

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 **SETH H. WITTNER, PA,**  
8 **Respondent.**

Case No. 19-30184-1

**FILED**

**MAR - 9 2020**

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 Donald K. White, Esq., Deputy General Counsel for the Board and  
13 attorney for the IC, and Seth H. Wittner, PA (Respondent), a formerly licensed physician assistant  
14 in Nevada, assisted by his attorney, Cristina A. Hinds, Esq., of the law firm of  
15 Hinds Injury Law Las Vegas, hereby enter into this Settlement Agreement (Agreement) based on  
16 the following:<sup>1</sup>

17 **A. Background**

18 1. Respondent is a physician assistant formerly licensed by the Board, as his license is  
19 currently in expired status, and was licensed by the Board at all times relevant to the Complaint in this  
20 matter, pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada  
21 Administrative Code (NAC) (collectively, the Medical Practice Act), to practice as a physician  
22 assistant in Nevada since February 23, 2005 (License No. PA903).

23 2. On March 29, 2019, in Case No. 19-30184-1, the IC filed a formal Complaint  
24 (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, the  
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26 <sup>1</sup> 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.

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners

9600 Gateway Drive

Reno, Nevada 89521

(775) 688-2559

1 Complaint alleges a violation of NRS 630.301(11)(d), conviction of a sexually related crime,  
2 (Count I), and a violation of NRS 630.301(9), engaging in conduct that brings the medical  
3 profession into disrepute (Count II).

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

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

9 5. Respondent is hereby advised of his rights regarding this administrative matter, and of  
10 his opportunity to defend against the allegations in the Complaint. Specifically, Respondent has  
11 certain rights in this administrative matter as set out by the United States Constitution, the Nevada  
12 Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is contained in  
13 NRS Chapter 241, and the Nevada Administrative Procedure Act (APA) applicable to certain  
14 regulatory bodies, which is contained in NRS Chapters 233B and 622A. These rights include the right  
15 to a formal hearing on the allegations in the Complaint, the right to representation by counsel, at his  
16 own expense, in the preparation and presentation of his defense, the right to confront and cross-  
17 examine the witnesses and evidence against him, the right to written findings of fact, conclusions of  
18 law and order reflecting the final decision of the Board, and the right to judicial review of the Board's  
19 order, if the decision is adverse to him.

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

25 7. Respondent understands and agrees that this Agreement, by and between  
26 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the  
27 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent  
28 understands that the IC shall advocate for the Board's approval of this Agreement, but that the

1 Board has the right to decide in its own discretion whether or not to approve this Agreement.  
2 Respondent further understands and agrees that if the Board approves this Agreement, then the  
3 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

4 **B. Terms & Conditions**

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

8 1. **Jurisdiction.** Respondent was, and at all times relevant to the Complaint, a  
9 physician assistant licensed to practice as a physician assistant in Nevada subject to the  
10 jurisdiction of the Board as set forth in the Medical Practice Act.

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

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

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

10           5.     Consent to Entry of Order. In order to resolve this Complaint pending against  
11 Respondent, Respondent hereby agrees that the Board may issue an order finding that Respondent  
12 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act. Accordingly,  
13 the following terms and conditions are hereby agreed upon:

14           a.     Respondent admits to Count I of the Complaint, a violation of NRS 630.301(11)(d),  
15 conviction of a sexually related crime.

16           b.     Respondent's license shall be immediately revoked. Pursuant to  
17 NRS 622A.410(1), Respondent may not apply for reinstatement of his license to practice as a  
18 physician assistant for a period of three (3) years from the date of the Board's acceptance,  
19 adoption, and approval of this Agreement as an Order of the Board.

20           c.     Respondent will pay the costs and expenses incurred in the investigation and  
21 prosecution of this matter, which imposition of costs and expenses shall be effective upon the  
22 Board's acceptance, adoption and approval of this Agreement, the current amount being \$1144.41,  
23 not including any costs that may be necessary to finalize this Agreement. This Board order for the  
24 payment of costs shall be immediately stayed, until which time as Respondent reapplies for  
25 licensure, at which time, Respondent is ordered to pay the aforementioned costs and fees within  
26 sixty (60) days.

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

1 e. Respondent shall receive a Public Letter of Reprimand.  
2 f. Count II shall be dismissed with prejudice.  
3 6. **Release From Liability.** In execution of this Agreement, Respondent understands  
4 and agrees that the State of Nevada, the Board, and each of its members, staff, counsel,  
5 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents  
6 are immune from civil liability for any decision or action taken in good faith in response to  
7 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the State of  
8 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,  
9 committees, panels, hearing officers, consultants and agents from any and all manner of actions,  
10 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and  
11 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against  
12 any or all of the persons, government agencies or entities named in this paragraph arising out of,  
13 or by reason of, this investigation, this Agreement, or the administration of the case referenced  
14 herein.

15 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall  
16 recommend approval and adoption of the terms and conditions of this Agreement by the Board in  
17 resolution of this Complaint. In the course of seeking Board acceptance, approval and adoption of  
18 this Agreement, counsel for the IC may communicate directly with the Board staff and the  
19 adjudicating members of the Board.

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

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1           8.     Effect of Acceptance of Agreement by Board. In the event the Board accepts,  
2 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement  
3 an order of the Board, and, pending full compliance with the terms herein, the case shall be closed.

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

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

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

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

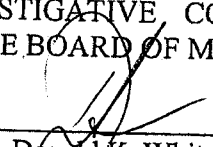
22           13.   Failure to Comply With Terms. Should Respondent fail to comply with any term  
23 or condition of this Agreement once the Agreement has been accepted, approved and adopted by  
24 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice  
25 medicine in Nevada pending an Order to Show Cause Hearing, which will be duly noticed.  
26 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,  
27 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may  
28 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).

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


Dated this 20 day of February, 2020.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXMINERS

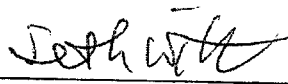
By:   
Donald K. White, Esq.  
Deputy General Counsel  
Attorney for the Investigative Committee

Dated this 12<sup>th</sup> day of February, 2020.

HINDS INJURY LAW LAS VEGAS

By:   
Christina A. Hinds, Esq.  
Attorneys for Respondent


Dated this 5<sup>th</sup> day of February, 2020.

  
Seth H. Wittner, PA, Respondent

OFFICE OF THE GENERAL COUNSEL  
Nevada State Board of Medical Examiners  
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Reno, Nevada 895521  
(775) 688-2559

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**IT IS HEREBY ORDERED** that the foregoing Settlement Agreement (19-30184-1) is approved and accepted by the Nevada State Board of Medical Examiners on the 6<sup>th</sup> day of March, 2020, with the final total amount of costs due of \$1,144.<sup>91</sup>.



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