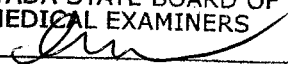


1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**  
2 **OF THE STATE OF NEVADA**

3 \* \* \* \* \*

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5  
6 **In the Matter of Charges and** ) **Case No. 13-10014-1**  
7 )  
8 **Complaint Against** ) **FILED**  
9 )  
10 **CHARLES FRED XELLER, M.D.,** ) **JUN - 7 2013**  
11 **Respondent.** ) **NEVADA STATE BOARD OF**  
 ) **MEDICAL EXAMINERS**  
 ) **By: **

12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee  
14 (IC) of the Nevada State Board of Medical Examiners (Board), composed of  
15 Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and  
16 Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through,  
17 Bradley O. Van Ry, Esq., Board General Counsel and Attorney for the IC, and  
18 Charles Fred Xeller, M.D. (Respondent), by and through his counsel  
19 L. Kristopher Rath, Esq., as follows:

20 **WHEREAS**, on January 9, 2013, 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 Medical Practice Act (MPA), Chapter 630 of the  
23 Nevada Revised Statutes (NRS), to wit: Count I, one count of any disciplinary action, including,  
24 without limitation, the revocation, suspension, modification or limitation of a license to practice  
25 any type of medicine, taken by another state, a violation of NRS 630.301(3);

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 engaged in conduct that is grounds for discipline pursuant to  
3 the MPA;

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

10       **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,  
11 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated  
12 below shall be binding and enforceable upon him.

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

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

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

25       **3.       Waiver of Rights.** Respondent waives all rights in connection with this  
26 Agreement, and the terms, covenants and conditions contained herein, and with the understanding  
27 that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant  
28 to the United States Constitution, the constitution of the state of Nevada, the MPA,

1 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply  
2 to him in connection with the proceedings on the formal Complaint filed herein, the defense of  
3 said formal Complaint and the adjudication of the charges in said formal Complaint.

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

11 **4. Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
12 proceedings pending against him without any further costs and expense of providing a defense to the  
13 formal Complaint, Respondent hereby agrees that the Board may issue an Order finding that  
14 Respondent has engaged in conduct that is grounds for discipline pursuant to the  
15 MPA, and agrees that:

16 a. The Board may find a violation of the MPA against Respondent, to wit: any  
17 disciplinary action, including, without limitation, the revocation, suspension, modification or  
18 limitation of a license to practice any type of medicine, taken by another state, a violation of  
19 NRS 630.301(3), as set forth in Count I of the formal Complaint;

20 b. Respondent shall receive a public reprimand;

21 c. Pursuant to NRS 622.400, Respondent shall reimburse the Board the sum of  
22 \$616.66, the current amount of the costs incurred by the Board to investigate and prosecute this  
23 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the  
24 Board within thirty (30) days of the Board's acceptance and approval of this Agreement; and,

25 d. The terms of this Agreement shall be reported as required by law.

26 **5. Release From Liability.** In execution of this Agreement, the Respondent, for  
27 himself, his executors, successors and assigns, hereby releases and forever discharges the state of  
28 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and

1 employees in their representative capacities, and in their individual capacities, from any and all  
2 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands  
3 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have  
4 or claim to have, against any or all of the persons or entities named in this paragraph arising out of  
5 or by reason of this investigation, this Agreement or its administration.

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

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

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

26           **8. Effect of Rejection of Agreement by Board.** In the event the Board does not  
27 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this  
28 Agreement shall be null, void, and of no further force and effect except as to the following

1 covenant and agreement regarding disqualification of adjudicating Board panel members.  
2 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing  
3 contained herein and nothing that occurs pursuant to the efforts of the IC or its counsel to seek  
4 acceptance and adoption of this Agreement by the Board shall disqualify any member of the  
5 adjudicating panel of the Board from considering the charges against Respondent and participating  
6 in the disciplinary proceeding in any role, including adjudication of the case. Respondent further  
7 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

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

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

18       **12.    Failure to Comply With Terms.** In the event the Board enters its order approving  
19 this Agreement, should Respondent fail to comply with any term or condition recited herein, the  
20 Board shall be authorized to immediately suspend Respondent's license to practice medicine in the  
21 state of Nevada pending an order to show cause hearing, which will be duly noticed. Further,  
22 failure to comply with the terms recited herein may result in additional disciplinary action being  
23 initiated against Respondent for a violation of an Order of the Board in accordance with

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1 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies  
2 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

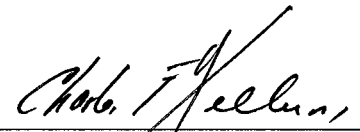
3 Dated this 6<sup>th</sup> day of May, 2013.

Dated this 3<sup>rd</sup> day of May, 2013.


4  
5  
6 By:   
7 Bradley O. Van Ry, Esq.  
8 Attorney for the Investigative Committee

By:   
L. Kristopher Rath, Esq.  
Attorney for Respondent

9 UNDERSTOOD AND AGREED:

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12 Charles Fred Xeller, M.D., Respondent  
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1 **IT IS HEREBY ORDERED** that the foregoing Settlement Agreement is approved and accepted by the  
2 Nevada State Board of Medical Examiners on the 7<sup>th</sup> day of June 2013, with the final total amount of  
3 costs due of \$616.66.

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