

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

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6 **In The Remediation Matter of**)

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8 **Board Licensee 24258**)
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Case No. 11-R-1
FILED

JUN 13 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

10 **STIPULATED REMEDIATION AGREEMENT**

11 **THIS STIPULATED REMEDIATION AGREEMENT** (Agreement) is hereby entered
12 into by and between the Investigative Committee (IC) of the Nevada State Board of Medical
13 Examiners (Board), composed of Charles N. Held, M.D., Valerie J. Clark, BSN, RHU, LUTCF, and
14 Theodore B. Berndt, M.D., by and through Edward O. Cousineau, Deputy Executive Director for
15 the Board and counsel for the IC, and Board licensee 24258, as follows:

16 **WHEREAS**, after its review of the underlying matter, the IC determined that evidence
17 exists to support the filing of a formal complaint against Board licensee 24258; the IC also
18 believes that the circumstance is one that is appropriate for resolution by way of this Agreement;
19 and

20 **WHEREAS**, Board licensee 24258 recognizes he has certain rights under the United States
21 Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act
22 (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including
23 but not limited to the right to a formal hearing if a formal complaint was to be filed against him, the
24 right to representation by counsel in the preparation and presentation of his defense to the formal
25 complaint, the right to confrontation and cross-examination of witnesses against him, the right to
26 present evidence and witnesses on his own behalf, the right to written findings, conclusions and
27 order regarding a final decision by the Board, and the right to judicial review of any final decision
28 by the Board that is adverse to him; and

1 **WHEREAS**, provided this Agreement is approved by the Board, Board licensee 24258
2 agrees to waive all of his rights under the United States Constitution, the Constitution of the state of
3 Nevada, the Medical Practice Act, and the Nevada Administrative Procedures Act, including but not
4 limited to the right to a hearing on the charges and written findings of fact, conclusions of law and
5 order, and he agrees to resolve a potential formal complaint filing by way of, and in accordance
6 with, this Agreement; and

7 **WHEREAS**, Board licensee 24258 understands and agrees that this Agreement is entered
8 into by and between himself and the 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 regularly-scheduled quarterly
10 meeting, duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but
11 that the Board has the right to decide in its own discretion whether or not to approve this Agreement;
12 and

13 **WHEREAS**, Board licensee 24258 and the IC each understand and agree that if the Board
14 approves the terms, covenants and conditions of this Agreement, then the terms, covenants and
15 conditions enumerated below shall be binding and enforceable upon Board licensee 24258 and the
16 Board's IC; and

17 **WHEREAS**, Board licensee 24258 has reviewed and understands all the relevant facts and
18 circumstances of this matter;

19 **NOW THEREFORE**, in order to resolve the above-captioned case in said matter 11-R-1,
20 Board licensee 24258 and the IC hereby agree to the following terms, covenants and conditions:

21 1. **Jurisdiction.** Board licensee 24258 is, and at all times mentioned in the complaint
22 filed in the above-captioned matter was, a physician licensed to practice medicine in the state of
23 Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the
24 Medical Practice Act, and to impose sanctions as provided by the Act.

25 2. **Representation by Counsel.** Board licensee 24258 is not represented by legal
26 counsel and agrees that he enters into this Agreement knowingly, willingly, and intelligently, despite
27 his non-retention of counsel.

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1 3. **Waiver of Rights.** Board licensee 24258 covenants and agrees that he waives all
2 rights arising under or pursuant to the United States Constitution, the Constitution of the state of
3 Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to
4 him in connection with the potential filing of a formal complaint, the defense of this complaint and
5 the adjudication of the charges in this complaint, and without the right to judicial review of the
6 adjudication determination. In the event this Agreement is not approved by the Board, this
7 Agreement shall have no force and effect and Board licensee 24258 shall have all rights arising
8 under or pursuant to the United States Constitution, the Constitution of the state of Nevada,
9 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in
10 connection with the future filing of a formal complaint.

11 4. **Acknowledgement of Reasonable Basis to Proceed.** Board licensee 24258
12 covenants and agrees that the IC has a reasonable basis to believe that he violated one or more
13 provisions of the Medical Practice Act.

14 5. **Consent to Entry of Order.** In order to resolve the matter, Board licensee 24258
15 hereby agrees that, in treating the patient referenced in the underlying complaint investigated by the
16 IC, Board licensee 24258's treatment was a deviation from the appropriate standard of care that
17 should have been used in similar circumstances, a potential violation of NRS 630.301(4), and as
18 a result:

19 a. Board licensee 24258 shall complete ten (10) hours of Continuing Medical Education
20 regarding the subject which is the basis for the underlying complaint and potentially a violation
21 of NRS 630.301(4). These Continuing Medical Education hours are to be in addition to any
22 Continuing Medical Education requirements that are regularly imposed upon Board
23 licensee 24258 as a condition of licensure in the state of Nevada and are to be approved by the
24 Board in advance of their accomplishment.

25 b. Board licensee 24258 shall perform twenty (20) hours of community service without
26 compensation, which are to be approved by the Board in advance of their accomplishment.

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1 c. Board licensee 24258 shall reimburse the Board the reasonable costs and expenses
2 incurred in the investigation and prosecution of this case in the current amount of \$3,314.74, plus
3 any additional costs that may be accrued subsequent in the disposition of this matter.

4 The aforementioned costs are to be paid to the Board within sixty (60) days of the
5 adoption and approval of this Agreement. All other aforementioned conditions are to be
6 completed within one (1) year of the adoption and approval of this Agreement.

7 6. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
8 recommend approval and adoption of the terms, covenants and conditions contained herein. In
9 the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for
10 the IC may communicate directly with Board staff and members of the panel of the Board who
11 would adjudicate this case if it were to go to hearing. Board licensee 24258 covenants and agrees
12 that such contacts and communication may be made or conducted ex parte, until the public Board
13 meeting where this Agreement is discussed, without notice or opportunity to be heard on his part
14 or on the part of his counsel, and that such contacts and communications may include, but not be
15 limited to, matters concerning this Agreement, the underlying complaint, any and all evidence
16 that may exist in support of the underlying complaint, and any and all information of every nature
17 whatsoever related to the underlying complaint against Board licensee 24258.

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

22 8. **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
24 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
25 Agreement and ordering full compliance with the terms herein and ordering that this case be
26 closed, subject to completion of the provisions in Section 5. The Board and Board
27 licensee 24258 both acknowledge and understand that this Agreement does not constitute
28 disciplinary action and the Agreement is not reportable to any national database.

1 9. **Effect of Rejection of Agreement by Board.** In the event the Board does not
2 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
3 Agreement shall be null, void, and of no further force and effect except as to the following
4 covenant and agreement regarding disqualification of adjudicating Board panel members. Board
5 licensee 24258 agrees that, notwithstanding rejection of this Agreement by the Board, nothing
6 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
7 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
8 adjudicating panel of the Board from considering the charges against Board licensee 24258 and
9 participating in the disciplinary proceedings in any role, including adjudication of the case, and
10 Board licensee 24258 further agrees that he shall not seek to disqualify any such member absent
11 evidence of bad faith.

12 10. **Release From Liability.** In execution of this Agreement, Board licensee 24258,
13 for himself, his executors, successors and assigns, hereby releases and forever discharges the
14 state of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
15 employees in their representative capacities, and in their individual capacities absent evidence of
16 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
17 executions, claims and demands whatsoever, known and unknown, in law or equity, that
18 Board licensee 24258 ever had, now has, may have or claim to have, against any or all of the
19 persons or entities named in this paragraph arising out of or by reason of this investigation, this
20 settlement or its administration, in connection with the underlying complaint

21 11. **Binding Effect.** Board licensee 24258 covenants and agrees that this Agreement
22 is a binding and enforceable contract upon Board licensee 24258 and the Board, which contract
23 may be enforced in a court or tribunal having jurisdiction.


24 12. **Forum Selection Clause.** Board licensee 24258 covenants and agrees that in the
25 event either party is required to seek enforcement of this Agreement in the district court, he
26 consents to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
27 Second Judicial District Court of the State of Nevada in and for the County of Washoe.

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1 13. Attorneys' Fees and Costs. Board licensee 24258 covenants and agrees that in
2 the event an action is commenced in the district court to enforce any provision of this Agreement,
3 the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

4 14. Failure to Comply With Terms. In the event the Board enters its Order
5 approving this Agreement and Board licensee 24258 violates a provision of this Agreement, the
6 Board or the IC may take any action it deems appropriate, including, without limitation,
7 initiating disciplinary proceedings against him as if this Agreement had never been put in place.

8 Dated this 20th day of April, 2011.

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10 By: 
11 Edward O. Cousineau, Esq.
12 Attorney for the Investigative Committee
 of the Nevada State Board of Medical Examiners


13 I, Board licensee 24258, hereby agree to the terms of the foregoing Agreement.

14 Dated this 18 day of April, 2011.

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17 Board licensee 24258

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IT IS HEREBY ORDERED that the foregoing Stipulated Remediation Agreement, is approved and accepted by the Nevada State Board of Medical Examiners on the 10th day of June 2011, with the final total amount of costs due of \$3,314.74.



Charles N. Held, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS