

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 **KAREN ARCOTTA, M.D.,**)
8 **Respondent**)
9 _____)

Case No. 11-5972-1

FILED

NOV 30 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is hereby entered into by and between the
12 Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board)
13 composed of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF,
14 Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through
15 Edward O. Cousineau, Esq., Deputy Executive Director for the Board and counsel for the IC, and
16 Karen Arcotta, M.D. (Respondent), as follows:

17 **WHEREAS**, on or about September 22, 2011, the Board's IC summarily suspended
18 Respondent's license to practice medicine in the state of Nevada pursuant to
19 Nevada Revised Statutes (NRS) Section 630.326(1); and,

20 **WHEREAS**, on or about October 7, 2011, the Board's IC filed a formal Complaint in the
21 above-referenced matter charging Respondent with engaging in conduct that is grounds for
22 discipline pursuant to the Nevada's Medical Practice Act, i.e., Chapter 630 of the NRS, to wit:
23 Count I, one count of failure to be found competent to practice medicine as a result of an
24 examination to test medical competency, a violation of NRS 630.306(13); Count II, one count of
25 failing to report in writing, within 30 days, any criminal action taken or conviction obtained
26 against the licensee, other than a minor traffic violation, a violation of NRS 630.306(12); and
27 Count III, one count of obtaining, maintaining, or renewing a license to practice medicine by
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1 bribery, fraud or misrepresentation or by any false, misleading, inaccurate or incomplete
2 statement, a violation of NRS 630.304(1); and,

3 **WHEREAS**, Respondent has received a copy of the Order of Summary Suspension and
4 the formal Complaint, reviewed it, understands it, and has had ample opportunity to consult with
5 her counsel, Marie Ellerton, Esq., concerning the nature and significance of the Order of Summary
6 Suspension and formal Complaint, and Respondent is fully aware concerning her rights and
7 defenses to the Summary Suspension and formal Complaint as well as the possible sanctions that
8 may be imposed if the Board finds and concludes that she has violated one or more provisions of
9 the Medical Practice Act; and,

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

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

18 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the
19 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
20 enumerated below shall not be binding and enforceable upon her except the provisions as to
21 disqualification of adjudicating panel members in paragraph number 8, and she will be provided
22 with an opportunity to defend herself against the charges against her as alleged in the Order of
23 Summary Suspension and formal Complaint at a regularly scheduled hearing in accordance with
24 all applicable laws; and,

25 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
26 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
27 terms, covenants and conditions:
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1 **1. Jurisdiction.** Respondent is, and at all times mentioned in the formal Complaint
2 filed in the above-captioned matter was, a physician licensed to practice medicine in the
3 State of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of
4 violations of the Medical Practice Act, and to impose sanctions as provided by the Medical
5 Practice Act.

6 **2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.**

7 Respondent is represented by Marie Ellerton, Esq. in this matter and has had ample
8 opportunity to review this agreement, the Order of Summary Suspension and formal Complaint
9 filed in this matter and related factual basis with said legal counsel. Respondent further covenants
10 and agrees that she enters into this Agreement knowingly, willingly, and intelligently.

11 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants

12 and conditions contained herein, and the understanding that Respondent knowingly, willingly and
13 intelligently, waives all rights arising under or pursuant to the United States Constitution, the
14 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other
15 statutory rights that may be available to her or that may apply to her in connection with the
16 proceeding on the Order of Summary Suspension and formal Complaint filed herein, the defense
17 of said Order of Summary Suspension and formal Complaint and the adjudication of the charges
18 in said Order of Summary Suspension and formal Complaint, and Respondent further agrees that
19 the matter of the Order of Summary Suspension and formal Complaint herein may be settled and
20 resolved in accordance with this Agreement without a hearing or any further proceeding, and
21 without the right to judicial review. In the event this Agreement is not approved by the Board,
22 this Agreement shall have no force and effect and shall be *void ab initio*, and Respondent shall
23 have all rights arising under or pursuant to the United States Constitution, the Constitution of the
24 state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be
25 available to her or that may apply to her in connection with the proceeding on the Order of
26 Summary Suspension and formal Complaint filed herein.

27 **4. Consent to Entry of Order.** Respondent is aware that the trier of fact, the Board,

28 may find a factual basis in support of the formal Complaint against Respondent. Accordingly, in

1 order to resolve the matter without incurring further costs and expense of providing a defense to
2 the Order of Summary Suspension and formal Complaint or to any other further amended
3 complaint, and in exchange for the waiver of the Respondent's foregoing rights, Respondent has
4 entered into this Agreement, and agrees:

5 1. Within three business days of the adoption of this Agreement, the Board shall enter an
6 order lifting the summary suspension on Respondent's license to practice medicine in the state of
7 Nevada;

8 2. The Board shall enter an order against Respondent finding that Respondent has engaged
9 in conduct that is grounds for discipline pursuant to the Medical Practice Act, to wit: one count of
10 failing to report in writing, within 30 days, any criminal action taken or conviction obtained
11 against the licensee, a violation of NRS 630.306(12), and one count of obtaining, maintaining, or
12 renewing a license to practice medicine by an inaccurate or incomplete statement, a violation of
13 NRS 630.304(1);

14 3. Respondent shall be issued a public reprimand related to the disciplinary findings in
15 paragraph 2 above;

16 4. Respondent shall continue with her participation and remain fully compliant with the
17 contractual terms enunciated in her monitoring agreement with the Nevada Professionals
18 Assistance Program, absent further order of the Board;

19 5. Respondent shall pay the sum of \$5,436.21, the current amount of the costs incurred by
20 the Board to investigate and prosecute this matter, along with the costs to conclude the matter, if
21 any. The costs shall be paid to the Nevada State Board of Medical Examiners within six months
22 of the Board's acceptance and approval of this Agreement;

23 6. Respondent shall contact the Compliance Officer of the Board within 30 days of
24 the approval and acceptance of this Agreement in order to provide information regarding the most
25 expeditious method of contacting her;

26 7. Respondent agrees that if she is charged with any form of professional misconduct in
27 the future, this Agreement, and/or related orders, and/or records regarding her compliance, may be
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1 admitted into evidence at a hearing regarding the alleged professional misconduct, at the sole
2 discretion of the IC authorizing the formal charges of professional misconduct;

3 8. The terms of this Agreement may be reported as allowed by law.

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

12 **6. Procedure of Adoption of Agreement.** The IC and counsel for the IC shall
13 recommend approval and adoption of the terms, covenants and conditions contained herein by the
14 Board in resolution of the formal Complaint pending herein against Respondent. In the course of
15 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
16 communicate directly with the Board staff and members of the panel of the Board who would
17 adjudicate this case if it were to go to hearing.

18 Respondent acknowledges that such contacts and communication may be made or
19 conducted ex parte, without notice or opportunity to be heard on her part or on the part of her
20 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
21 and communications may include, but not be limited to, matters concerning this Agreement, the
22 formal Complaint, and any and all information of every nature whatsoever related to the formal
23 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
24 Respondent and/or her counsel, if any, may appear at the Board meeting where this Agreement is
25 discussed, and if requested, to respond to any questions that may be addressed to counsel for the
26 IC.

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.

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
12 participating in the disciplinary proceeding in any role, including adjudication of the case.
13 Respondent further agrees that she shall not seek to disqualify any such member absent evidence
14 of bad faith.

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

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


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

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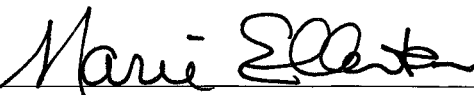
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addition to that included herein for the Respondent's violation of an Order of the Board in accordance with NRS 630.3065(2)(a).

Dated this 26th day November of 2012.

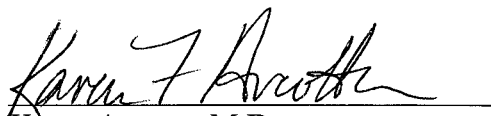
By: 
Edward O. Cousineau, Esq.
Attorney for the Investigative Committee

Dated this 21st day of November, 2012.


By: 
Marie Elberton, Esq.
Attorney for Respondent

Read and understood by:

Dated this 21st day of November, 2012.

By: 
Karen Arcotta, M.D.

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 30th day of
3 November 2012, with the final total amount of costs due of \$5,436.21.

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

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