

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

3 * * * * *

4
5
6 In the Matter of Charges and)
7 Complaint Against)
8 **HENRI WETSELAAR, M.D.**)
9 Respondent.)
10 _____)

Case No. 11-5083-1

FILED

JUN - 2 2017

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

11
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 Theodore B. Berndt,
15 M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fisher, M.D., by and through
16 Edward O. Cousineau, Deputy Executive Director for the Board, and Henri Wetselaar, M.D.
17 (Respondent), by and through his counsel, S. Brent Vogel, Esq., as follows:

18 **WHEREAS**, on or about October 5, 2011, the IC of the Board filed a formal Complaint in
19 the above-referenced matter, charging Respondent with violations of Nevada's Medical Practice Act
20 (Chapters 630 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code), to wit: a
21 four-count violation of NRS 630.301(4) and a four-count violation of NRS 630.3062(1);and.

22 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands the
23 nature and significance of the Complaint, and Respondent is fully advised concerning his rights and
24 defenses to the Complaint, as well as the possible sanctions that may be imposed if the Board finds
25 and concludes that he has violated one or more provisions of the Medical Practice Act; and

26 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United
27 States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice
28 Act and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to

1 the right to a formal hearing on the charges against him, the right to representation by counsel in the
2 preparation and presentation of his defense, the right to confrontation and cross-examination of
3 witnesses against him, the right to present evidence and witnesses on his own behalf, the right to
4 written findings, conclusions and order regarding a final decision by the Board, and the right to
5 judicial review of any final decision by the Board that is adverse to him; and

6 **WHEREAS**, provided this Agreement is approved by the Board, Respondent agrees to waive
7 all of his rights under the United States Constitution, the Constitution of the state of Nevada, the
8 Medical Practice Act, and the Nevada Administrative Procedures Act, including but not limited to the
9 right to a hearing on the charges and written findings of fact, conclusions of law and order, and he
10 agrees to settle and resolve this matter of the formal Complaint against him by way of, and in
11 accordance with, this Settlement Agreement; and

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

17 **WHEREAS**, Respondent and the IC each understand and agree that if the Board approves
18 the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
19 enumerated below shall be binding and enforceable upon Respondent and the Board's IC.

20 **NOW THEREFORE**, in order to resolve the above-captioned case and the charges brought
21 against him by the Board's IC in said 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 Complaint filed in the
24 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject
25 to the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice
26 Act (NRS 630), and to impose sanctions as provided by the Act.

27 2. **Representation by Counsel.** Respondent is represented by counsel named herein,
28 whom Respondent covenants and agrees is fully capable, competent and fully advised in these

1 circumstances, and Respondent further covenants and agrees that he enters into this Agreement
2 knowingly, willingly, and intelligently after full consultation with and upon the advice of said
3 counsel.

4 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and
5 conditions contained herein, Respondent knowingly, willingly and intelligently waives all rights
6 arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada,
7 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in
8 connection with the proceeding on the Complaint filed herein, the defense of said Complaint and the
9 adjudication of the charges in said Complaint, and Respondent further agrees that the matter of the
10 disciplinary action commenced by Complaint herein may be settled and resolved in accordance with
11 this Agreement without a hearing or any further proceeding, and without the right to judicial review.

12 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
13 agrees that the Board's IC had a reasonable basis to believe that Respondent engaged in one or more
14 instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice
15 Act. All admissions made by Respondent are solely for final disposition of this matter and any
16 subsequent related administrative proceedings or civil litigation involving the Board and
17 Respondent. Therefore, said admissions by Respondent are not intended or made for any other
18 use, such as in the context of another state or federal government regulatory agency proceeding,
19 state or federal civil or criminal court proceeding, or any other state or federal court proceeding.
20 Should the Board not approve this Agreement, Respondent reserves the right to fully defend
21 against the allegations in the Complaint at a formal hearing. Respondent fully reserves his rights
22 to defend against the allegations in the Complaint, should they be raised in any subsequent civil
23 suit to which the Board is not a party.

24 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
25 proceedings pending against him without any further cost and expense of providing a defense to the
26 Complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,
27 finding that Respondent has violated the Medical Practice Act, to wit: that in treating the patients
28 referenced in the original Complaint filed by the IC, Respondent's associated medical treatment

1 related to the underlying patients was deficient in multiple regards and, as a result, Respondent
2 committed two violations of NRS 630.301(4) and two violations of NRS 630.3062(1). For these
3 violations, Respondent shall be publicly reprimanded and reimburse the Board the reasonable costs
4 and expenses incurred in the investigation and prosecution of this case in the current amount of
5 \$6,244.75, plus any additional costs that may be accrued subsequent in the disposition of this
6 matter. The aforementioned costs are to be paid to the Board within ninety (90) days of the
7 acceptance, adoption and approval of this Agreement by the Board. A final accounting of the
8 additional costs will be provided to Respondent in the entry of the Board's Order relating to the
9 matter. Lastly, Respondent's controlled substances prescribing license with the Nevada State
10 Board of Pharmacy has lapsed. In this regard, Respondent agrees that he will not ever in the
11 future apply anew for a controlled substances prescribing license with the Nevada State Board of
12 Pharmacy.

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 disciplinary proceedings pending herein against Respondent pursuant to
16 the formal complaint. In the course of seeking Board approval, adoption and/or acceptance of this
17 Agreement, counsel for the IC may communicate directly with the Board staff and members of the
18 panel of the Board who would adjudicate this case if it were to go to hearing. Respondent
19 covenants and agrees that such contacts and communication may be made or conducted ex parte,
20 without notice or opportunity to be heard on his part or on the part of his counsel, and that such
21 contacts and communications may include, but not be limited to, matters concerning this
22 Agreement, the Complaint, the allegations in the Complaint, any and all evidence that may exist in
23 support of the Complaint, and any and all information of every nature whatsoever related to the
24 Complaint against Respondent.

25 7. **Board Approval Required.** This Agreement will be placed on the next available
26 Agenda of a regularly-scheduled and duly-noticed quarterly Board meeting. It is expressly
27 understood that this Agreement will only become effective if the Board approves the
28 recommendation of the IC for acceptance.

1 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
2 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
3 IC will cause to be entered herein the Board's Order consistent with the terms of paragraph 5
4 above.

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

16 10. **Release From Liability.** In execution of this Agreement, the Respondent, for
17 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
18 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
19 employees in their representative capacities, and in their individual capacities, absent evidence of
20 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
21 executions, claims and demands whatsoever, known and unknown, in law or equity, that
22 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
23 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
24 action, this settlement or its administration, in connection with the Complaint. The IC hereby
25 agrees to accept this Agreement in full settlement of all claims related to the Complaint, with the
26 understanding that the final decision rests with the Board.

27 ///

28 ///

11. **Binding Effect.** 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.


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


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

14. **Failure to Comply With Terms.** In the event the Board enters its Order approving this Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have grounds, after notice and a hearing, to take disciplinary action against Respondent in addition to that included herein for violation of an Order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

Dated this 25th day of Nov, 2014.

Dated this 29 day of Aug, 2014.

By: 
Edward O. Cousineau, Esq.
Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners

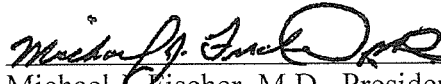
By: 
S. Brent Vogel, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED.


Henri Wetselaar, M.D., Respondent

Dated this 29 day of Aug, 2014.

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 2nd day of June 2017, with the final total amount of
3 costs due of \$6,244.75.

4 
5 _____

Michael Fischer, M.D., President

6 NEVADA STATE BOARD OF MEDICAL EXAMINERS
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28