SETTLEMENT AGREEMENT BETWEEN THE MISSOURI STATE BOARD OF REGISTRATION FOR THE HEALING ARTS AND CLAYTON E. WHETMORE, D.O.

Come Now Clayton E. Whetmore, D.O. (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 Clayton Whetmore'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 section 621.045, RSMo.[1]

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 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. After consulting with counsel and being duly advised in the premises,

[1] All statutory references are to the Revised Statutes of Missouri (2000) unless otherwise stated.

Licensee agrees to waive his right to submit this Settlement Agreement to the Administrative Hearing Commission for a determination as to whether the facts agreed to by the parties constitute grounds for discipline of Licensee's license, and Licensee agrees not to do so.

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) 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 section 334.120, RSMo, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

7. Respondent, Clayton E. Whetmore, D.O., is licensed by the Board as a physician and surgeon, License Number 2004030585. This license was first issued on October 27, 2004. Licensee's license is current, and was current and active at all relevant times herein.

8. Patient 1[2] was an 83 year-old female, with a history of insulin dependent diabetes, when she presented at Northwest Regional Medical Center (NRMC) on October 1, 2006.

9. Patient 1 misread her glucose meter as "41" at home and treated her supposedly low blood sugar with candy. The meter actually read "hi" and her initial glucose level at NRMC was 548. Patient 1 was brought to the emergency department at NRMC by her family.

10. Respondent examined Patient 1 in the emergency department on October 2, 2006, and diagnosed her with acute hyperglycemia concurrent with the diabetes mellitus.

11. Respondent treated Patient 1 with 20 units of regular insulin subcutaneously and 20 units of regular insulin IV, and an insulin drip at 8 units per hour. The patient's blood sugar was then continuously monitored by finger stick and Basic Metabolic Panel (BMP) was also rechecked to measure Patient 1's glucose level.

12. An hour after being given the insulin, another BMP was done which measured the Patient 1's glucose level at 147. At that point, Respondent ordered that D5W be given and that the insulin drip be discontinued. D5W is a solution of 5% dextrose in water often given to deal with low blood sugar. At 2355, Patient 1 became clammy and had a finger stick blood sugar done which showed a reading of 42. At this time, Respondent told the nurse to increase the D5W drip to 125. Shortly thereafter, Patient 1 was admitted to the Critical Care Unit at NRMC on a D5W drip. Patient 1 was later released from the Critical Care Unit to home and incurred no permanent ill effects from her treatment.

13. Respondent's treatment of Patient 1 with 20 units of regular insulin subcutaneously and 20 units of regular insulin IV, and an insulin drip at 8 units per hour was overly aggressive and caused her blood sugar level to descend rapidly to hypoglycemic levels at a reading of 42.

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[2] "Patient 1" is used in place of the patient's name to protect the identity of the patient. The identity of Patient 1 has been provided to Dr. Whetmore.

14. Respondent's failure to appropriately treat Patient 1's acute hyperglycemia was or might have been harmful or dangerous to the mental or physical health of Patient 1.

15. Respondent's license is subject to discipline for violation of section 334.100.2(5), RSMo., for conduct that was or might have been harmful and dangerous to the physical health of the patient.

II. JOINT CONCLUSIONS OF LAW

16. Cause exists to discipline Licensee's license pursuant to section334.100.2(5), RSMo, which states:

> 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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> > (5) Any conduct or practice which is or might be harmful or dangerous to the mental or physical health of a patient or the public; or incompetency, gross negligence or repeated negligence in the performance of the functions or duties of any profession licensed or regulated by this chapter. For the purposes of this subdivision, "repeated negligence" means the failure, on more than one occasion, to use that degree of skill and learning ordinarily used under the same or similar circumstances by the member of the applicant's or licensee's profession;

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

18. Cause exists for the Board to take disciplinary action against the Licensee's license under section 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 section

621.110 RSMo. This agreement, including the disciplinary order, will be effective immediately on the date entered and finalized by the Board. Upon the full execution of this Settlement Agreement by the parties, the Board will dismiss Case No. 11-1720 HA, filed in the Administrative Hearing Commission, with prejudice. The following are the terms of the disciplinary order:

19. License number 2004030585, issued by the Board to the Licensee, is hereby PUBLICLY REPRIMANDED.

20. If the Licensee is licensed in other jurisdictions, then he shall notify, in writing, the medical 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.

21. The Licensee shall notify, within fifteen (15) days of the effective date of this agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where the Licensee practices or has privileges, of his disciplinary status. The Licensee shall forward a copy of this written notice to the Board contemporaneously with sending it to the relevant facility. If the Licensee does not practice or have privileges at any hospital, nursing home, out-patient center, surgical center, clinic or other facility, he shall notify the Board of that fact in writing within fifteen (15) days of the effective date of this settlement agreement.

22. The Licensee shall notify any physician assistants or other allied health care professionals he supervises of the disciplinary action imposed. The Licensee shall forward a copy of this

written notice to the Board contemporaneously with sending it to the physician assistant or other allied health professional. If the Licensee does not supervise any physician assistant or other allied health professional, he shall notify the Board of that fact in writing within fifteen (15) days of the effective date of this settlement agreement.

23. 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.

24. 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.

25. 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

C Whetmore, DO 1 May 14

Clayton E. Whetmore, D.O. Date

K. Roger Luther 5/5/14

Attorney for Licensee Date

Missouri Bar No. 28464

BOARD

Connie Clarkston 5/13/14

Connie Clarkston Date

Executive Director

5/7/14

Glenn E. Bradford Date

Counsel for the Board, MO Bar No. 27396

EFFECTIVE THIS 13th DAY OF May, 2014.