

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

3 \* \* \* \* \*

4  
5 **In the Matter of Charges and Complaint**

**Case No. 21-11804-1**

6 **Against:**

**FILED**

7 **GAIL POPELKA KRIVAN, M.D.,**

**JUN - 7 2021**

8 **Respondent.**

9 **NEVADA STATE BOARD OF  
MEDICAL EXAMINERS**  
By: 

10 **SETTLEMENT AGREEMENT**

11 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners  
12 (Board), by and through Aaron Bart Fricke, Esq., Senior Deputy General Counsel for the Board  
13 and attorney for the IC, and Gail Popelka Krivan, M.D. (Respondent), a licensed physician in  
14 Nevada, assisted by her attorney, Lyn E. Beggs, Esq., of the law firm of Law Offices of  
15 Lyn E. Beggs, PLLC, hereby enter into this Settlement Agreement (Agreement) based on the  
16 following:<sup>1</sup>

17 **A. BACKGROUND**

18 1. Respondent is a medical doctor currently licensed in active status by the Board  
19 pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada  
20 Administrative Code (NAC) (collectively, the Medical Practice Act). Her license was originally  
21 issued on March 20, 2001 (License No. 9735).

22 2. On May 12, 2021, in Case No. 21-11804-1, the IC filed a formal First Amended  
23 Complaint (Complaint) charging Respondent with violating the Medical Practice Act. Specifically,  
24 the Complaint alleges one (1) violation of NRS 630.306(1)(b)(2) Violation of Standards of Practice.

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26 \_\_\_\_\_  
27 <sup>1</sup> All agreements and admissions made by Respondent are solely for final disposition of these matters and  
28 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.

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners

9600 Gateway Drive

Reno, Nevada 89521

(775) 688-2559

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

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

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

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

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

28       ///

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

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

25 4. **Acknowledgement of Reasonable Basis to Proceed.** As of the time of entering  
26 into this Settlement Agreement, the allegations of the Complaint remain unproven. Respondent  
27 acknowledges that the IC believes it has a reasonable basis to allege that Respondent engaged in  
28 conduct that is grounds for discipline pursuant to the Medical Practice Act. The IC acknowledges

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

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

12 a. Respondent admits to Count I of the Complaint, violation of  
13 NRS 630.306(1)(b)(2), Violation of Standards of Practice.

14 b. Respondent shall pay a fine of one thousand dollars (\$1,000.00) within  
15 sixty (60) days of the Board's acceptance, adoption and approval of this Agreement.

16 c. Respondent will pay the costs and expenses incurred in the investigation  
17 and prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,  
18 adoption and approval of this Agreement, in the amount of three thousand two hundred three  
19 dollars and thirteen cents (\$3,203.13).

20 d. Respondent shall take twenty (20) hours of live continuing medical  
21 education (CME) related to best practices in the prescribing of controlled substances before or  
22 within six (6) months from the date of the Board's acceptance, adoption and approval of this  
23 Agreement. The aforementioned hours of CME shall be in addition to the CME requirements that  
24 are regularly imposed upon Respondent as a condition of licensure in the State of Nevada pursuant  
25 to NAC 630.153(1), and shall be approved by the Board prior to their completion.

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

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

1 f. All claims and allegations arising from all pending investigations shall be  
2 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 the Complaint at an upcoming Board meeting at the Board's earliest convenience,  
18 and Respondent hereby waives notice of the same, whether under the United States Constitution,  
19 the Nevada Constitution, the Medical Practice Act, the OML, the APA, or otherwise. In the  
20 course of seeking Board acceptance, approval and adoption of this Agreement, counsel for the IC  
21 may communicate directly with the Board staff and the adjudicating members of the Board.

22 Respondent acknowledges that such contacts and communications may be made or  
23 conducted ex parte, without notice or opportunity to be heard on her part until the public Board  
24 meeting where this Agreement is discussed, and that such contacts and communications may  
25 include, but may not be limited to, matters concerning this Agreement, the Complaint and any and  
26 all information of every nature whatsoever related to these matters. The IC and its counsel agree  
27 that Respondent and/or Counsel for the Respondent may appear at the Board meeting where this

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1 Agreement is discussed and, if requested, respond to any questions that may be addressed to the  
2 IC or the IC's counsel.

3       **8. Effect of Acceptance of Agreement by Board.** In the event the Board accepts,  
4 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement  
5 an order of the Board, and, pending full compliance with the terms herein, the case shall be closed  
6 and any and all remaining claims arising out of the Complaint shall be dismissed with prejudice.

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

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

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

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

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

1 noticed. Failure to comply with the terms of this Agreement, including failure to pay any fines,  
2 costs, expenses or fees owed to the Board, is a failure to comply with an order of the Board, which  
3 may result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).  
4 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a  
5 condition of this Agreement may subject Respondent to any civil and administrative collection  
6 efforts available.

7 DATED this 11<sup>th</sup> day of MAY, 2021. DATED this 10<sup>th</sup> day of May, 2021.

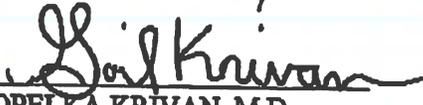
8 INVESTIGATIVE COMMITTEE OF THE  
9 NEVADA STATE BOARD OF MEDICAL  
EXAMINERS

LAW OFFICES OF LYN E. BEGGS, PLLC

10  
11 By:   
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Attorney for Respondent

16  
17 DATED this 10 day of May, 2021.

18  
19 By:   
GAIL POPELKA KRIVAN, M.D.,  
Respondent

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**ORDER**

**IT IS HEREBY ORDERED**, that the foregoing Settlement Agreement (Case No. 21-11804-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 4th day of June, 2021, with the final total amount of costs due of three thousand two hundred three dollars and thirteen cents (\$3,203.13).

DATED this 4 day of June, 2021.

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

  
\_\_\_\_\_  
RACHAKONDA D. PRABHU, M.D.  
*President*