

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

3 \* \* \* \* \*

4 **In The Matter of Charges and** )  
5 )  
6 **Complaint Against** )  
7 )  
8 **MARYANNE PHILLIPS, M.D.,** )  
9 **Respondent.** )

Case No. 11-10032-1

**FILED**

**JUN -8 2012**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee of the  
12 Nevada State Board of Medical Examiners, composed at the time of filing of the Complaint of  
13 Charles N. Held, M.D, Theodore B. Berndt, M.D., and Ms. Valerie Clark, BSN, RHU, LUTCF,  
14 by and through counsel, Lyn E. Beggs, Esq., and Maryanne Phillips, M.D. (Respondent), by and  
15 through her counsel, Jess Marchese, Esq., as follows:

16 **WHEREAS**, on January 28, 2011, the Investigative Committee filed a Complaint in the  
17 above- referenced matter charging Respondent with engaging in conduct that is grounds for  
18 discipline pursuant to the Medical Practice Act (Nevada Revised Statutes (NRS) Chapter 630) to  
19 wit: one count of engaging in conduct intended to deceive as set forth in count I of the Complaint,  
20 a violation of NRS 630.306(2)(a); one count of a violation of a regulation adopted by the State  
21 Board of Pharmacy, as set forth in count II of the Complaint, a violation of NRS 630.306(2)(c);  
22 one count of prescribing a controlled substance except as authorized by law, as set forth in count III  
23 of the Complaint, a violation of NRS 630.306(3); and one count of failure to maintain timely,  
24 legible, accurate and complete medical records related to the diagnosis, treatment and care of  
25 patient, as set forth in count IV of the Complaint, a violation of NRS 630.306(1); and

26 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands  
27 it, has consulted with competent counsel as noted above concerning the nature and significance of  
28 the Complaint and is fully advised concerning her rights and defenses to the Complaint, as well as

1 the possible sanctions that may be imposed if the Nevada State Board of Medical Examiners (the  
2 Board) finds and concludes that she has engaged in conduct that is grounds for discipline pursuant  
3 to the Medical Practice Act and after due consideration concedes that she engaged in conduct  
4 which is in violation of the Medical Practice Act, as set forth in counts I and IV, and

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

11       **WHEREAS**, Respondent and the Investigative Committee each understand and agree that  
12 if the Board approves the terms, covenants and conditions of this Agreement, then the terms,  
13 covenants and conditions enumerated below shall be binding and enforceable upon Respondent  
14 and the Board's Investigative Committee; and

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

18       1.       **Consent to Entry of Order**. In order to resolve the matter of these disciplinary  
19 proceedings pending against her without any further costs and expense of providing a defense to  
20 the Complaint or to any amended complaints, Respondent hereby agrees a stipulated resolution in  
21 this matter is fair and appropriate and that an order may be entered herein by the Board finding that  
22 Respondent engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act  
23 to wit: engaging in conduct intended to deceive, as set forth in count I of the Complaint, a violation  
24 of NRS 630.306(2)(a), and failure to maintain timely, legible, accurate and complete medical  
25 records related to the diagnosis, treatment and care of patient, as set forth in count IV of the  
26 Complaint, a violation of NRS 630.3062(1); and ordering that Respondent's license to practice  
27 medicine be revoked. Said revocation shall be stayed, and Respondent shall be placed on thirty-six  
28 (36) months probation pursuant to the following terms and conditions:

- 1 a.) Respondent shall be issued a public letter of reprimand;
- 2 b.) Respondent must comply with all state and federal laws regarding the prescribing,  
3 administration, and dispensing of dangerous drugs and controlled substances;
- 4 c.) Respondent shall be subject to random reviews of her patient records and  
5 acknowledges that her prescribing profile maintained through the Nevada State Board of Pharmacy  
6 shall be monitored on a regular basis during the period of probation;
- 7 d.) Respondent shall pay a fine of \$5,000 for counts I and IV, for a total of \$10,000;
- 8 e.) Respondent shall be responsible for the costs incurred in monitoring her  
9 compliance with the terms of this Agreement and shall reimburse said expenses within thirty (30)  
10 days of the date of any invoices for said costs;
- 11 f.) Respondent shall reimburse the Board the reasonable costs and expenses incurred  
12 in the investigation and prosecution of this case, the current amount being \$5,847.38, not including  
13 any costs that may be necessary to finalize this Agreement;
- 14 g.) The fine and costs shall be remitted separately to the Nevada State Board of  
15 Medical Examiners within one-hundred-eighty (180) days of the acceptance of this Agreement  
16 by the Board; Respondent may arrange a payment schedule with the Compliance Officer after  
17 acceptance of this Agreement by the Board.

18 Furthermore, counts II and III of the Complaint shall be dismissed. This Agreement  
19 shall be reported to the appropriate entities and parties as required by law, including, but not  
20 limited to, the National Practitioner Data Bank.

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

25 3. **Waiver of Rights.** Respondent covenants and agrees that she enters into this  
26 Agreement knowingly, willingly, intelligently and after consultation with counsel. In connection  
27 with this Agreement, and the terms, covenants and conditions contained herein, Respondent  
28 knowingly, willingly and intelligently waives all rights arising under or pursuant to the United

1 States Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and NRS Chapter  
2 233B that may be available to Respondent or that may apply to Respondent in connection with the  
3 proceeding regarding the Complaint filed herein, the defense of said Complaint and the  
4 adjudication of the charges in said Complaint, and Respondent further agrees that the matter of the  
5 disciplinary action commenced by the filing of the Complaint herein may be settled and resolved in  
6 accordance with this Agreement without a hearing or any further proceeding, and without the right  
7 to judicial review. In the event this Agreement is not approved by the Board, this Agreement shall  
8 have no force and effect and Respondent shall have all rights arising under or pursuant to the  
9 United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and NRS  
10 Chapter 233B that may be available to Respondent or that may apply to Respondent in connection  
11 with the proceeding on the Complaint filed herein.

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

15 5. **Procedure for Adoption of Agreement.** It is expressly understood that this  
16 Agreement will only become effective if the Board approves the recommendation of the  
17 Investigative Committee for acceptance. The Investigative Committee and counsel for the  
18 Investigative Committee shall recommend approval of the terms, covenants and conditions  
19 contained herein by the Board in resolution of the disciplinary proceedings pending herein  
20 against Respondent pursuant to the Complaint. In the course of seeking Board approval of this  
21 Agreement, counsel for the Investigative Committee may communicate directly with Board staff  
22 and members of the panel of the Board who would adjudicate this case if it were to go to  
23 hearing. Respondent covenants and agrees that such contacts and communication may be made  
24 or conducted ex parte, without notice or opportunity to be heard on her part or on the part of her  
25 counsel until the public Board meeting where this Agreement is discussed, and that such  
26 contacts and communications may include, but not be limited to, matters concerning this  
27 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in  
28 support of the Complaint, and any and all information of every nature whatsoever related to the

1 Complaint against Respondent. The Investigative Committee and its counsel agree that  
2 Respondent and her counsel may appear at the Board meeting where this Agreement is discussed  
3 in order to respond to any and all questions that may be addressed to the Investigative  
4 Committee or its counsel at such meeting.

5       6.       **Effect of Acceptance of Agreement by Board.** In the event the Board approves  
6 the terms, covenants and conditions set out in this Agreement, counsel for the Investigative  
7 Committee will cause to be entered herein the Board's Order approving this Settlement, Waiver  
8 and Consent Agreement, ordering full compliance with the terms herein and ordering that this  
9 case be closed, subject to the provisions in Paragraph 1.

10       7.       **Effect of Rejection of Agreement by Board.** In the event the Board does not  
11 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be  
12 null, void and of no further force and effect except as to the following covenant and agreement  
13 regarding disqualification of adjudicating Board panel members. Respondent agrees that,  
14 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing  
15 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance  
16 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating  
17 panel of the Board from considering the charges against Respondent and participating in the  
18 disciplinary proceedings in any role, including adjudication of the case, and Respondent further  
19 agrees that she shall not seek to disqualify any such member absent evidence of bad faith.

20       8.       **Release From Liability.** In execution of this Agreement, the Respondent, for  
21 herself, her executors, successors and assigns, hereby releases and forever discharges the state of  
22 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and  
23 employees in their representative capacities, and in their individual capacities absent evidence of  
24 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,  
25 executions, claims and demands whatsoever, known and unknown, in law or equity, that  
26 Respondent ever had, now has, may have or claim to have, against any or all of the persons or  
27 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary  
28 action, this settlement or its administration, in connection with the Complaint. The Investigative

1 Committee hereby agrees to accept this Agreement in full settlement of all claims related to the  
2 Complaint, with the understanding that the final decision rests with the Board.

3 9. **Binding Effect.** Respondent covenants and agrees that this Agreement is a  
4 binding and enforceable contract upon Respondent and the Board's Investigative Committee,  
5 which contract may be enforced in a court or tribunal having jurisdiction.

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

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

13 12. **Failure to Comply With Terms.** In the event the Board enters its Order  
14 approving this Agreement, should Respondent fail to comply with the terms recited herein, the  
15 Board would then have grounds, after notice and a hearing, to take disciplinary action against  
16 Respondent in addition to that included herein for the subject's violation of an Order of the  
17 Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to  
18 reimburse the Board for monies agreed to be paid as a condition of settlement may subject  
19 Respondent to civil collection efforts.

20 Dated this 23 day of April, 2012.

Dated this 17th day of April, 2012.

21  
22 By: [Signature]  
23 Lyn E. Beggs, Esq.  
24 Attorney for the Investigative Committee

By: [Signature]  
Jess Marchese, Esq.  
Attorney for Respondent

25 UNDERSTOOD AND AGREED:

26 [Signature]  
27 Maryanna Phillips, M.D., Respondent

28 Dated this 16 day of April, 2012.

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 8<sup>th</sup> day of June  
3 2012, with the final total amount of costs due of \$5,847.38.

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

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