

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

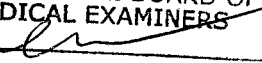
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6 **In the Matter of Charges and**)
7 **Complaint Against**)
8 **KEVIN J. THORN, P.A.-C,**)
9 **Respondent.**)
10
11

Case No. 12-25047-1

FILED

JUN - 7 2013

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 at the time of filing the
15 formal Complaint of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF,
16 Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through
17 its counsel, Erin L. Albright, Esq., Board Deputy General Counsel and attorney for the IC, and
18 Kevin J. Thorn, P.A.-C. (Respondent), as follows:

19 **WHEREAS**, on September 27, 2012, the Board's IC filed a formal Complaint in the
20 above-captioned matter charging Respondent with engaging in conduct that is grounds for
21 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the
22 Nevada Revised Statutes (NRS) and the Nevada Administrative Code (NAC), to wit: Count I: two
23 (2) counts of obtaining, maintaining or renewing or attempting to obtain, maintain or renew a
24 license to practice medicine by bribery, fraud or misrepresentation or by any false, misleading,
25 inaccurate or incomplete statement, two (2) violations of NRS 630.304(1); Count II: six (6) counts
26 of failure to report to the Board, in writing, within thirty (30) days, any criminal action taken or
27 conviction obtained against the licensee, other than a minor traffic violation, in this State, six (6)
28 violations of NRS 630.306(12); Count III: one (1) count of engaging in conduct that brings the
medical profession into disrepute, a violation of NRS 630.301(9); Count IV: one (1) count of

1 engaging in conduct that is intended to deceive, a violation of NRS 630.306(2)(a); and Count V:
2 one (1) count of being convicted of a violation of any state law regulating the use of a controlled
3 substance, a violation of NAC 630.380(1)(i); and

4 **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,
5 understands it, and has had ample opportunity to consult with and retain counsel concerning the
6 nature and significance of the formal Complaint. Respondent is fully aware concerning his rights
7 and defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the
8 Board finds and concludes that he violated one or more provisions of the
9 MPA, and after due consideration, concedes that he engaged in conduct which is in violation of
10 the MPA as set forth in Count I and Count V of the formal Complaint; and

11 **WHEREAS**, Respondent understands and agrees that he has certain rights under the
12 United States Constitution and the Constitution of the state of Nevada, as well as under the MPA
13 and the Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to,
14 the right to a formal hearing on the charges against him, the right to representation by counsel in
15 the preparation and presentation of his defense, the right to confront and cross-examine the
16 witnesses against him, the right to written findings, conclusions and an order regarding a final
17 decision by the Board, and the right to judicial review of any final decision by the Board that is
18 adverse to him; and

19 **WHEREAS**, Respondent understands and agrees that this Settlement Agreement
20 (Agreement) is entered into by and between himself and the Board's IC, and not with the Board,
21 but that the IC will present this Agreement to the Board for consideration in open session at a
22 meeting duly noticed and scheduled. Respondent understands that the IC shall advocate approval
23 of this Agreement by the Board, but that the Board has the right to decide in its own discretion
24 whether or not to approve this Agreement; and

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

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

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

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

9 Respondent acknowledges that he is not represented by counsel and wishes to proceed
10 towards a resolution of this matter, as set forth in this Agreement, without counsel. Respondent
11 understands and acknowledges that he may retain and consult counsel prior to entering into this
12 Agreement. Respondent agrees that if counsel is retained for representation in this matter prior to
13 entering into this Agreement, that counsel for the IC will be informed of such representation prior
14 to Respondent executing this Agreement. Respondent covenants and agrees that he enters into
15 this Agreement knowingly, willingly and intelligently.

16 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
17 and conditions contained herein, Respondent knowingly, willingly and intelligently waives all
18 rights in connection with this Agreement, and the terms, covenants and conditions contained
19 herein, and with the understanding that Respondent knowingly, willingly and intelligently waives
20 all rights arising under or pursuant to the United States Constitution, the constitution of the state of
21 Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be available to him
22 or that may apply to him in connection with the proceedings on the formal Complaint filed herein,
23 the defense of said formal Complaint, the adjudication of the charges in said formal Complaint,
24 and the imposition of sanctions.

25 Respondent agrees that the matter of the formal Complaint herein may be settled and
26 resolved in accordance with this Agreement without a hearing or any further proceedings, and
27 without the right to judicial review.

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1 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
2 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or
3 more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

4 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
5 proceedings pending against him without incurring any further costs and expense of providing a
6 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order
7 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, to
8 wit: two (2) counts of obtaining, maintaining or renewing or attempting to obtain, maintain or
9 renew a license to practice medicine by bribery, fraud or misrepresentation or by any false,
10 misleading, inaccurate or incomplete statement, two (2) violations of NRS 630.304(1), as set forth
11 in Count I of the formal Complaint, and six (6) counts of failure to report to the Board, in writing,
12 within thirty (30) days, any criminal action taken or conviction obtained against the licensee, other
13 than a minor traffic violation, in this State, six (6) violations of NRS 630.306(12), as set forth in
14 Count II of the formal Complaint.

15 For the aforementioned violations, Respondent shall:

16 a. Allow his license to be suspended, with said suspension stayed and
17 Respondent shall be placed on probation for a period of twelve (12) months from the date of the
18 Board's acceptance, adoption and approval of this Agreement, with an obligation to comply with
19 the following terms and conditions:

20 (1) Respondent shall remain in compliance with all state and federal
21 laws pertaining to the practice of medicine, the prescribing, administering or
22 dispensing of any dangerous drug or controlled substance and driving under the
23 influence;

24 (2) Respondent shall successfully complete the Professionals Reaching
25 Nevada-Physician Assistant Recovery Network program, which he commenced on
26 November 13, 2012;

27 (3) Respondent shall remain in compliance with any conditions and
28 terms placed upon him by any criminal court;

- 1 b. Receive a public reprimand;
- 2 c. Pay a fine in the amount of One Thousand and 00/100 Dollars (\$1,000.00)
- 3 to the Board within ninety (90) days of the Board's acceptance, adoption and approval of this
- 4 Agreement;
- 5 d. Pursuant to NRS 622.400, Respondent shall reimburse the sum of Two
- 6 Thousand Three Hundred Forty-Six and 26/100 Dollars (\$2,346.26), the current amount of the
- 7 costs incurred by the Board to investigate and prosecute this matter. The costs shall be paid to the
- 8 Board within ninety (90) days of the Board's acceptance, adoption and approval of this
- 9 Agreement;
- 10 e. Counts III, IV and V of the formal Complaint shall be dismissed; and
- 11 f. The terms of this Agreement shall be reported as required by law.

12 **6. Release From Liability.** In execution of this Agreement, the Respondent, for

13 himself, his executors, successors and assigns, hereby releases and forever discharges the state of

14 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, from any and all

16 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands

17 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have

18 or claim to have, against any or all of the persons or entities named in this paragraph arising out of

19 or by reason of this investigation, this Agreement or its administration.

20 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall

21 recommend approval and adoption of the terms, covenants and conditions contained herein by the

22 Board in resolution of the formal Complaint pending herein against Respondent. In the course of

23 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may

24 communicate directly with the Board staff and the adjudicating members of the Board.

25 Respondent acknowledges that such contacts and communication may be made or

26 conducted ex parte, without notice or opportunity to be heard on his part until the public Board

27 meeting where this Agreement is discussed, and that such contacts and communications may

28 include, but not be limited to, matters concerning this Agreement, the formal Complaint, and any

1 and all information of every nature whatsoever related to the formal Complaint or the proceedings
2 herein against Respondent. The IC and its counsel agree that Respondent may appear at the Board
3 meeting where this Agreement is discussed, and if requested, respond to any questions that may be
4 addressed to the IC or its counsel.

5 **8. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
6 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
7 IC will cause the Board's order accepting, adopting and approving this Agreement to be entered
8 herein, ordering full compliance with the terms herein and ordering that this case be closed,
9 subject to the provisions in Paragraph 5.

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

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

24 **11. Forum Selection Clause.** Respondent covenants and agrees that in the event
25 either party is required to seek enforcement of this Agreement in the district court, he consents to
26 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 **12. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
2 action is commenced in the district court to enforce any provision of this Agreement, the
3 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

4 **13. Failure to Comply With Terms.** In the event the Board enters its order
5 approving, accepting and adopting this Agreement, should Respondent fail to comply with any
6 term or condition recited herein, the Board shall be authorized to immediately suspend
7 Respondent's license to practice medicine in the state of Nevada pending an order to show cause
8 hearing, which will be duly noticed and scheduled. Further, failure to comply with the terms
9 recited herein may result in additional disciplinary action being initiated against Respondent for a
10 violation of an order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure
11 of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement
12 may subject Respondent to civil collection efforts.

13 Dated this 20th day of May, 2013.

Dated this 18 day of May, 2013.

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15 By: *Erin Albright*
16 Erin L. Albright, Esq.
17 Attorney for the Investigative Committee

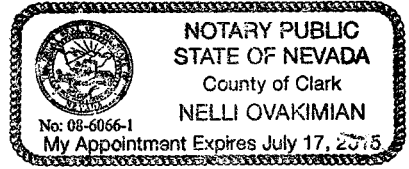
By: *[Signature]*
Kevin J. Thorn, P.A.-C
Respondent

18 STATE OF NEVADA)
19) ss.
20 COUNTY OF CLARK)

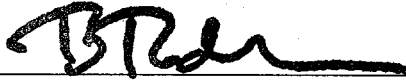
SUBSCRIBED and SWORN to before me

21
22 This 18 day of MAY, 2013.

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24 *[Signature]*
25 Notary Public



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 7th day of June 2013, with the final total amount of
3 costs due of \$2,346.26.

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