

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

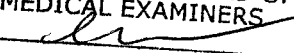
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5 **In The Matter of Charges and**)
6 **Complaint Against**)
7 **JAMES ROBERT EELLS, M.D.,**)
8 **Respondent.**)

Case No. 12-8459-1

FILED

SEP 11 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

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11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the
13 Investigative Committee ("IC") of the Nevada State Board of Medical Examiners (the "Board"),
14 composed of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF,
15 Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through its
16 counsel, Bradley O. Van Ry, Esq., Board Deputy General Counsel, and
17 James Robert Eells, M.D. (Respondent), by and through counsel, Maria Nutile, Esq., as follows:

18 **WHEREAS**, on February 9, 2012, the Board's IC filed a formal Complaint in the
19 above-referenced matter charging Respondent with engaging in conduct that is grounds for
20 discipline pursuant to the Nevada Medical Practice Act, i.e., Chapter 630 of the
21 Nevada Revised Statutes (NRS), to wit: Count I, one count of obtaining, maintaining or renewing
22 or attempting to obtain, maintain or renew a license to practice medicine by bribery, fraud or
23 misrepresentation or by any false, misleading, inaccurate or incomplete statement, a violation of
24 NRS 630.304(1); and, Count II, one count of engaging in conduct that brings the medical
25 profession into disrepute, a violation of NRS 630.301(9).

26 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,
27 understands it, and has had ample opportunity to consult with his counsel concerning the nature
28 and significance of the formal Complaint. Respondent is fully aware concerning his rights and

1 defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the
2 Board finds and concludes that he has violated one or more provisions of the
3 Medical Practice Act, and after due consideration, concedes that evidence exists in this matter
4 such that it provided the IC with a reasonable basis to proceed against him for violation(s) of the
5 Medical Practice Act as set forth in Count I and Count II;

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

15 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
16 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
17 terms, covenants and conditions:

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

22 **2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.**
23 Respondent is represented by legal counsel in this matter and has had ample opportunity to
24 review this Agreement, the formal Complaint filed in this matter and the related factual basis with
25 said legal counsel, Maria Nutile, Esq. Respondent covenants and agrees that he enters into this
26 Agreement knowingly, willingly and intelligently.

27 **3. Waiver of Rights.** Respondent waives all rights in connection with this
28 Agreement, and the terms, covenants and conditions contained herein, and with the understanding

1 that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant
2 to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630,
3 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply
4 to him in connection with the proceedings on the formal Complaint filed herein, the defense of
5 said formal Complaint and the adjudication of the charges in said formal Complaint.

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

14 **4. Consent to Entry of Order.** Respondent concedes only that the Board has
15 sufficient evidence to proceed with its Complaint against him, but does not concede or admit to
16 such allegations, which he expressly denies, and which, but for his desire to reach this
17 compromise, he would contest at the formal hearing of this matter. Accordingly, in order to
18 resolve the matter without incurring further costs and expense of providing a defense to the formal
19 Complaint or to any other further amended complaint, and in exchange for the waiver of the
20 Respondent's foregoing rights, Respondent has entered into this Agreement¹, and agrees that:

21 a. The Board may issue an Order finding that Respondent has engaged in
22 conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act, to wit: the
23 obtaining, maintaining or renewing or attempting to obtain, maintain or renew a license to practice
24 medicine by bribery, fraud or misrepresentation or by any false, misleading, inaccurate or
25 incomplete statement, a violation of NRS 630.304(1), as set forth in Count I of the formal
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27 ¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by
Respondent are not intended or made for any other use, such as in the context of another state or federal government
regulatory agency proceeding, state or federal civil or criminal court proceeding, or any other state or federal court
proceeding, or any credentialing or privileges matter.

1 Complaint; and the engaging in conduct that brings the medical profession into disrepute, a
2 violation of NRS 630.301(9), as set forth in Count II of the formal Complaint;

3 b. Respondent shall be issued a public reprimand;

4 c. Respondent shall pay a fine of \$1,000.00. The fine shall be paid to the
5 Nevada State Board of Medical Examiners within one hundred eighty (180) days of the Board's
6 acceptance and approval of this Agreement;

7 d. Respondent shall attend six (6) hours of CME in medical records and/or
8 billing, in-person and within one (1) year of the Board's acceptance and approval of this
9 Agreement and in addition to the normal requirements;

10 e. Pursuant to NRS 622.400, Respondent shall reimburse the sum of \$669.84,
11 the current amount of the costs incurred by the Board to investigate and prosecute this matter,
12 along with the costs to conclude the matter, if any. The costs shall be paid to the
13 Nevada State Board of Medical Examiners within one hundred eighty (180) days of the Board's
14 acceptance and approval of this Agreement; and,

15 f. The terms of this Agreement shall be reported as required by law.

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

24 **6. Procedure of Adoption of Agreement.** The IC and counsel for the IC shall
25 recommend approval and adoption of the terms, covenants and conditions contained herein by the
26 Board in resolution of the formal Complaint pending herein against Respondent. In the course of
27 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may

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1 communicate directly with the Board staff and members of the panel of the Board who would
2 adjudicate this case if it were to go to hearing.

3 Respondent acknowledges that such contacts and communication may be made or
4 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
5 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
6 and communications may include, but not be limited to, matters concerning this Agreement, the
7 formal Complaint, and any and all information of every nature whatsoever related to the formal
8 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
9 Respondent and/or his counsel may appear at the Board meeting where this Agreement is
10 discussed, and if requested, respond to any questions that may be addressed to the IC or its
11 counsel.

12 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
13 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
14 IC will cause to be entered herein the Board's order accepting, adopting and approving this
15 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
16 ordering that this case be closed, subject to the provisions in Paragraph 4.

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

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


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


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

12. **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). Moreover, the failure of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

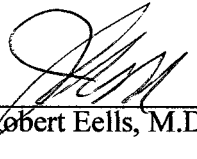
Dated this 3rd day of August, 2012.

Dated this 31st day of July, 2012.

By: 
Bradley O. Van Ry, Esq.
Attorney for the Investigative Committee

By: 
Maria Nutile, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:


James Robert Eells, M.D., Respondent

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 7th day of
3 September 2012, with the final total amount of costs due of \$669.84.

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