

1 **WHEREAS**, Respondent understands and agrees that had the IC filed a complaint alleging
2 any violation of the Nevada Medical Practice Act (MPA), i.e., NRS Chapter 630 and Nevada
3 Administrative Code (NAC) Chapter 630, he would have certain rights under the United States
4 Constitution and the Constitution of the state of Nevada, as well as under the MPA and the
5 Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to, the
6 right to a formal hearing on the allegations against him, the right to representation by counsel in
7 the preparation and presentation of his defense, the right to confront and cross-examine the
8 witnesses against him, the right to written findings, conclusions and an order regarding a final
9 decision by the Board, and the right to judicial review of any final decision by the Board that is
10 adverse to him; and

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

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

20 **NOW THEREFORE**, in order to resolve this matter and all charges, if any, alleged by the
21 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
22 terms, covenants and conditions:

23 **1. Jurisdiction.** Respondent is, and at all times mentioned in the Order of Summary
24 Suspension filed in the above-captioned matter was, a physician licensed to practice medicine in
25 the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of
26 violations of the MPA, and to impose sanctions as provided by the MPA.

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

2 Respondent is represented by above-identified counsel herein, whom Respondent
3 covenants and agrees is fully capable, competent and fully advised in these circumstances, and
4 Respondent further covenants and agrees that he knowingly, willingly, and intelligently enters into
5 this Agreement after full consultation with and upon advice of above-identified counsel.

6 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
7 and conditions contained herein, Respondent knowingly, willingly and intelligently, with the
8 advice of above-identified counsel, waives all rights in connection with this Agreement, and the
9 terms, covenants and conditions contained herein, and with the understanding that Respondent
10 knowingly, willingly and intelligently waives all rights arising under or pursuant to the
11 United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter 233B,
12 and any other statutory rights that may be available to him or that may apply to him in connection
13 with the proceedings on the Order of Summary Suspension filed herein, the defense of said Order
14 of Summary Suspension, and the adjudication of the allegations in said Order of Summary
15 Suspension.

16 Respondent agrees that the matter of the Order of Summary Suspension herein may be
17 settled and resolved in accordance with this Agreement without a hearing or any further
18 proceedings, and without the right to judicial review.

19 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
20 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or
21 more instances of conduct that may be grounds for discipline pursuant to the provisions of the
22 MPA.

23 **5. Consent to Entry of Order.** In order to resolve the matter of the summary
24 suspension currently in place against him without incurring any further costs and expense of
25 providing a defense to the Order of Summary Suspension, Respondent hereby agrees that the
26 suspension of his medical license shall be lifted immediately upon the approval and filing of this
27 Agreement subject to the following terms and conditions:

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1 a. Respondent shall enroll, for a minimum of twelve (12) months, in weekly,
2 individual treatment to address substance abuse issues with Murray Brooks, LADC, at
3 LifePath Recovery LLC, P.O. Box 919, Carson City, NV 89702. The weekly, individual
4 treatment program shall perform random alcohol/drug urine tests on Respondent at least
5 four (4) times per month during Respondent's enrollment in weekly, individual treatment;

6 b. Within ten (10) days of his enrollment in weekly, individual treatment with
7 Murray Brooks, LADC, at LifePath Recovery LLC, Respondent shall execute a HIPAA
8 compliant release in favor of the Board to allow Mr. Brooks and LifePath Recovery LLC
9 to provide status reports regarding Respondent's treatment directly to the Board;

10 c. Respondent shall also join a positive peer support group (i.e., Alcoholics
11 Anonymous) to support his endeavors at sobriety. Respondent shall attend a minimum of
12 two (2) support groups per week for a total of twelve (12) months. On the fifth day of
13 every month, Respondent shall submit proof of his prior month's attendance directly to the
14 Board;

15 d. Respondent shall be solely responsible for any costs and fees associated
16 with his compliance with all terms and conditions of this Agreement;

17 e. If the IC finds that Respondent has violated any terms or conditions of this
18 Agreement, it may immediately summarily suspend Respondent's license to practice
19 medicine in Nevada and shall set a date for a hearing to be held within forty-five (45) days
20 to determine whether the summary suspension of Respondent's license to practice
21 medicine in the state of Nevada shall remain in effect.

22 **6. Release From Liability.** In execution of this Agreement, the Respondent, for
23 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
24 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
25 employees in their representative capacities, and in their individual capacities, from any and all
26 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
27 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have

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1 or claim to have, against any or all of the persons or entities named in this paragraph arising out of
2 or by reason of this investigation, this Agreement or its administration.

3 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
4 recommend approval and adoption of the terms, covenants and conditions contained herein by the
5 Board in resolution of the Order of Summary Suspension currently in effect against Respondent.
6 In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel
7 for the IC may communicate directly with the Board staff and the adjudicating members of the
8 Board.

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

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

23 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not
24 accept, approve and adopt the terms, covenants and conditions set out in this Agreement, this
25 Agreement shall be null, void, and of no further force and effect except as to the following
26 covenant and agreement regarding disqualification of adjudicating Board panel members.
27 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
28 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek

1 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
2 adjudicating panel of the Board from considering the charges, if any, against Respondent and
3 participating in the disciplinary proceedings in any role, including adjudication of the case.
4 Respondent further agrees that he shall not seek to disqualify any such member absent evidence of
5 bad faith.

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


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


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

16 **13. Failure to Comply With Terms.** Failure to comply with the terms recited herein
17 may result in disciplinary action being initiated against Respondent for a violation of an order of
18 the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to
19 reimburse the Board for monies agreed to be paid as a condition of settlement may subject
20 Respondent to civil collection efforts.

21 Dated this 10th day of November, 2014.

Dated this 6th day of November, 2014.

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23 By: 
Erin L. Albright, Esq.
24 Attorney for the Investigative Committee

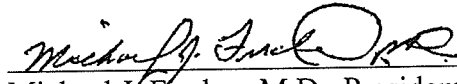
By: 
Lyn E. Beggs, Esq.
25 Attorney for Respondent

26 **UNDERSTOOD AND AGREED:**
Dated this 6 day of Nov, 2014.

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Dana R. Marks, M.D., Respondent

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IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 5th day of December 2014.



Michael J. Fischer, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS