

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 **KATHLEEN D. SMITH, M.D.,**
8 **Respondent.**

Case No. 19-28205-1

FILED

DEC - 9 2019

**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 Kathleen D. Smith, M.D. (Respondent), a licensed physician in Nevada, by and through
14 her counsel, John Hunt, Esq., hereby enter into this Settlement Agreement (Agreement) based on
15 the following:¹

16 **A. Background**

17 1. Respondent is a medical doctor currently licensed in active status by the Board,
18 pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada
19 Administrative Code (NAC) (collectively, the Medical Practice Act), to practice medicine in Nevada.
20 Her license was original issued on August 4, 2003 (License No. 10735).

21 2. On September 19, 2019, in Case No. 19-28205-1, the IC filed a formal Complaint
22 (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, the
23 Complaint alleges one (1) violation of NAC 630.230(1)(d), acquiring controlled substances from any
24 pharmacy or other sources by misrepresentation, fraud, deception, or subterfuge, (1) violation of NRS
25 630.306(1)(b)(3), engaging in conduct that violated pharmacy board regulations, one (1) violation of

26
27 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter and any
28 subsequent related administrative proceedings or civil litigation involving the Board and 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.

1 NRS 630.306(1)(r), failure to adequately supervise medical assistant, and, one (1) violation of NRS
2 630.3062(1)(a), failure to maintain proper medical records.

3 3. By reason of the foregoing, Respondent is subject to discipline by the Board as
4 provided in NRS 630.352.

5 4. Respondent was properly served with a copy of this Complaint, has reviewed and
6 understands this Complaint, and has had the opportunity to consult with competent counsel
7 concerning the nature and significance of this Complaint.

8 5. Respondent is hereby advised of her rights regarding this administrative matter, and
9 her opportunity to defend against the allegations in the Complaint. Specifically, Respondent has
10 certain rights in this administrative matter as set out by the United States Constitution, the Nevada
11 Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is contained in
12 NRS Chapter 241, and the Nevada Administrative Procedure Act (APA), which is contained in
13 NRS Chapter 233B. These rights include the right to a formal hearing on the allegations in the
14 Complaint, the right to representation by counsel, at her own expense, in the preparation and
15 presentation of her defense, the right to confront and cross-examine the witnesses and evidence against
16 her, the right to written findings of fact, conclusions of law and order reflecting the final decision of
17 the Board, and the right to judicial review of the Board's order, if the decision is adverse to her.

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

23 7. Respondent understands and agrees that this Agreement, by and between
24 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the
25 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent
26 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
27 Board has the right to decide in its own discretion whether or not to approve this Agreement.
28 Respondent further understands and agrees that if the Board approves this Agreement, then the

1 terms and conditions enumerated below shall be binding and enforceable upon her and the Board.

2 **B. Terms & Conditions**

3 **NOW, THEREFORE**, in order to resolve the matters addressed herein, i.e., the matters
4 with regard to the Complaint, Respondent and the IC hereby agree to the following terms and
5 conditions:

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

9 2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement.**
10 Respondent acknowledges she is represented by counsel, and wishes to resolve the matters
11 addressed herein with said counsel. Respondent agrees that if representation by counsel in this
12 matter materially changes prior to entering into this Agreement and for the duration of this
13 Agreement, that counsel for the IC will be timely notified of the material change. Respondent
14 agrees that she knowingly, willingly and intelligently enters into this Agreement after deciding to
15 have a full consultation with and upon the advice of legal counsel.

16 3. **Waiver of Rights.** In connection with this Agreement, and the associated terms
17 and conditions, Respondent knowingly, willingly and intelligently waives all rights in connection
18 with this administrative matter. Respondent hereby knowingly, willingly and intelligently waives
19 all rights arising under the United States Constitution, the Nevada Constitution, the Medical
20 Practice Act, the OML, the APA and any other legal rights that may be available to her or that
21 may apply to her in connection with the administrative proceedings resulting from the Complaint
22 filed in this matter, including defense of the Complaint, adjudication of the allegations set forth in
23 the Complaint, and imposition of any disciplinary actions or sanctions ordered by the Board.
24 Respondent agrees to settle and resolve the allegations of the Complaint as set out by this
25 Agreement, without a hearing or any further proceedings and without the right to judicial review.

26 4. **Acknowledgement of Reasonable Basis to Proceed.** As of the time of entering
27 into this Settlement Agreement, the allegations of the Complaint remain unproven. Respondent
28 acknowledges that the IC believes it has a reasonable basis to allege that Respondent engaged in

1 conduct that is grounds for discipline pursuant to the Medical Practice Act. The IC acknowledges
2 Respondent is not admitting that the IC's claims/counts as alleged in the Complaint have merit
3 and Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential
4 subsequent litigation. Respondent asserts if this matter were to proceed to hearing, she has
5 evidence, witnesses, expert witness(es) and defenses to the counts/claims alleged in the
6 Complaint, but for the purposes of resolving the matter and for no other purpose, Respondent
7 waives the presentation of evidence, witnesses, expert witnesses, and defenses in order to
8 effectuate this Agreement.

9 5. **Consent to Entry of Order.** In order to resolve this Complaint pending against
10 Respondent without incurring any further costs or the expense associated with a hearing, Respondent
11 hereby agrees that the Board may issue an order finding that Respondent engaged in conduct that
12 is grounds for discipline pursuant to the Medical Practice Act. Accordingly, the following terms
13 and conditions are hereby agreed upon:

14 a. Respondent admits (1) violation of NRS 630.306(1)(b)(3), engaging in conduct that
15 violated pharmacy board regulations; Respondent admits to one (1) violation of NRS 630.306(1)(r),
16 failure to adequately supervise medical assistant; and, Respondent admits to one (1) violation of NRS
17 630.3062(1)(a) failure to maintain proper medical records. The IC dismisses Count I (NAC
18 630.230(1)(d) with prejudice.

19 b. Respondent will pay the costs and expenses incurred in the investigation and
20 Wprosecution of the above-referenced matter upon the Board's acceptance, adoption and approval
21 of this Agreement, the current amount being \$1915.11, not including any costs that may be
22 necessary to finalize this Agreement. Based on Respondent's current financial circumstances,
23 payment of \$191.51 per month will be due on the fifteenth day of the month beginning on
24 January 15, 2020 through October 15, 2020 until satisfied in full.

25 c. Respondent shall take six (6) hours of continuing medical education (CME) related
26 to the best practices for prescribing controlled substances within six (6) months from the date of the
27 Board's acceptance, adoption and approval of this Agreement. [Best Rx Practices Course]. The
28 aforementioned hours of CME *shall be in addition* to any CME requirements that are regularly

1 imposed upon Respondent as a condition of licensure in the State of Nevada and shall be approved
2 by the Board prior to their completion.

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

5 e. Respondent shall receive a Public Letter of Reprimand.

6 f. Respondent shall pay a fine of \$1500.00 upon of the Board's acceptance, adoption
7 and approval of this Agreement. Based on Respondent's current financial circumstances,
8 payment of \$150.00 per month will be due on the fifteenth day of the month beginning on January
9 15, 2020 through October 15, 2020 until satisfied in full.

10 6. **Release From Liability.** In execution of this Agreement, Respondent understands
11 and agrees that the State of Nevada, the Board, and each of its members, staff, counsel,
12 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents
13 are immune from civil liability for any decision or action taken in good faith in response to
14 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the State of
15 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,
16 committees, panels, hearing officers, consultants and agents from any and all manner of actions,
17 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
18 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against
19 any or all of the persons, government agencies or entities named in this paragraph arising out of,
20 or by reason of, this investigation, this Agreement or the administration of the case referenced.

21 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
22 recommend approval and adoption of the terms and conditions of this Agreement by the Board in
23 resolution of the Complaint. In the course of seeking Board acceptance, approval and adoption of
24 this Agreement, counsel for the IC may communicate directly with the Board staff and the
25 adjudicating members of the Board.

26 Respondent acknowledges that such contacts and communications may be made or
27 conducted ex parte, without notice or opportunity to be heard on her part until the public Board
28 meeting where the Agreement is discussed, and that such contacts and communications may

1 include, but not be limited to, matters concerning this Agreement, the Complaint and any and all
2 information of every nature whatsoever related to this matter. The IC and its counsel agree that
3 Respondent and/or counsel for the Respondent may appear at the Board meeting where this
4 Agreement is discussed and, if requested, respond to any questions that may be addressed to the
5 IC or the IC's counsel.

6 8. **Effect of Acceptance of Agreement by Board.** In the event the Board accepts,
7 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement
8 an order of the Board.

9 9. **Effect of Rejection of Agreement by Board.** In the event the Board does not
10 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and
11 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,
12 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement
13 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this
14 Agreement shall disqualify any member of the adjudicating panel of the Board from considering
15 this Complaint and from participating in disciplinary proceedings against Respondent, including
16 adjudication of this case; and (2) Respondent further agrees that she shall not seek to disqualify
17 any such member absent evidence of bad faith.

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

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

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

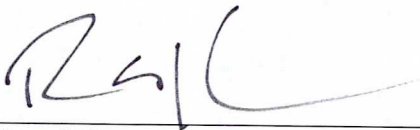
27 13. **Failure to Comply With Terms.** Should Respondent fail to comply with any term
28 or condition of this Agreement once the Agreement has been accepted, approved and adopted by

1 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice
2 medicine in Nevada pending an Order To Show Cause Hearing, which will be duly noticed.
3 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,
4 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may
5 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).

6
7 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a
8 condition of this Agreement may subject Respondent to civil collection efforts.

9 Dated this 10 day of Dec, 2019.

10 INVESTIGATIVE COMMITTEE OF THE NEVADA
11 STATE BOARD OF MEDICAL EXAMINERS


12
13 By: 
14 Robert Kilroy, Esq., General Counsel
15 Attorney for the Investigative Committee

16 Dated this _____ day of _____, 2019.

17 CLARK HILL, PLC

18 By: _____
19 John Hunt, Esq.
20 Attorney for Respondent

21 Dated this _____ day of _____, 2019.

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23 _____
24 Kathleen D. Smith, M.D., Respondent
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OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521
(775) 688-2559

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2 medicine in Nevada pending an Order To Show Cause Hearing, which will be duly noticed.
3 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,
4 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may
5 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).

6
7 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a
8 condition of this Agreement may subject Respondent to civil collection efforts.

9 Dated this _____ day of _____, 2019.

10 INVESTIGATIVE COMMITTEE OF THE NEVADA
11 STATE BOARD OF MEDICAL EXAMINERS

12
13 By: _____
14 Robert Kilroy, Esq., General Counsel
15 Attorney for the Investigative Committee

16 Dated this 4 day of Dec, 2019.

17 CLARK HILL, PLC
18 By: [Signature]
19 John Hunt, Esq.
20 Attorney for Respondent

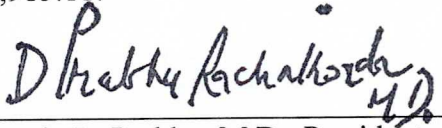
21 Dated this 4 day of Dec, 2019.

22 [Signature]
23 Kathleen D. Smith, M.D., Respondent
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Nevada State Board of Medical Examiners
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IT IS HEREBY ORDERED that the foregoing Settlement Agreement (19-28205-1) is approved and accepted by the Nevada State Board of Medical Examiners on the 6th day of December, 2019, with the final total amount of costs due of \$1,915.11.



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