BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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In the Matter of the Investigation of	)	**Case No. 14-26427-1**
	)	
ARLYN M. VALENCIA, M.D.,	)	
License No. 10340	)	

FILED
MAR - 9 2015
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By: _____

SETTLEMENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned matter, by and through Erin L. Albright, Esq., Board General Counsel and attorney for the IC, and Arlyn M. Valencia, M.D. (Respondent), as follows:

WHEREAS, on August 21, 2014, the Board's IC filed an Order of Summary Suspension in the above-captioned matter after reviewing evidence and information which demonstrated that Respondent presented an imminent risk to the health, safety and welfare of the public. On September 23, 2014, the parties agreed, by stipulation, that Respondent's license to practice medicine in the state of Nevada shall remain indefinitely suspended; and

WHEREAS, Respondent received a copy of the Order of Summary Suspension, reviewed it, understands it, and has had the opportunity to consult with competent counsel concerning the nature and significance of the Order of Summary Suspension. Respondent is fully advised concerning her rights and defenses to the Order of Summary Suspension, as well as the possible sanctions that may be imposed if the Board finds and concludes that she violated one or more provisions of the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code Chapter 630; and

WHEREAS, Respondent understands and agrees that she has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the MPA and the Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to, the right to a formal hearing on the allegations against her, the right to representation by counsel in the preparation and presentation of her defense, the right to confront and cross-examine the witnesses against her, the right to written findings, conclusions and an order regarding a final decision by the Board, and the right to judicial review of any final decision by the Board that is adverse to her; and

WHEREAS, Respondent understands and agrees that this Settlement Agreement (Agreement) is entered into by and between Respondent and the Board's IC, and not with the Board, but that the IC will present this Agreement to the Board for consideration in open session at a meeting duly noticed and scheduled. Respondent understands that the IC shall advocate approval of this Agreement by the Board, but that the Board has the right to decide in its own discretion whether or not to approve this Agreement; and

WHEREAS, Respondent understands and agrees that if the Board approves the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be binding and enforceable upon her.

NOW THEREFORE, in order to resolve this matter and all charges, if any, alleged by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following terms, covenants and conditions:

1. Jurisdiction. Respondent is, and at all times mentioned in the Order of Summary Suspension filed in the above-captioned matter was, a physician licensed to practice medicine in the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the MPA, and to impose sanctions as provided by the MPA.

2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.

Respondent acknowledges that she is not represented by counsel and wishes to proceed towards a resolution of this matter, as set forth in this Agreement, without counsel. Respondent understands and acknowledges that she may retain and consult counsel prior to entering into this

Agreement. Respondent agrees that if counsel is retained for representation in this matter prior to entering into this Agreement, that counsel for the IC will be informed of such representation prior to Respondent executing this Agreement. Respondent covenants and agrees that she knowingly, willingly and intelligently enters into this Agreement.

3. **Waiver of Rights**. In connection with this Agreement, and the terms, covenants and conditions contained herein, Respondent knowingly, willingly and intelligently waives all rights in connection with this Agreement, and the terms, covenants and conditions contained herein, and with the understanding that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant to the United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be available to her or that may apply to her in connection with the proceedings on the Summary Suspension filed herein, the defense of said Summary Suspension, the adjudication of the charges in said Summary Suspension, and the imposition of sanctions.

Respondent agrees that the matter of the Complaint herein may be settled and resolved in accordance with this Agreement without a hearing or any further proceedings, and without the right to judicial review.

4. **Acknowledgement of Reasonable Basis to Proceed**. Respondent covenants and agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

5. **Consent to Entry of Order**. In order to resolve the matter of the summary suspension currently in place against her without incurring any further costs and expense of providing a defense to the Order of Summary Suspension: Respondent agrees to allow her license to practice medicine in the state of Nevada to be revoked, with said revocation stayed and Respondent placed on probation for a period of sixty (60) months from the date of the Board's acceptance, adoption and approval of this Agreement, with an obligation to comply with the following terms and conditions:

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a. The summary suspension of Respondent's license to practice medicine in the state of Nevada shall be lifted on March 6, 2015 and Respondent's licensure status shall be reinstated to the appropriate licensing status;

b. Respondent is currently enrolled in the Nevada Professionals Assistance Program (NPAP) and shall remain enrolled in said program for the duration of her probation;

c. Within fourteen (14) days the Board's adoption and approval of this Agreement, Respondent shall execute a HIPAA compliant release in favor of the Board to allow NPAP to directly provide the Board's Compliance Officer with status reports regarding Respondent's program;

d. Respondent shall remain in compliance with all terms of her participation contracts with NPAP during the term her probation;

e. Respondent shall complete in full any participation contract entered into with NPAP;

f. Respondent shall continue her trauma therapy with Dr. Shiode for the duration of her probation;

g. Within fourteen (14) days the Board's adoption and approval of this Agreement, Respondent shall execute a HIPAA compliant release in favor of the Board to allow Dr. Shiode to directly provide the Board's Compliance Officer with status reports regarding Respondent's therapy;

h. Respondent shall submit to random hair and urine alcohol and drug screens at her own expense when requested by an employee of the Board. Any test that is positive for alcohol, controlled substances or dangerous drugs, other than prescribed by a treating physician or dentist, shall be considered a violation of this Agreement. Failure to comply with any such request shall be deemed to be an automatic positive test;

i. Should Respondent be prescribed any controlled substances or dangerous drugs as defined in NRS 453.3615, by a treating physician or dentist, Respondent shall provide documentation from the treating physician or dentist to the Board's Compliance

Officer with seventy-two (72) hours of the prescription or within ninety-six (96) hours should the prescription be provided on a weekend;

j. For the duration of her probation, Respondent shall attend a 12-step meeting at least one time per week. On the fifth day of every month, Respondent shall submit proof of her prior month's attendance at the 12-step meetings directly to the Board's Compliance Officer;

k. Within fourteen (14) days of the Board's acceptance, adoption and approval of this Agreement, Respondent shall select and actively work with a 12-step sponsor to support her endeavors at sobriety;

l. Respondent shall attend a Caduceus meeting at least one time per month. On the fifth day of every month, Respondent shall submit proof of her prior month's attendance at the Caduceus meetings directly to the Board's Compliance Officer;

m. Respondent shall inform any and all employers of the terms of this Agreement during the term of her probation;

n. Respondent shall provide to the Board's Compliance Officer the best method to contact her and shall maintain a current address and phone number with the Compliance Officer;

o. Respondent shall not violate any laws or regulations of the state of Nevada during the period of her probation and Respondent shall remain in compliance with all federal laws pertaining to the practice of medicine and the prescribing, administering or dispensing of any dangerous drug or controlled substance during the term of her probation;

p. Respondent shall abstain from any and all mood altering/addictive substances during the term of his probation, with the exception of mood altering/addictive substances prescribed by a treating physician or dentist;

q. Respondent shall be solely responsible for any costs and fees associated with her compliance with all terms and conditions of this Agreement;

r. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum of One Thousand Nineteen and 14/100 Dollars ($1,019.14), the current amount of the costs

incurred by the Board to investigate and prosecute this matter, along with the costs to conclude the matter, if any. The costs shall be paid to the Board within twelve (12) months of the Board's acceptance, adoption and approval of this Agreement;

s. The formal Complaint filed in this matter shall be dismissed without prejudice and shall only be re-filed if Respondent fails to comply with the terms and conditions of her probation; and

t. If the IC finds that Respondent has violated any terms or conditions of this Agreement, it may immediately summarily suspend Respondent's license to practice medicine in Nevada and shall set a date for a hearing to be held within forty-five (45) days to determine whether the summary suspension of Respondent's license to practice medicine in the state of Nevada shall remain in effect.

6. **Release From Liability**. In execution of this Agreement, the Respondent, for herself, her executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and employees in their representative capacities, and in their individual capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against any or all of the persons or entities named in this paragraph arising out of or by reason of this investigation, this Agreement or its administration.

7. **Procedure for Adoption of Agreement**. The IC and counsel for the IC shall recommend approval and adoption of the terms, covenants and conditions contained herein by the Board in resolution of the Order of Summary Suspension pending herein against Respondent. In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff and the adjudicating members of the Board.

Respondent acknowledges that such contacts and communication may be made or conducted ex parte, without notice or opportunity to be heard on her part or on the part of her counsel, if any, until the public Board meeting where this Agreement is discussed, and that such contacts and communications may include, but not be limited to, matters concerning this

Agreement, the Order of Summary Suspension, and any and all information of every nature whatsoever related to the Order of Summary Suspension or the proceedings herein against Respondent. The IC and its counsel agree that Respondent and/or her counsel, if any, may appear at the Board meeting where this Agreement is discussed, and if requested, respond to any questions that may be addressed to the IC or its counsel.

8. **Effect of Acceptance of Agreement by Board**. In the event the Board approves, accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC will cause the Board's order accepting, adopting and approving this Agreement to be entered herein, ordering full compliance with the terms herein and ordering that this case be closed, subject to the provisions in Paragraph 5.

9. **Effect of Rejection of Agreement by Board**. In the event the Board does not accept, approve and adopt the terms, covenants and conditions set out in this Agreement, this Agreement shall be null, void, and of no further force and effect except as to the following covenant and agreement regarding disqualification of adjudicating Board panel members. Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by the Board shall disqualify any member of the adjudicating panel of the Board from considering the charges, if any, against Respondent and participating in the disciplinary proceedings in any role, including adjudication of the case. Respondent further agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

10. **Binding Effect**. If this Agreement is approved by the Board, Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

11. **Forum Selection Clause**. Respondent covenants and agrees that in the event either party is required to seek enforcement of this Agreement in the district court, she consents to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District Court of the state of Nevada in and for the county of Washoe.

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

13. **Failure to Comply With Terms**. Failure to comply with the terms recited herein may result in additional disciplinary action being initiated against Respondent for a violation of an order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies agreed to be paid as a condition of this Agreement may subject Respondent to civil collection efforts.

Dated this 18th day of February, 2015.

By: _____
Erin L. Albright, Esq.
Attorney for the Investigative Committee

Dated this 17 day of February, 2015.

By: _____
Arlyn M. Valencia, ~~Esq.~~ M.D.
Respondent

STATE OF NEVADA)
:ss.
COUNTY OF CLARK)

SUBSCRIBED and SWORN to before me

This 17 day of February, 2015.

_____
Notary Public

ANDREW S. CLARK
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: June 15, 2015
Certificate No: 12-6673-1

IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 6th day of March 2015, with the final total amount of costs due of $1,019.14.

Michael J. Fischer, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS