel for the Investigative Committee
of the Nevada State Board of Medical Examiners

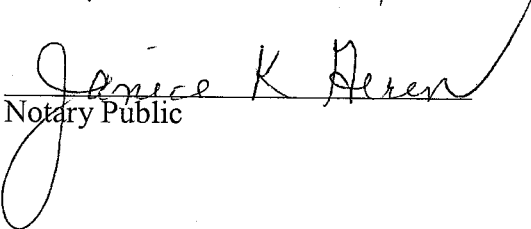
Alan Mulliner, Esq.
Counsel for Respondent

UNDERSTOOD AND AGREED:


Maryanne Phillips, M.D., Respondent

Dated this 7 day of January, 2010.

Subscribed and sworn to before me
this 7 day of JANUARY, 2010²⁰¹¹


Notary Public

