

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 )  
8 **Complaint Against** )  
9 **DARBY-ANNETTE CLAYSON, M.D.,** )  
10 **Respondent.** )  
11 \_\_\_\_\_ )

**Case No. 13-30595-1**

**FILED**

**JUN - 6 2014**

**NEVADA STATE BOARD OF  
MEDICAL EXAMINERS**

By: 

12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the  
14 Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board),  
15 composed 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 Bradley O. Van Ry, Esq., Board General Counsel and counsel for the IC, and  
18 Darby-Annette Clayson, M.D. (Respondent), by and through John A. Hunt, Esq., counsel for  
19 Respondent, as follows:

20 **WHEREAS**, on July 24, 2013, the Board's IC filed a Complaint in the above-referenced  
21 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to  
22 the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes (NRS) Chapter 630 and  
23 Nevada Administrative Code (NAC) Chapter 630;

24 **WHEREAS**, on September 3, 2013, Respondent filed an Answer to the Complaint  
25 denying the allegations contained therein;

26 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands  
27 it, and has had ample opportunity to consult with her above-identified counsel concerning the  
28 nature and significance of the Complaint, and Respondent is fully aware concerning her rights and

1 defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board  
2 finds and concludes that she has violated one or more provisions of the MPA;

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

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

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

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

18       **2.     Representation by Counsel/Knowing, Willing and Intelligent Agreement.**  
19       Respondent is represented by above-identified legal counsel in this matter and has had  
20 ample opportunity to review this Agreement, the Complaint filed in this matter and the related  
21 factual basis with said legal counsel, John A. Hunt, Esq. Respondent covenants and agrees that  
22 she knowingly, willingly and intelligently enters into this Agreement.

23       **3.     Waiver of Rights.** In connection with this Agreement, and the terms, covenants  
24 and conditions contained herein, and the understanding that Respondent knowingly, willingly, and  
25 intelligently waives all rights arising under or pursuant to the United States Constitution, the  
26 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other  
27 statutory rights that may be available to her or that may apply to her in connection with the  
28 proceedings on the Complaint filed herein, the defense of said Complaint and the adjudication of

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

9 **4. Consent to Entry of Order.** Respondent concedes only that the Board has  
10 sufficient evidence to proceed with its formal Complaint against her, but does not concede or  
11 admit to such allegations, which she expressly denies, and which, but for her desire to reach this  
12 compromise, she would contest at the formal hearing of this matter. Accordingly, in order to  
13 resolve the matter without incurring further costs and expense of providing a defense to the formal  
14 Complaint, Respondent hereby agrees<sup>1</sup> that the Board may issue an order finding that Respondent  
15 engaged in conduct that is grounds for discipline pursuant to the MPA, and agrees:

16 a. The Board may find that Respondent engaged in conduct that is grounds for  
17 discipline pursuant to the MPA, to wit: the failure to adequately supervise a physician assistant, a  
18 violation of NAC 630.230(1)(i), as set forth in Count II of the Complaint;

19 b. Respondent shall be issued a public reprimand;

20 c. Respondent shall complete ten (10) hours of Continuing Medical Education  
21 (CME) in professional boundaries and/or medical ethics, pre-approved by the Board, in person  
22 and in addition to the normal amount of CMEs required for licensure, within one (1) year of the  
23 Board's acceptance and approval of this Agreement;

24 d. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum  
25 of \$4,785.86, the amount of the costs incurred by the Board to investigate and prosecute this  
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27 <sup>1</sup> All admissions made by Respondent are solely for final disposition of this matter and any subsequent related  
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by  
Respondent are not intended or made for any other use, such as in the context of another state or federal government  
regulatory agency proceeding, state or federal civil or criminal court proceeding, or any other state or federal court  
proceeding, or any credentialing or privileges matter.

1 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the  
2 Board within thirty (30) days of the Board's acceptance and approval of this Agreement;

3 e. All remaining counts of the Complaint shall be dismissed; and,

4 f. The terms of this Agreement shall be reported as required by law.

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

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

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

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 Agreement, ordering full compliance with the terms herein and ordering that this case  
3 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. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an  
19 action is commenced in the district court to enforce any provision of this Agreement, the  
20 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

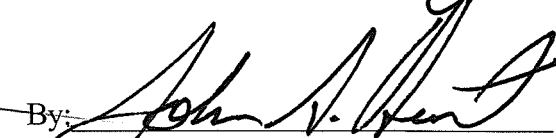
21 **11. Failure to Comply with Terms.** In the event the Board enters its order approving  
22 this Agreement, should Respondent fail to comply with any term or condition recited herein, the  
23 Board shall be authorized to immediately suspend Respondent's license to practice medicine in  
24 the state of Nevada pending an order to show cause hearing, which will be duly noticed.  
25 Further, failure to comply with the terms recited herein may result in additional disciplinary action  
26 being initiated against Respondent for a violation of an order of the Board in accordance with  
27 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies  
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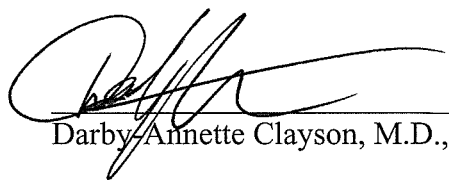
agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

Dated this 27<sup>th</sup> day of May, 2014. Dated this 23 day of May, 2014.

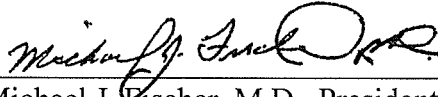
By:   
Bradley O. Van Ry, Esq.  
Attorney for the Investigative Committee

By:   
John A. Hunt, Esq.  
Attorney for Respondent

UNDERSTOOD AND AGREED:

  
Darby Annette Clayson, M.D., Respondent

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 6<sup>th</sup> day of June 2014, with the final total amount of  
3 costs due of \$4,785.86.

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