

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. 24-28386-1

6 **Against:**

**FILED**

7 **HILARY LYNN MALCARNEY, M.D.,**

JUN 07 2024

8 **Respondent.**

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 Deonne E. Contine, General Counsel for the Board and attorney for the  
13 IC, and Hilary Lynn Malcarney, M.D. (Respondent), a licensed physician in Nevada, assisted by  
14 her attorney, Edward J. Lemons, Esq., of the law firm of Lemons, Grundy & Eisenberg, hereby  
15 enter into this Settlement Agreement (Agreement) based on the following:<sup>1</sup>

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  
20 Nevada. Her license was originally issued on December 29, 2003 (License No. 10754).

21 2. On March 28, 2024, in Case No. 24-28386-1, 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 NRS 630.301(4), Malpractice (Count I). By reason of the  
24 foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

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27 <sup>1</sup> 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           3.       Respondent was properly served with a copy of this Complaint, has reviewed and  
2 understands this Complaint, and has had the opportunity to consult with competent counsel  
3 concerning the nature and significance of this Complaint.

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

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

20           6.       Respondent understands and agrees that this Agreement, by and between  
21 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the  
22 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent  
23 understands that the IC shall advocate for the Board's approval of this Agreement, but that the  
24 Board has the right to decide in its own discretion whether or not to approve this Agreement.  
25 Respondent further understands and agrees that if the Board approves this Agreement, then the  
26 terms and conditions enumerated below shall be binding and enforceable upon her 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 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 this administrative matter. Respondent hereby knowingly, willingly and intelligently waives  
18 all rights arising under the United States Constitution, the Nevada Constitution, the Medical  
19 Practice Act, the OML, the APA, and any other legal rights that may be available to her or that  
20 may apply to her in connection with the administrative proceedings resulting from the Complaint  
21 filed in this matter, including defense of the Complaint, adjudication of the allegations set forth in  
22 the Complaint, and imposition of any disciplinary actions or sanctions ordered by the Board.  
23 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 Respondent is not admitting that the IC's claims/counts as alleged in the Complaint have merit  
2 and Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential  
3 subsequent litigation. Respondent asserts if this matter were to proceed to hearing, she has  
4 evidence, witnesses, expert witness(es) and defenses to the counts/claims alleged in the  
5 Complaint, but for the purposes of resolving the matter and for no other purpose, Respondent  
6 waives the presentation of evidence, witnesses, expert witnesses, and defenses in order to  
7 effectuate this Agreement.

8 5. **Consent to Entry of Order.** In order to resolve this 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.  
11 Accordingly, the following terms and conditions are hereby agreed upon:

12 a. Respondent admits to Count I, one (1) violation of NRS 630.301(4),  
13 Malpractice.

14 b. Respondent will pay the costs and expenses incurred in the investigation  
15 and prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,  
16 adoption and approval of this Agreement, in the amount of three thousand two hundred nineteen  
17 dollars and ninety-two cents (\$3,219.92).

18 c. Respondent shall pay a fine of one thousand five hundred dollars (\$1,500)  
19 within sixty (60) days of the Board's acceptance, adoption and approval of this Agreement.

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

22 e. Any other claims arising from the Board's corresponding investigative case  
23 file(s), shall be dismissed with prejudice.

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

1 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,  
2 committees, panels, hearing officers, consultants and agents from any and all manner of actions,  
3 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and  
4 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against  
5 any or all of the persons, government agencies or entities named in this paragraph arising out of,  
6 or by reason of, this investigation, this Agreement or the administration of the case referenced  
7 herein.

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

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

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

25           9.       **Effect of Rejection of Agreement by Board.** In the event the Board does not  
26 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and  
27 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,  
28 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement

1 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this  
2 Agreement shall disqualify any member of the adjudicating panel of the Board from considering  
3 this Complaint and from participating in disciplinary proceedings against Respondent, including  
4 adjudication of this case; and (2) Respondent further agrees that she shall not seek to disqualify  
5 any such member absent evidence of bad faith.

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

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

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

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

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

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4 DATED this 6th day of May, 2024. DATED this 6th day of May, 2024.

5 INVESTIGATIVE COMMITTEE OF THE  
6 NEVADA STATE BOARD OF MEDICAL  
EXAMINERS

LEMONS, GRUNDY & EISENBERG

7  
8 By: Deonne E. Contine  
9 DEONNE E. CONTINE  
10 General Counsel  
11 9600 Gateway Drive  
12 Reno, NV 89521  
13 Tel: (775) 688-2559  
14 Email: [dcontine@medboard.nv.gov](mailto:dcontine@medboard.nv.gov)  
15 *Attorney for the Investigative Committee*

By: Edward J. Lemons  
EDWARD J. LEMONS, ESQ.  
6005 Plumas St., Third Floor  
Reno, NV 89519  
Tel: (775) 786-6868  
Email: [cjl@lge.net](mailto:cjl@lge.net)  
*Attorney for Respondent*

14 DATED this 3 day of May, 2024.

15  
16 By: Hilary Lynn Malcarney  
17 HILARY LYNN MALCARNEY, M.D.,  
18 Nevada License No. 10754  
*Respondent*

**OFFICE OF THE GENERAL COUNSEL**

Nevada State Board of Medical Examiners  
9600 Gateway Drive  
Reno, Nevada 895521  
(775) 688-2559

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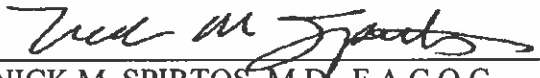
**ORDER**

**IT IS HEREBY ORDERED** that, the foregoing Settlement Agreement (Case No. 24-28386-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 7th day of June, 2024.

DATED this 7th day of June, 2024.

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

  
NICK M. SPIRTOS, M.D., F.A.C.O.G.  
*Board President*