

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA

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In the Matter of Charges and Complaint  
Against:  
DAVID POTTER, M.D.,  
Respondent.

Case No. 21-50908-1

FILED

DEC 03 2021

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

SETTLEMENT AGREEMENT

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), by and through BRANDEE MOONEYHAN, J.D., Deputy General Counsel for the Board and attorney for the IC, and DAVID POTTER, M.D. (Respondent), a physician licensed in Nevada, hereby enter into this Settlement Agreement (Agreement) based on the following:<sup>1</sup>

**A. BACKGROUND**

1. Respondent is a medical doctor currently licensed in active status by the Board pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC) (collectively, the Medical Practice Act). His license was originally issued on July 1, 2019 (License No. 18965).

2. On November 12, 2021, in Case No. 21-50908-1, the IC filed a formal Complaint (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, the Complaint alleges one (1) violation of NRS 630.306(1)(b)(3), Violation of Statutes and Regulations of the Nevada State Board of Pharmacy (Count I).

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

<sup>1</sup> All agreements and admissions made by Respondent are solely for final disposition of these matters and any 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           4.       Respondent was properly served with a copy of the Complaint, has reviewed and  
2 understands the Complaint, and has had the opportunity to consult with competent counsel  
3 concerning the nature and significance of the Complaint.

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

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

19           7.       Respondent understands and agrees that this Agreement, by and between  
20 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the  
21 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent  
22 understands that the IC shall advocate for the Board's approval of this Agreement, but that the  
23 Board has the right to decide in its own discretion whether or not to approve this Agreement.  
24 Respondent further understands and agrees that if the Board approves this Agreement, then the  
25 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

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1 **B. TERMS & CONDITIONS**

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

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

8 2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement**.  
9 Respondent acknowledges he has had the opportunity to engage appropriate counsel to represent  
10 him in this matter and wishes to resolve the matters addressed herein without such counsel.  
11 Respondent agrees that if any representation he makes in this matter materially changes prior to  
12 entering into this Agreement and for the duration of this Agreement, that counsel for the IC will  
13 be timely notified of the material change. Respondent agrees that he knowingly, willingly and  
14 intelligently enters into this Agreement after deciding to represent himself in this matter in lieu of  
15 engaging Nevada-licensed counsel to represent him.

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 these administrative matters. Respondent hereby knowingly, willingly and intelligently  
19 waives all rights arising under the United States Constitution, the Nevada Constitution, the  
20 Medical Practice Act, the OML, the APA, and any other legal rights that may be available to him  
21 or that may apply to him in connection with the administrative proceedings resulting from the  
22 Complaint filed in this matter, including defense of the Complaint, adjudication of the allegations  
23 set forth in the Complaint, and imposition of any disciplinary actions or sanctions ordered by the  
24 Board. 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 that Respondent is not admitting that the IC's claims/counts as alleged in the Complaint have  
3 merit and Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential  
4 subsequent litigation. Respondent asserts that if these matters were to proceed to hearing, he has  
5 evidence, witnesses, expert witness(es) and defenses to the count/claim alleged in the Complaint,  
6 but for the purposes of resolving these matters and for no other purpose, Respondent waives the  
7 presentation of evidence, witnesses, expert witnesses, and defenses in order to effectuate this  
8 Agreement.

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

13           a. Respondent admits to Count I of the Complaint, Violation of Statutes and  
14 Regulations of the Nevada State Board of Pharmacy, a violation of NRS 630.306(1)(b)(3).

15           b. Respondent agrees to surrender his license to practice medicine in the  
16 State of Nevada, License No. 18965, pursuant to NAC 630.240. Respondent will submit a sworn  
17 written statement of such surrender, along with his actual license, to the Board at  
18 9600 Gateway Drive, Reno, NV 89521.

19           c. Respondent will pay the costs and expenses incurred in the investigation  
20 and prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,  
21 adoption and approval of this Agreement, in the amount of seven hundred thirty-nine dollars and  
22 twenty-nine cents (\$739.29).

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

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

26           f. Any other claims and allegations arising from Board's corresponding  
27 investigative case file, shall be dismissed with prejudice.

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

13           **7.     Procedure for Adoption of Agreement** The IC and counsel for the IC shall  
14 recommend approval and adoption of the terms and conditions of this Agreement by the Board in  
15 resolution of the Complaint at an upcoming Board meeting at the Board's earliest convenience,  
16 and Respondent hereby waives notice of the same, whether under the United States Constitution,  
17 the Nevada Constitution, the Medical Practice Act, the OML, the APA, or otherwise. In the  
18 course of seeking Board acceptance, approval and adoption of this Agreement, counsel for the IC  
19 may communicate directly with the Board staff and the 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 these matters. The IC and its counsel agree  
25 that Respondent and/or Counsel for the Respondent may appear at the Board meeting where this  
26 Agreement is discussed and, if requested, respond to any questions that may be addressed to the  
27 IC or the IC's 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 and any and all remaining claims arising out of the Complaint shall be dismissed with prejudice.

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

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

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

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

23           **13.   Failure to Comply With Terms.** Should Respondent fail to comply with any term or  
24 condition of this Agreement once the Agreement has been accepted, approved and adopted by the  
25 Board, the IC shall be authorized to immediately suspend Respondent's license to practice  
26 medicine in Nevada pending an Order To Show Cause Hearing on revocation, which will be duly  
27 noticed. Failure to comply with the terms of this Agreement, including failure to pay any fines,  
28 costs, expenses or fees owed to the Board, is a failure to comply with an order of the Board, which

1 may result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).  
2 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a  
3 condition of this Agreement may subject Respondent to any civil and administrative collection  
4 efforts available.

5  
6 DATED this 15th day of November, 2021. DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021

7 INVESTIGATIVE COMMITTEE OF THE  
8 NEVADA STATE BOARD OF MEDICAL  
9 EXAMINERS

10 By: Brandee Mooneyhan  
11 BRANDEE MOONEYHAN, J.D.  
12 Deputy General Counsel  
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14 Reno, Nevada 89521  
15 Tel: (775) 324-9367  
16 Email: mooneyhanb@medboard.nv.gov  
17 *Attorney for the Investigative Committee*

By: David Potter M.D.  
DAVID POTTER, M.D.  
Nevada License No. 18965  
*Respondent*

18 State of Colorado  
19 County of El Paso  
20 Subscribe and sworn to (or affirmed) before me on this 16th day  
21 of November, 2021 by David Potter M.D.  
22 personally known to me or proven to me on the basis of  
23 satisfactory evidence to be the person(s) who appeared  
24 before me.  
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Notary Public  
Commission Exp. April 20th 2025

WILLIAM JOSHUA PARKER  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20214015626  
MY COMMISSION EXPIRES APRIL 20, 2025


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**ORDER**

**IT IS HEREBY ORDERED** that, the foregoing Settlement Agreement (Case No. 21-50908-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 3rd day of December, 2021.

DATED this 3RD day of December, 2021.

NEVADA STATE BOARD OF MEDICAL  
EXAMINERS

By:   
VICTOR M. MURO, M.D.  
*Board President*