

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

3 * * * * *

4
5 **In the Matter of Charges and**
6 **Complaint Against**
7 **Michael Stanley Kaplan, M.D.,**
8 **Respondent.**

Case Nos. 11-8547-1

15-8547-1

FILED

JUN 14 2018

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

9
10 **SETTLEMENT AGREEMENT**

11 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through Robert Kilroy, Esq., General Counsel for the Board and attorney for the
13 IC, and Michael Stanley Kaplan, M.D. (Respondent), a licensed Physician in Nevada, hereby enter
14 into this Settlement Agreement (Agreement) based on the following:¹

15 **A. Background**

16 1. Respondent is a medical doctor whose license is indefinitely suspended, and in an
17 expired status since June 30, 2017, by the Board pursuant to Chapter 630 of the Nevada Revised
18 Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC) (collectively, the
19 Medical Practice Act). Respondent was first licensed to practice medicine in Nevada on December
20 2, 1989 (License No. 5983).

21 2. On April 12, 2011, in Case No, 11-12859-1, a Stipulation and Order was entered
22 into between the IC and Michael Kaplan, M.D., wherein Dr. Kaplan's license was reinstated after
23 summary suspension on March 14, 2011, subject to certain conditions. The parties stipulated that
24 this Stipulation and Order would not affect Case No. 11-8547-1. However, evidence of Dr.

25
26 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter
27 and any subsequent related administrative proceedings or civil litigation involving the Board and
28 Respondent. Therefore, Respondent's agreements and admissions 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 proceeding, any state or federal court proceeding, or
any credentialing or privileges matter.

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1 Kaplan's good faith compliance with the conditions set forth therein may be considered in
2 connection with any hearing or resolution of legal case No. 11-8547-1. Nothing in the Stipulation
3 constituted an admission of negligence or guilt and it was specifically stated: "It is understood and
4 agreed that the intent of this Stipulation is to allow Dr. Kaplan's license to be reinstated and that
5 he may practice within his area of specialty, urology, without restriction, but subject to the
6 voluntary and temporary conditions set forth above."

7 3. On July 24, 2013, in Case No. 11-8547-1, the IC filed a formal First Amended
8 Complaint (First Complaint) charging Respondent with violating the Medical Practice Act.
9 Specifically, the First Complaint alleges one (1) violation of NAC 630.230(1)(h), failing to
10 adequately supervise a medical assistant (Count I) and one (1) violation of NRS630.306(7), failure
11 to exercise ordinary skill or diligence (Count II).

12 4. On September 24, 2015, in Case No. 15-8547-1, the IC filed a formal Complaint
13 (Second Complaint) charging Respondent with violating the Medical Practice Act. Specifically,
14 the Second Complaint alleges one (1) violation of NRS 630.301(9), disreputable conduct (Count
15 I), one (1) violation of NRS 630.301(11)(g), conviction of an offense involving moral turpitude
16 (Count II), and one (1) violation of NRS 630.301(1), conviction of a felony relating to the practice
17 of medicine (Count III).

18 5. By reason of the foregoing, Respondent is subject to discipline by the Board as
19 provided in NRS 630.352.

20 6. Respondent was properly served with a copy of these Complaints, has reviewed
21 and understands these Complaints, and has had the opportunity to consult with competent counsel
22 concerning the nature and significance of these Complaints.

23 7. Respondent is hereby advised of his rights regarding this administrative matter, and
24 of his opportunity to defend against the allegations in the Complaints. Specifically, Respondent
25 has certain rights in this administrative matter as set out by the United States Constitution, the
26 Nevada Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is
27 contained in NRS Chapter 241, and the Nevada Administrative Procedure Act (APA) pertaining to
28 certain regulatory bodies, which is contained in NRS Chapters 233B and 622A. These rights

1 include the right to a formal hearing on the allegations in the Complaints, the right to
2 representation by counsel, at his own expense, in the preparation and presentation of his defense,
3 the right to confront and cross-examine the witnesses and evidence against him, the right to
4 written findings of fact, conclusions of law and order reflecting the final decision of the Board,
5 and the right to judicial review of the Board's order, if the decision is adverse to him.

6 8. Respondent understands that, under the Board's charge to protect the public by
7 regulating the practice of medicine, the Board may take disciplinary action against Respondent's
8 license, including license probation, license suspension, license revocation and imposition of
9 administrative fines, as well as any other reasonable requirement or limitation, if the Board
10 concludes that Respondent violated one or more provisions of the Medical Practice Act.

11 9. Respondent understands and agrees that this Agreement, by and between
12 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the
13 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent
14 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
15 Board has the right to decide in its own discretion whether or not to approve this Agreement.
16 Respondent further understands and agrees that if the Board approves this Agreement, then the
17 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

18 **B. Terms & Conditions**

19 **NOW, THEREFORE**, in order to resolve the matters addressed herein, i.e., the matters
20 with regard to the Complaints, Respondent and the IC hereby agree to the following terms and
21 conditions:

22 1. **Jurisdiction**. Respondent is, and at all times relevant to the Complaints has been, a
23 physician licensed to practice medicine in Nevada subject to the jurisdiction of the Board as set
24 forth in the Medical Practice Act.

25 2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement**.
26 Respondent acknowledges he is represented by counsel, and wishes to resolve the matters
27 addressed herein with said counsel. Respondent agrees that if representation by counsel in this
28 matter materially changes prior to entering into this Agreement and for the duration of this

1 Agreement, that counsel for the IC will be timely notified of the material change. Respondent
2 agrees that he knowingly, willingly and intelligently enters into this Agreement after deciding to
3 have a full consultation with and upon the advice of legal counsel.

4 **3. Waiver of Rights.** In connection with this Agreement, and the associated terms
5 and conditions, Respondent knowingly, willingly and intelligently waives all rights in connection
6 with this administrative matter. Respondent hereby knowingly, willingly and intelligently waives
7 all rights arising under the United States Constitution, the Nevada Constitution, the Medical
8 Practice Act, the OML, the APA, and any other legal rights that may be available to him or that
9 may apply to him in connection with the administrative proceedings resulting from the Complaints
10 filed in this matter, including defense of the Complaints, adjudication of the allegations set forth in
11 the Complaints, and imposition of any disciplinary actions or sanctions ordered by the Board.
12 Respondent agrees to settle and resolve the allegations of the Complaints as set out by this
13 Agreement, without a hearing or any further proceedings and without the right to judicial review.

14 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent acknowledges
15 that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is
16 grounds for discipline pursuant to the Medical Practice Act. The Board acknowledges Respondent
17 is not admitting and specifically denies that the Board's claims/counts as alleged in the
18 Complaints have merit. Respondent is agreeing to resolve this matter to avoid the costs of hearing
19 and potential subsequent litigation. Respondent asserts if these cases were to proceed to hearing,
20 he has evidence, witnesses, expert witness(es) and defenses to the counts/claims alleged in the
21 Complaints, but for the purposes of resolving these cases and for no other purpose, Respondent
22 waives the presentation of evidence, witnesses, expert witnesses, and defenses in order to
23 effectuate this Agreement. It is understood that Respondent intends to reapply for his medical
24 license and specifically that entering into this settlement agreement will not preclude him from
25 reapplying.

26 **5. Consent to Entry of Order.** In order to resolve these Complaints pending against
27 Respondent, Respondent hereby agrees that the Board may issue an order finding that Respondent
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1 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act.
2 Accordingly, the following terms and conditions are hereby agreed upon:

3 a. Respondent admits to Count I of the Second Complaint.
4 b. Counts I and II of the First Complaint and Count II and III of the Second
5 Complaint shall be dismissed with prejudice.

6 c. Respondent's license to practice medicine shall be revoked.

7 d. Respondent will pay the costs and expenses incurred in the investigation and
8 prosecution of the above-referenced matters, which imposition of costs and expenses shall be
9 effective upon the Board's acceptance, adoption and approval of this Agreement, the current
10 amount being \$18,819.87, not including any costs that may be necessary to finalize this
11 Agreement. Respondent shall pay the aforementioned costs and fees within 60 days of his
12 reapplication for licensure by the Board; Respondent may also request a plan of repayment, and
13 repay said costs under such terms that are acceptable to the Board.

14 e. This Agreement shall be reported to the appropriate entities and parties as required
15 by law, including, but not limited to, the National Practitioner Data Bank.

16 f. Respondent shall receive a Public Letter of Reprimand.

17 g. If Respondent otherwise meets the requirements for application for licensure, then
18 he may reapply for a medical license, and this agreement will not preclude him from making such
19 application.

20 h. This Agreement encompasses the resolution of all issues before the Board,
21 including any allegations that Respondent may have failed to comply with reporting requirements.

22 **6. Release From Liability.** In execution of this Agreement, Respondent understands
23 and agrees that the State of Nevada, the Board, and each of its members, staff, counsel,
24 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents
25 are immune from civil liability for any decision or action taken in good faith in response to
26 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the State of
27 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,
28 committees, panels, hearing officers, consultants and agents from any and all manner of actions,

1 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
2 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against
3 any or all of the persons, government agencies or entities named in this paragraph arising out of,
4 or by reason of, this investigation, this Agreement or the administration of the case referenced
5 herein.

6 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
7 recommend approval and adoption of the terms and conditions of this Agreement by the Board in
8 resolution of these Complaints. In the course of seeking Board acceptance, approval and adoption
9 of this Agreement, counsel for the IC may communicate directly with the Board staff and the
10 adjudicating members of the Board.

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

18 **8. Effect of Acceptance of Agreement by Board.** In the event the Board accepts,
19 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement
20 an order of the Board, and, pending full compliance with the terms herein, the case shall be closed
21 and the remaining counts of the Complaints shall be dismissed with prejudice.

22 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not
23 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and
24 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,
25 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement
26 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this
27 Agreement shall disqualify any member of the adjudicating panel of the Board from considering
28 these Complaints and from participating in disciplinary proceedings against Respondent, including

1 adjudication of these cases; and (2) Respondent further agrees that he shall not seek to disqualify
2 any such member absent evidence of bad faith.

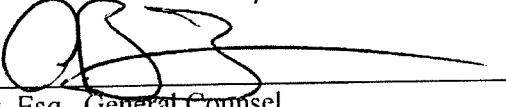
3 **10. Binding Effect.** If approved by the Board, Respondent understands that this
4 Agreement is a binding and enforceable contract upon Respondent and the Board.

5 **11. Forum Selection Clause.** The parties agree that in the event either party is
6 required to seek enforcement of this Agreement in district court, the parties consent to such
7 jurisdiction and agree that exclusive jurisdiction shall be in the Second Judicial District Court,
8 State of Nevada, Washoe County.

9 **12. Attorneys' Fees and Costs.** The parties agree that in the event an action is
10 commenced in district court to enforce any provision of this Agreement, the prevailing party shall
11 be entitled to recover reasonable attorneys' fees and costs.

12 **13. Failure to Comply with Terms.** Should Respondent fail to comply with any term
13 or condition of this Agreement once the Agreement has been accepted, approved and adopted by
14 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice
15 medicine in Nevada pending an Order to Show Cause Hearing, which will be duly noticed.
16 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,
17 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may
18 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).
19 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a
20 condition of this Agreement may subject Respondent to civil collection efforts, however a
21 payment plan may be agreed to at the time of reapplication.

22 Dated this 31 day of MAY, 2018.

23
24 By: 
25 Robert Kilroy, Esq., General Counsel
26 Aaron Bart Fricke, Esq., Deputy General Counsel
27 Attorneys for the Investigative Committee
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Dated this 25th day of May, 2018.

COLLINSON, DAEHNKE, INLOW & GRECO

By: Patricia Daehnke
Patricia Egan Daehnke, Esq.
Attorneys for Respondent

Dated this 30th day of May, 2018.

Michael Stanley Kaplan
Michael Stanley Kaplan, M.D., Respondent
By: General Power of attorney

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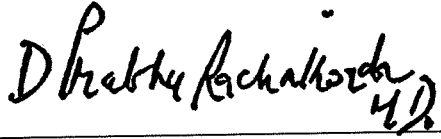
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IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 1st day of June, 2018, with the final total amount of costs due of \$18,819.87.



Rachakonda D. Prabhu, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS