

**BEFORE THE IOWA BOARD OF MEDICINE**

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**IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST**

**MELVYN W. FLYE, M.D., RESPONDENT**

**FILE No. 02-13-027**

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**STATEMENT OF CHARGES and SETTLEMENT AGREEMENT  
(Combined)**

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COMES NOW the Iowa Board of Medicine (Board) and Melvyn W. Flye, M.D., (Respondent), on June 6, 2014, and pursuant to Iowa Code sections 17A.10(2) and 272C.3(4) and 653 IAC 25.3, enter into this combined Statement of Charges and Settlement Agreement.

**STATEMENT OF CHARGES**

1. Respondent was issued Iowa medical license no. 30871 on October 13, 1995.
2. Respondent's Iowa medical license went inactive due to nonrenewal on June 1, 2002.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.

## COUNT I

4. **Discipline by Another Licensing Authority:** Respondent is charged pursuant to Iowa Code section 148.6(2)(d) and 653 IAC 23.1(1) with having a license to practice medicine and surgery or osteopathic medicine and surgery revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the order of disciplinary action is prima facie evidence.

### STATEMENT OF THE MATTERS ASSERTED

5. Respondent is an Iowa-licensed physician who formerly practiced surgery in multiple locations in St. Louis, Missouri.

6. **Missouri Disciplinary Action:** On January 11, 2013, Respondent voluntarily surrendered his Missouri medical license in lieu of discipline. The Missouri State Board of Registration for the Healing Arts (Missouri Board) alleged that:

- A. Respondent lost his surgical privileges at multiple hospitals in St. Louis, Missouri, in 2009 and 2010 due to concerns about his perioperative complication rate and professional competency.
- B. Respondent provided false or misleading testimony about the status of his surgical privileges, the status of his surgical practice and his malpractice history while under oath serving as an expert witness in multiple malpractice cases between April 2009 and July 2010.

- C. Respondent failed to cooperate with the Missouri Board's investigation. See Attachment A.

### SETTLEMENT AGREEMENT

7. **VOLUNTARY SURRENDER:** Respondent voluntarily surrenders his Iowa medical license to resolve this matter.
8. Respondent voluntarily submits this Order to the Board for consideration.
9. Respondent agrees that the State's counsel may present this Order to the Board for consideration.
10. This Order constitutes the resolution of a contested case proceeding.
11. By entering into this Order, Respondent understands that he has a right to be represented by legal counsel in this matter, voluntarily waives any rights to a contested case hearing on the allegations in the Statement of Charges, and waives any objections to the terms of this Order.
12. Respondent understands that by entering into this combined Statement of Charges and Settlement Agreement, Respondent cannot obtain a copy of the investigative file. Pursuant to Iowa Code section 272C.6(4), a copy of the investigative file may only be provided to a licensee after a Statement of Charges is filed but before the final resolution of those charges.
13. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in Iowa.

14. Respondent understands that the Board is required by Federal law (45 C.F.R. 60.8) to report this Order to the National Practitioner Data Bank.

15. The Order becomes a public record available for inspection and copying upon execution in accordance with the requirements of Iowa Code Chapters 17A, 22 and 272C.

16. This Order is subject to approval of the Board. If the Board fails to approve this Order it shall be of no force or effect to either party.

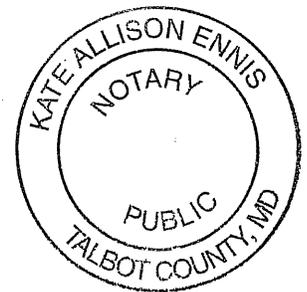
17. The Board's approval of this Order shall constitute a **Final Order** of the Board.

W. Flye  
Melvyn W. Flye, M.D., Respondent

Subscribed and sworn to before me on April 18, 2014.

Notary Public, State of MARYLAND.

Kate Allison Ennis  
My Exp Date 10/01/14



This Order is approved by the Board on June 6, 2014.

[Signature]

Hamed H. Tewfik, M.D., Chairman  
Iowa Board of Medicine  
400 SW 8<sup>th</sup> Street, Suite C  
Des Moines, Iowa 50309-4686

RECEIVED

JAN 11 2013

BOARD OF  
HEALING ARTS

**SETTLEMENT AGREEMENT BETWEEN THE MISSOURI  
STATE BOARD OF REGISTRATION FOR THE HEALING ARTS  
AND MELVYN FLYE, M.D.**

Come now Melvyn Flye (hereinafter "Licensee"), and the State Board of Registration for the Healing Arts (hereinafter the "Board") and enter into this agreement for the purpose of resolving the question of whether Melvyn Flye's license as a physician and surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo<sup>1</sup>.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against the Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided to the Licensee by operation of law, the Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri (2011) unless otherwise stated.

agreement and agrees to abide by the terms of this document as they pertain to him.

2. The Licensee acknowledges that he may, at the time this agreement is effective or within fifteen days thereafter, submit this agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of the Licensee's license.
3. The Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.
4. The parties stipulate and agree that the order agreed to by the Board and the Licensee in Part III herein is based only on the agreement set out in Parts I and II herein. The Licensee understands that the Board may take further action against him based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.
5. The Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this agreement as an open record of the Board as required by Chapters 324, 334, 610, and 621, RSMo, as amended and will report this agreement to the National Practitioner's Data Bank (NPDB), the Health Integrity and Protection Data Bank (HIPDB), and the Federation of State Medical Boards (FSMB).

#### **I. JOINT STIPULATION OF FACTS**

Based upon the foregoing, the Board and the Licensee herein jointly stipulate to the following:

6. The State Board of Registration for the Healing Arts is an agency of the State of Missouri created and established pursuant to §334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

7. The Licensee is licensed by the Board as a physician and surgeon, License Number RIF49, which was first issued on August 12, 1985. Licensee's license is current, and was current and active at all times relevant herein.

#### COUNT I

8. Herein incorporated by reference are paragraphs 1 through 7.

9. On or about January 9, 2009, Washington University School of Medicine suspended Licensee's surgery privileges. In turn, Barnes-Jewish Hospital, St. Louis Children's Hospital and the Veteran's Administration also suspended Licensee's surgery privileges. The suspension was due to concerns about Licensee's peri-operative complication rates.

10. On or about December 31, 2009, the Veteran's Administration (VA) revoked Licensee's privileges.

11. On or about June 23, 2010, Barnes-Jewish Hospital revoked Licensee's staff membership and admitting privileges. This was due to repeated problems with pre-operative judgement, surgical case planning and decision making which resulted in increased risk to patients; repeated failure to request help from senior colleagues when life threatening complication occurred; failure to provide adequate supervision to residents and fellows; failure to appropriately communicate with attending physicians in order to provide safe transitions of care;

requests for vascular surgery fellows to provide post-operative care to Licensee's patients when the patient's had surgery or complications outside of the scope of fellows training or expertise; and documentation deficiencies, including providing clinical documentation that deviated significantly from the observations of others.

12. On or about July 1, 2010, St. Louis Children's Hospital revoked Licensee's staff membership and clinical privileges for failure to maintain liability insurance as required by the hospital by-laws and failure to provide notification of the adverse action by Barnes Jewish Hospital.

13. On or about January 1, 2011, Licensee resigned from the medical staff of Washington University during an investigation.

14. The above constitutes cause to discipline Licensee's license pursuant to §334.100.2(4)(g).

#### COUNT II

15. Herein incorporated by reference are paragraphs 1 through 14.

16. On or about April 23, 2009, Licensee gave a deposition in *Savarine v. Gibbs*, a medical malpractice case filed in the Thirteenth Circuit Court of Tennessee. During this deposition, Licensee testified that he was doing surgery,

17. During this deposition Licensee testified that he was still performing surgery, and that no conditions had ever been placed on his privileges. In fact, Licensee had not performed surgery since January 1, 2009.

18. Licensee also testified that he had been sued only once, approximately 15 to 18 years ago. Licensee has been named as a defendant at least twice in medical malpractice cases since 1985, with the most recent case being filed in 2007.

19. On or about May 20, 2009 Licensee gave a deposition in *Archer v. Padilla*, a medical malpractice case filed in the Circuit Court of Boone County, Arkansas.

20. Licensee testified that he had most recently performed surgery two days earlier, on or about May 18, 2009, and that he had most recently performed gall bladder surgery about one month earlier.

21. At the time of the Arkansas deposition Licensee had been suspended from performing any surgery since January 9, 2009 at the Washington University School of Medicine, Barnes-Jewish Hospital, St. Louis Children's Hospital or the VA.

22. Licensee also testified that he had been sued only once, approximately 15 to 18 years ago. Licensee has been named as a defendant at least twice in medical malpractice cases since 1985, with the most recent case being filed in 2007.

23. On or about June 15, 2010, Licensee reiterated his deposition testimony in the Arkansas case at the subsequent trial, and also provided testimony that he was currently an active surgeon at Barnes-Jewish Hospital and that his credentials had not been restricted or limited in any way and were not under review.

24. At the time of the Arkansas trial Licensee had been suspended from performing any surgery since January 9, 2009 at the Washington University

School of Medicine, Barnes-Jewish Hospital, St. Louis Children's Hospital and the VA.

25. On or about July 16, 2010, Licensee gave a deposition in *Stanley v. Jain*, a medical malpractice case filed in the Circuit Court of Kalamazoo County, Michigan.

26. Licensee testified to several facts, including:

- a. that Licensee was currently on staff at Barnes-Jewish Hospital and St. Louis Children's Hospital;
- b. that Licensee still had privileges at Barnes-Jewish Hospital and that he had performed surgery there in the last eight weeks;
- c. that Licensee was not on any kind of indefinite or temporary suspension or privileges;
- d. that no action was pending with respect to his privileges at any facility;
- e. that Licensee would be able to perform surgery at Barnes-Jewish Hospital the following day if necessary;
- f. that Licensee had never had any problems with his privileges at any facility;
- g. and that Licensee had never had his privileges revoked, suspended, or held in abeyance at any facility at any time since becoming a physician.

27. At the time of the Michigan deposition Licensee had been suspended from performing any surgery since January 9, 2009 at the Washington University School of Medicine, Barnes-Jewish Hospital, St. Louis Children's Hospital or the VA.

28. The above constitutes cause to discipline Licensee's license pursuant to §334.100.2(4), RSMo (2011).

### COUNT II

29. Herein incorporated by reference are paragraphs 1 through 28.

30. On or about August 11, 2012 Licensee was served with a subpoena from the Board commanding Licensee to appear for a closed meeting with the Board to discuss disciplinary action taken against Licensee's license by Barnes-Jewish Hospital and allegations that Licensee provided false or misleading testimony under oath as an expert witness in medical malpractice cases across the country. The meeting was to be held on October 19, 2012.

31. On or about October 12, 2012, Licensee contacted John Heidy, Chief Investigator for the Board, and informed Mr. Heidy that Licensee did not intend to come to the Board meeting on October 19, 2012.

32. Licensee did not appear at the October 19, 2012 Board meeting as commanded by the subpoena served on or about August 11, 2012.

33. The above constitutes cause to discipline Licensee's license pursuant to §334.100.2(4)(m) and (n) RSMo (2011).

## II. JOINT CONCLUSIONS OF LAW

34. Cause exists to discipline Licensee's license pursuant to §§ 334.100.2(4)

and (4)(g) (2009) which state:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes:

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(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:

(g) Final disciplinary action by any professional medical or osteopathic association or society or licensed hospital or medical staff of such hospital in this or any other state or territory, whether agreed to voluntarily or not, and including, but not limited to, any removal, suspension, limitation, or restriction of the person's license or staff or hospital privileges, failure to renew such privileges or license for cause, or other final disciplinary action, if the action was in any way related to unprofessional conduct, professional incompetence, malpractice or any other violation of any provision of this chapter;

35. Cause exists to discipline Licensee's license pursuant to §334.100.2(4)(m)

and (n) (2011):

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of

registration or authority, permit or license for any one or any combination of the following causes:

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(4) Misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of any profession licensed or regulated by this chapter, including, but not limited to, the following:

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(m) Failure of any applicant or licensee to cooperate with the board during an investigation;

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(n) Failure to comply with any subpoena or subpoena duces tecum from the board or an order of the board;

36. The Licensee's conduct, as established by the foregoing facts, falls within the intendments of §334.100.2 RSMo.

37. Cause exists for the Board to take disciplinary action against the Licensee's license under §334.100.2 RSMo.

### **III. JOINT AGREEMENT ON DISCIPLINE**

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §621.110 RSMo 2000. This agreement, including the disciplinary order, will be effective immediately on the date entered and finalized by the Board. The following are the terms of the disciplinary order:

38. License number R1F49, issued by the Board to the Licensee, is hereby VOLUNTARILY SURRENDERED IN LIEU OF DISCIPLINE.

39. Within fifteen (15) days of the effective date of this agreement, the Licensee shall return all indicia of Missouri medical licensure to the board, including but not limited to, his wall-hanging license and pocket card.

40. If the Licensee is licensed in other jurisdictions, then he shall notify, in writing, the physician licensing authorities of those jurisdictions, within fifteen (15) days of the effective date of this settlement agreement, of the Licensee's disciplinary status in Missouri. The Licensee shall forward a copy of this written notice to the Board contemporaneously with sending it to the relevant licensing authority. If the Licensee is not licensed in other jurisdictions, he shall notify the Board of that fact in writing within fifteen (15) days of the effective date of this settlement agreement.

41. The Licensee shall notify, within fifteen (15) days of the effective date of this agreement, all employers, hospitals, nursing homes, out-patient centers, clinics, and all other facilities where the Licensee practices or has privileges, of his disciplinary status. The Licensee shall notify any allied health care professionals he supervises during the disciplinary period of the disciplinary action imposed. Notification shall be in writing and the Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative. If the Licensee does not have an employer, does not have privileges or does not practice at any facility, he shall notify the Board of that fact in writing within fifteen (15) days of the effective date of this settlement agreement.

42. For purposes of this agreement, unless otherwise specified in this agreement, all reports, documentation, evaluations, notices, or other materials required to be submitted to the Board in this Order shall be forwarded to The State Board of Registration for the Healing Arts, Attention: Investigations, P.O. Box 4, Jefferson City, Missouri 65102.

43. This agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by the Licensee not specifically mentioned in this document that are currently either known or unknown to the Board.

Licensee hereby waives and releases the Board, its members, and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

LICENSEE

M.W. Flye      1/7/13  
Melvyn Flye, M.D.      Date

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Attorney for Licensee      Date  
Missouri Bar No. \_\_\_\_\_

BOARD

Connie Clarkson      1/1/13  
Connie Clarkson      Date  
Executive Director

Frank B. Meyers      1/1/13  
Frank B. Meyers      Date  
Associate General Counsel,  
MO Bar No. 60976

EFFECTIVE THIS 1<sup>th</sup> DAY OF January, 2012. 2013 cc