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BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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In the Matter of Charges and) Case No. 16-30572-1
Complaint Against))) JUN - 7 2016
SIMMON L. WILCOX, M.D.,) NEVADA STATE BOARD OF MEDICAL EXAMINERS
Respondent.) By:

SETTLEMENT AGREEMENT

THIS SETTLEMENTAGREEMENT ("Agreement") is hereby entered into by and between the Investigative Committee ("IC") of the Nevada State Board of Medical Examiners ("Board"), composed of Wayne Hardwick, M.D., Theodore B. Berndt, M.D., and M. Neil Duxbury, Public Member, in the above-captioned matter, by and through Robert Kilroy, Esq., General Counsel for the IC, and Simmon L. Wilcox, M.D. ("Respondent"), by and through John A. Hunt, Esq., counsel for Respondent:

WHEREAS, an Indictment was filed on October 23, 2013 ("Indictment"), in the matter of United States of America v. Simmon Lee Wilcox, Benjamin David Grisel, Brenda Ann Grisel, Jeron Scott Hales, Jeremy Daniel Perkins, and Randal David Ayrton, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW.¹ Respondent provided the Board with timely notice of the Indictment.

WHEREAS, following a jury trial involving Respondent only, a *Verdict Form* was filed on January 28, 2015, in the matter of <u>United States of America v. Simmon Lee Wilcox</u>, United District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, which notes the jury found

¹Each Defendant, with the exception of the Respondent, reached a plea deal with the Government wherein they each plead guilty to Count 1 of the Indictment (i.e., Conspiracy to Distribute Oxycodone, 21 U.S.C. §§ 841(a)(1) and 846).

Respondent guilty as to Count 1 of the Indictment (i.e., Conspiracy to Distribute Oxycodone, 21 U.S.C. §§ 841(a)(1) and 846) and guilty as to Count 2 of the Indictment (i.e., Distribution of Oxycodone, 21 U.S.C. § 841(a)(1)).

Moreover, the *Verdict Form* reflects the jury found Respondent not guilty as to Count 8 (i.e., Distribution of Hydrocodone, 21 U.S.C. § 841(a)(1)), Count 9 (i.e., Distribution of Hydrocodone, 21 U.S.C. § 841(a)(1)), and Count 10 (i.e., Distribution of Hydrocodone, 21 U.S.C. § 841(a)(1)).

WHEREAS, following the filing of the *Verdict Form*, a sentencing hearing for Respondent in the matter of <u>United States of America v. Simmon Lee Wilcox</u>, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, was set for April 18, 2016.

WHEREAS, Respondent has received a copy of the Complaint in the above-captioned matter (Case No. 16-30572-1), has reviewed it, understands it, has had ample opportunity to consult with his above-identified counsel concerning the nature and significance of the Complaint in Case No. 16-30572-1, and Respondent is fully aware concerning his rights and defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board finds and concludes that he has violated one or more provisions of the Medical Practice Act ("MPA"), Nevada Revised Statutes ("NRS") Chapter 630 and Nevada Administrative Code Chapter 630.

WHEREAS, Respondent has received a copy of the Indictment and a copy of the *Verdict Form*, has reviewed them, understands them, and has had ample opportunity to consult with his above-identified counsel concerning the nature and significance of the same with regards to possible sanctions that may be imposed if the Board finds and concludes that he has violated one or more provisions of the MPA as a result of the Indictment and/or *Verdict Form*.

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

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

NOW THEREFORE, in order to resolve this matter and all charges alleged by the Board's IC in the Complaint in Case No. 16-30572-1 and any and all matters relating to and any and all matters that may be charged by the Board or the Board's IC by virtue of or in connection with the above-referenced Indictment, the *Verdict Form*, and/or any sentencing/judgment following the sentencing hearing currently scheduled for April 18, 2016, Respondent and the IC hereby agree to the following terms, covenants and conditions:

1. <u>Jurisdiction</u>. Respondent is, and at all times mentioned in the Complaint in Case No. 16-30572-1, and at all times relevant with respect to the filing of the above-referenced Indictment, the *Verdict Form* and/or any sentencing/judgment following the sentencing hearing currently scheduled for April 18, 2016, Respondent was, a physician licensed to practice medicine in the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the MPA and to impose sanctions as provided by the MPA.

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

Respondent is represented by above-identified legal counsel in this matter and has had ample opportunity to review this Agreement, the Complaint in Case No. 16-30572-1, the above-referenced Indictment and the *Verdict Form* (as well as consider the sentencing hearing currently scheduled for April 18, 2016), and the related factual basis with regards to the same with said legal counsel, John A. Hunt, Esq. Respondent covenants and agrees that he knowingly, willingly and intelligently enters into this Agreement.

3. <u>Waiver of Rights</u>. In connection with this Agreement, and the terms, covenants, and conditions contained herein, Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply to him in connection with the proceedings on the Complaint in Case No. 16-30572-1, the Indictment, the *Verdict Form*, and/or any sentencing/judgment

following the sentencing hearing currently scheduled for April 18, 2016, the defense of said Complaint in Case No. 16-30572-1, and the adjudication of the charges in said Complaint in Case No. 16-30572-1.

In connection with this Agreement, and the terms, covenants, and conditions contained herein, Respondent knowingly, willingly, and intelligently waives all rights arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply to him in connection with the proceedings herein and/or any and all matters relating to and any and all matters that may be charged by the Board or the Board's IC by virtue of or in connection with the above-referenced Indictment, the *Verdict Form*, any sentencing/judgment following the sentencing hearing currently scheduled for April 18, 2016, and the defense of the same in this administrative context.

4. Consent to Entry of Order. Respondent concedes only that the Board has sufficient evidence to proceed with its formal Complaint in Case No. 16-30572-1 against him, and that by virtue of the Indictment, the *Verdict Form* and the sentencing/judgment following the sentencing hearing currently scheduled for April 18, 2016, the Board also has sufficient evidence to bring additional allegations against Respondent, but does not concede or admit to such allegations, which he expressly denies, and which, but for his desire to reach this compromise, he would contest at a formal hearing of these matters (i.e., the Complaint in Case No. 16-30572-1 as well as any and all matters that could be alleged by the Board or the IC with regards to the Indictment, the *Verdict Form* and the sentencing/judgment following the sentencing hearing currently scheduled for April 18, 2016). Accordingly, in order to resolve these matters without incurring further costs and expense of providing a defense to the Complaint, Case No. 16-30572-1, Respondent hereby agrees² that the Board may issue an order finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, and agrees:

²All admissions made by Respondent are solely for final disposition of this matter and any subsequent related 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.

- a. The Board may find that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, to wit: Respondent being found guilty as to Count 1 of the Indictment (i.e., Conspiracy to Distribute Oxycodone, 21 U.S.C. §§ 841(a)(1) and 846) and guilty as to Count 2 of the Indictment (i.e., Distribution of Oxycodone, 21 U.S.C. § 841(a)(1)), which are violations of NRS 630.301(9).
- b. Pursuant to NRS 630.352(4)(d), Respondent agrees that **if he is sentenced to probation and/or supervised release** at the sentencing hearing currently scheduled for April 18, 2016, in the matter of <u>United States of America v. Simmon Lee Wilcox</u>, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, that effective on said date, the following shall apply³:
- 1. Respondent agrees to accept a stayed suspension of his license to practice medicine in the state of Nevada for a period of six (6) months. If, during the term of Respondent's six (6) months' stayed suspension, the IC receives substantial evidence that Respondent has materially breached the terms and conditions of this Agreement, Respondent agrees the IC, without any further hearing or action by the Board, shall issue an order suspending Respondent's license to practice medicine in the state of Nevada. Thereafter, Respondent may request a hearing before the Board to reinstate his license, which must be heard within forty-five (45) days of the Order of Suspension. However, during the pendency of the hearing before the Board, Respondent waives any right to seek judicial review (state or federal) to reinstate his privilege to practice medicine in the state of Nevada pending a final Board hearing;
- 2. Pursuant to NRS 630.352(4)(a), Respondent agrees to being placed on probation with the Nevada State Board of Medical Examiners pursuant to the terms and conditions issued by the United States District Court in the matter of <u>United States of America v. Simmon Lee Wilcox</u>, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW. Within thirty (30) days of the sentencing hearing, Respondent shall

³So there is no misunderstanding, Respondent, the Board, and the IC recognize and agree the terms and conditions of **Paragraph 4.b.** and all of its subparts shall apply and be applicable **only** if Respondent is sentenced to probation and/or supervised release in the matter of <u>United States of America v. Simmon Lee Wilcox</u>, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, and, accordingly, if Respondent is sentenced to probation and/or supervised release, the terms and conditions of **Paragraph 4.c.** (and its subparts) shall **not** apply and shall not be effective.

1 provide a copy of this Agreement to the office of Federal Parole and Probation and/or any other 2 3 4 5 7 8 9 10 11 12 13 14 15 16 17

applicable office/department. Respondent shall also execute any documents necessary authorizing the office of Federal Parole and Probation and/or any other applicable office/department to release any and all reports generated regarding Respondent's compliance with the terms and conditions of Respondent's federal probation and/or supervised release. Once Respondent is given written notice of his completion of his federal probation and/or supervised release, Respondent shall submit the written notice to the Investigative Committee. Upon receipt of the written notice of completion of Respondent's federal probation and/or supervised release, the Board shall issue an Order reinstating Respondent's license to the status of "active" without restriction. If, during the term of Respondent's federal probation and/or supervised release, the IC receives substantial evidence that Respondent has materially breached the terms and conditions of his federal probation and/or supervised release, Respondent agrees the IC, without any further hearing or action by the Board, shall issue an order suspending Respondent's license to practice medicine in the state of Nevada. Thereafter, Respondent may request a hearing before the Board to reinstate his license, which must be heard within forty-five (45) days of the Order of Suspension. However, during the pendency of the hearing before the Board, Respondent waives any right to seek judicial review (state or federal) to reinstate his privilege to practice medicine in the state of Nevada pending a final Board hearing. 3. Pursuant to NRS 622.400, Respondent shall reimburse to the Board

- the sum of \$998.46, the amount of the costs incurred by the Board to investigate and prosecute this matter, along with the costs to conclude the matter, if any. Respondent further agrees that these costs shall be paid to the Board within ninety (90) days of the sentencing in the federal matter of United States of America v. Simmon Lee Wilcox, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW.
- c. Pursuant to NRS 630.352(4)(e), Respondent agrees that if he is sentenced to incarceration/custody at the sentencing hearing currently scheduled for April 18, 2016, in the matter of United States of America v. Simmon Lee Wilcox, United States District Court, District

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of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, that effective on the date that he presents to begin his incarceration/custody sentence, the following shall apply⁴:

- 1. Respondent's license to practice medicine in the state of Nevada shall be revoked, pursuant to the terms and conditions set forth below.
- a. Following his release from incarceration/custody, Respondent may petition the Board to reinstate Respondent's license to practice medicine in the state of Nevada pursuant to the following terms and conditions:
- i. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum of \$998.46, the amount of the costs incurred by the Board to investigate and prosecute this matter, along with the costs to conclude the matter, if any. Respondent must pay these costs prior to petitioning the Board for reinstatement of Respondent's license to practice medicine in the state of Nevada;
- ii. Respondent must submit proof that Respondent has complied with required continuing education requirements while incarcerated/in-custody;

additional terms the Board deems appropriate in the event the Board reinstates Respondent's license to practice medicine in the state of Nevada, Respondent shall be placed on probation for a period of one (1) year. Respondent shall also comply with any terms and conditions of parole and probation and/or supervised release which may follow the incarceration/custody period, if any, related to the case of <u>United States of America v. Simmon Lee Wilcox</u>, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW. Within thirty (30) days of Respondent's release from incarceration/custody, Respondent shall provide a copy of this Agreement to the office of Federal Parole and Probation and/or any other applicable office/department. Respondent shall also execute any documents necessary authorizing the office of Federal Parole and Probation and/or any other applicable office/department to release any and

⁴So there is no misunderstanding, Respondent, the Board, and the IC recognize and agree the terms and conditions of **Paragraph 4.c.** and all of its subparts shall apply and be applicable **only** if Respondent is sentenced to incarceration/custody in the matter of <u>United States of America v. Simmon Lee Wilcox</u>, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW, and, accordingly, if Respondent is sentenced to incarceration/custody, the terms and conditions of **Paragraph 4.b.** (and its subparts) shall **not** apply and shall not be effective.

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all reports generated regarding Respondent's compliance with the terms and conditions of Respondent's federal probation and/or supervised release following his incarceration/custody. Once Respondent is given written notice of his completion of his federal probation and/or supervised release following his incarceration/custody, Respondent shall submit the written notice to the Investigative Committee. Upon receipt of the written notice of completion of federal probation and/or supervised release following his incarceration/custody and Respondent's completion of the one (1) year of probation relative to Respondent's Nevada medical license, the Board shall issue an Order reinstating Respondent's license to the status of "active" without restriction. If, during the term of Respondent's federal probation and/or supervised release following his incarceration/custody or Respondent's Nevada medical license probation, the IC receives substantial evidence that Respondent has materially breached the terms and conditions of either probation and/or supervised release following his incarceration/custody, Respondent agrees the IC, without any further hearing or action by the Board, shall issue an order suspending Respondent's license to practice medicine in the state of Nevada. Thereafter, Respondent may request a hearing before the Board to reinstate his license, which must be heard within forty-five (45) days of the Order of Suspension. However, during the pendency of the hearing before the Board, Respondent waives any right to seek judicial review (state or federal) to reinstate his privilege to practice medicine in the state of Nevada pending a final Board hearing.

iv. Respondent agrees he shall submit to the Board any and all documentation regarding any of the terms and conditions of parole and probation and/or supervised release following his incarceration/custody related to the case of <u>United States of America v. Simmon Lee Wilcox</u>, United States District Court, District of Utah, Central Division, Case No. 2:13-cr-00717-TS-PMW upon Respondent's release from incarceration/custody.

- d. Pursuant to NRS 630.352(4)(b), Respondent agrees the Board shall administer a formal written public reprimand which will include language which is synonymous with the terms of this Agreement.
- e. Respondent and the Board agree that this Agreement does not involve facts or circumstances relating to the delivery of health care to Respondent's former patients.

- f. This Agreement fully and completely resolves all matters contained in the Complaint in Case No. 16-30572-1.
- g. This Agreement fully and completely resolves all matters that have or may be alleged by the Board or the Board's IC against Respondent with regards to the Indictment, the *Verdict Form* and/or any sentencing/judgment following the sentencing hearing currently scheduled for April 18, 2016.
 - h. The terms of this Agreement shall be reported as required by law.
- 5. Release From Liability. In execution of this Agreement, the Respondent, for himself, his executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and employees in their representative capacities, and in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this Agreement or its administration.
- 6. Procedure for Adoption of Agreement. The IC and counsel for the IC shall recommend approval and adoption of the terms, covenants and conditions contained herein by the Board in resolution of the matters referenced herein and above. In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff and members of the panel of the Board who would adjudicate this case if it were to go to hearing. Respondent acknowledges that such contacts and communication may be made or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel until the public Board meeting where this Agreement is discussed, and that such contacts and communications may include, but not be limited to, matters concerning this Agreement, the Complaint in Case No. 16-30572-1, the Indictment, the Verdict Form, the sentencing hearing currently scheduled for April 18, 2016, and any and all information of every nature whatsoever related to the same or the proceedings herein against Respondent. The IC and its counsel agree that Respondent and/or his counsel may appear at the Board meeting where this

Agreement is discussed, and if requested, respond to any questions that may be addressed to the IC or its counsel.

- 7. Effect of Acceptance of Agreement by Board. In the event the Board approves, accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC will cause to be entered herein the Board's Order accepting, adopting and approving this Agreement, ordering full compliance with the terms herein (as may be applicable relative to Paragraphs 4.b. or 4.c. and their respective subparts see discussion above), and ordering that this case involving the Complaint in Case No. 16-30572-1, as well as any matter involving the Indictment, the *Verdict Form* and the sentencing hearing currently scheduled for April 18, 2016, be closed.
- 8. Effect of Rejection of Agreement by Board. In the event the Board does not approve, accept and adopt the terms covenants and conditions set out in this Agreement, this Agreement shall be null, void, and of no further force and effect except as to the following covenant and agreement regarding disqualification of adjudicating Board panel members. Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by the Board shall disqualify any member of the adjudicating panel of the Board from considering the charges against Respondent and participating in the disciplinary proceeding in any role, including adjudication of the case. Respondent further agrees that he shall not seek to disqualify any such member absent evidence of bad faith.
- 9. <u>Binding Effect</u>. Providing this Agreement is approved by the Board, Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.
- 10. **Forum Selection Clause**. The parties agree that in the event either party is required to see enforcement of this Agreement in district court, the parties consent to such jurisdiction and agree that exclusive jurisdiction shall be in the Second Judicial District court, state of Nevada, Washoe County.

1	11.	Attorneys' Fees and Costs. Respondent covenants and agrees that in the event an
2	action is con	mmenced in the district court to enforce any provision of this Agreement, the
3	prevailing par	rty shall be entitled to recover costs and reasonable attorneys' fees.
4	12.	Failure to Comply with Terms. In the event the Board enters its order approving
5	this Agreeme	nt, should Respondent fail to comply with any term or condition recited herein, the
6	Board shall b	be authorized to immediately suspend Respondent's license to practice medicine in
7	the state of	Nevada pending an order to show cause hearing, which will be duly noticed.
8	Further, failur	re to comply with the terms recited herein may result in additional disciplinary action
9	being initiated	d against Respondent for a violation of an order of the Board in accordance with
10	NRS 630.306	55(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
11	agreed to be p	paid as a condition of settlement may subject Respondent to civil collection efforts.
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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 third day of June 2016, with the final total amount of costs due of \$998.46. Michael J. Eischer, M.D., President NEVADA STATE BOARD OF MEDICAL EXAMINERS