

COPY

*Before the Board of Medical Examiners  
of the State of Nevada*

\* \* \* \* \*

In The Matter of Charges and  
Complaint Against  
BENJAMIN VENGER, M.D.,  
Respondent.

Case No. 08-9819-1

**FILED**

**MAY 14 2009**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

**SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

**THIS AGREEMENT** is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board) composed of Charles N. Held, M.D., Benjamin J. Rodriguez, M.D., and Jean Stoess, M.A., by and through General Counsel, Edward O. Cousineau, and Benjamin Venger, M.D., (Respondent), through his counsel of record, Kathleen Janssen, Esq., as follows:

**WHEREAS**, on June 26, 2008, the Board's IC filed a formal Complaint in the above-referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630), to wit: one count of engaging in conduct that violates NRS 630.301(7), one count of engaging in conduct that violates NRS 630.301(9), and one count of engaging in conduct that violates NRS 630.306(2)(a) ; and

**WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands it, and has consulted with competent counsel Kathleen Janssen, Esq., concerning the nature and significance of the complaint, and Respondent is fully advised concerning his rights and defenses to the complaint as well as the possible sanctions that may be imposed if the Board finds and concludes that he has violated one or more provisions of the Medical Practice Act; and

**WHEREAS**, Respondent understands and agrees that he has certain rights under the United States Constitution and the Constitution of the State of Nevada as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B) including but not

1 limited to the right to a formal hearing on the charges against him, the right to representation by counsel in  
2 the preparation and presentation of his defense, the right to confrontation and cross-examination of  
3 witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written  
4 findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of  
5 any final decision by the Board that is adverse to him; and

6         **WHEREAS**, provided this Agreement is approved by the Board, Respondent, agrees to waive all  
7 of his rights under the United States Constitution, the Constitution of the State of Nevada, the Medical  
8 Practice Act and the Nevada Administrative Procedures Act, including but not limited to the right to a  
9 hearing on the charges and written findings of fact, conclusions of law and order, and he agrees to settle  
10 and resolve this matter of the formal complaint against him by way of, and in accordance with, this  
11 Settlement, Waiver and Consent Agreement; and

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

17         **WHEREAS**, Respondent understands and agrees that if the Board approves the terms, covenants  
18 and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be  
19 binding and enforceable upon him, and

20         **WHEREAS**, Respondent understands and agrees that if the Board does not approve the terms,  
21 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below  
22 shall not be binding and enforceable upon him except the provisions as to disqualification of adjudicating  
23 panel members in paragraph number 9, and he will be provided with an opportunity to defend himself  
24 against the charges against him at a regularly scheduled hearing in accordance with all applicable laws;

25         **NOW THEREFORE**, in order to resolve the charges alleged by the Board's IC in Case No. 08-  
26 9819-1, Respondent and the IC hereby agree to the following terms, covenants and conditions:

27         1.         **Jurisdiction.** Respondent is, and at all times mentioned in the Complaint filed in the  
28 above-captioned matter was, a physician licensed to practice medicine in the State of Nevada subject to

1 the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act  
2 (NRS 630), and to impose sanctions as provided by the Act.

3       2.     Representation by Counsel. Respondent is represented by counsel herein, whom  
4 Respondent covenants and agrees is fully capable, competent, and fully advised in these circumstances and  
5 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and  
6 intelligently after full consultation with counsel.

7       3.     Waiver of Rights. In connection with this Agreement, and the terms, covenants and  
8 conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of above  
9 identified counsel, waives all rights arising under or pursuant to the United States Constitution, the  
10 Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to  
11 him or that may apply to him in connection with the proceeding on the Complaint filed herein, the defense  
12 of said Complaint and the adjudication of the charges in said Complaint, and Respondent further agrees  
13 that the matter of the Complaint herein may be settled and resolved in accordance with this Agreement  
14 without a hearing or any further proceeding, and without the right to judicial review. In the event this  
15 Agreement is not approved by the Board, this Agreement shall have no force and effect and Respondent  
16 shall have all rights arising under or pursuant to the United States Constitution, the Constitution of the  
17 State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply  
18 to him in connection with the proceeding on the Complaint filed herein.

19       Furthermore, all admissions made by Respondent are solely for final disposition of this matter and  
20 any subsequent related administrative proceedings or civil litigation involving the Board and Respondent.  
21 Therefore, said admissions by Respondent are not intended or made for any other use, such as in the  
22 context of hospital peer review proceedings, another state or federal regulatory proceeding, civil or  
23 criminal court proceeding, in the State of Nevada or any other state or federal court.

24       4.     Acknowledgement of Reasonable Basis to Proceed. Respondent covenants and agrees  
25 that the Board's IC had a reasonable basis to believe that Respondent engaged in conduct that is grounds  
26 for discipline pursuant to the provisions of the Medical Practice Act.

27       5.     Consent to Entry of Order In order to resolve the matter of these disciplinary  
28 proceedings pending against him without any further costs and expense of providing a defense to the

1 Complaint or to an amended complaint, and in recognition that Respondent has already voluntarily  
2 provided substantial community medical services (consisting of both administrative and clinical non-  
3 surgical activities) at Mike O'Callahan Hospital, Respondent has accomplished various self-initiated  
4 restitution and remedial measures, and the conduct at issue in this matter does not involve any  
5 allegations of malpractice, Respondent hereby agrees and does not contest that an order may be entered  
6 herein by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant  
7 to the Medical Practice Act to wit: his acceptance of payment from an intermediary in 2003 which  
8 exceeded the non-surgical work product performed and his untruthful testimony in a civil matter in that  
9 same year, was in violation of NRS 630.301(9), engaging in conduct that brings the medical profession  
10 into disrepute; that Respondent's license shall be suspended, with that suspension stayed, and Respondent  
11 be placed on probation for 36 months with the following terms and conditions: (1) that Respondent shall  
12 be issued a formal written public letter of reprimand from the Board which will include language which is  
13 synonymous with the terms of this Agreement; (2) that Respondent shall be fined in the amount of  
14 \$5,000.00; (3) that Respondent shall continue to engage in individual outpatient therapy on an as-needed  
15 basis as determined by his therapist throughout the period of his probation; (4) that Respondent shall  
16 undertake, participate as indicated, and complete the attached community service proposal ("CSP")  
17 consisting of 805 hours of clinical and administrative service which is to be completed as is further  
18 described in the CSP which is incorporated into this Agreement by reference; (5) that Respondent shall  
19 continue to assist the United States Attorney's Office in its investigation and prosecution to the extent  
20 which has been agreed to between those parties; and (6) that Respondent agrees to pay the aforementioned  
21 fine and the costs of investigation and prosecution of this matter, which are in the amount of \$12,375.92,  
22 payable to the Nevada State Board of Medical Examiners within sixty (60) days of acceptance, adoption  
23 and approval of this Agreement by the Board. A final accounting of the additional costs will be  
24 provided to Respondent within thirty (30) days of approval of the matter.

25  
26 Respondent acknowledges that his on-going active medical licensure in the State of Nevada is  
27 contingent upon his completion of the thirty-six (36) month probation and the aforementioned terms and  
28 that Respondent's failure to comply with these terms in the entirety will result in the summary suspension  
of his medical license for failure to comply with an order of the Board.

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

9           **7.     Procedure for Adoption of Agreement.** The IC and counsel for the IC shall  
10 recommend approval and adoption of the terms, covenants and conditions contained herein by the  
11 Board in resolution of the Complaint pending herein against Respondent. In the course of seeking Board  
12 approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly  
13 with the Board staff and members of the panel of the Board who would adjudicate this case if it were to  
14 go to hearing. Respondent acknowledges that such contacts and communication may be made or  
15 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel  
16 until the public Board meeting where this Agreement is discussed, and that such contacts and  
17 communications may include, but not be limited to, matters concerning this Agreement, the Complaint,  
18 and any and all information of every nature whatsoever related to the Complaint or the proceedings  
19 herein against Respondent. The IC and its counsel agree that Respondent and his counsel may appear at  
20 the Board meeting where this Agreement is discussed, and if requested, to respond to any questions that  
21 may be addressed to the IC or its counsel.

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

27           **9.     Effect of Rejection of Agreement by Board.** In the event the Board does not approve,  
28 accept and adopt the terms, covenants and conditions set out in this Agreement, this Agreement shall be

1 null, void, and of no further force and effect except as to the following covenant and agreement  
2 regarding disqualification of adjudicating Board panel members. Respondent agrees that,  
3 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that  
4 occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by  
5 the Board shall disqualify any member of the adjudicating panel of the Board from considering the  
6 charges against Respondent and participating in the disciplinary proceedings in any role, including  
7 adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such  
8 member absent evidence of bad faith.

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

12 **11. Forum Selection Clause.** Respondent covenants and agrees that in the event either  
13 party is required to seek enforcement of this Agreement in the District Court, he consents to such  
14 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District  
15 Court of the State of Nevada in and for the County of Washoe.

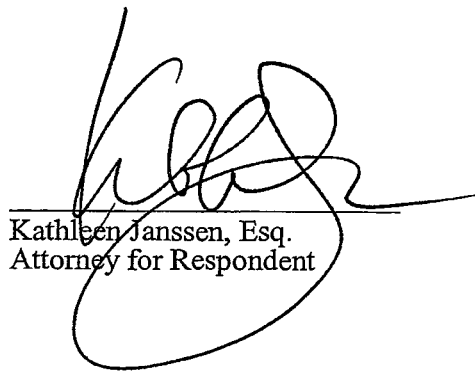
16 **12. Attorneys Fees and Costs.** Respondent covenants and agrees that in the event an action  
17 is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall  
18 be entitled to recover costs and reasonable attorneys' fees.

19 **13. Failure to comply with terms.** In the event the Board enters its Order approving this  
20 Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have  
21 grounds, after notice and a hearing, for disciplinary action, including the revocation of his active-  
22 medical-licensure in the State of Nevada, for Respondent's violation of an Order of the Board. NRS  
23 630.3065(2)(a)

24 Dated this 6th day of May 2009.

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27 Edward O. Cousineau  
28 Attorney for the Investigative Committee of the  
Nevada State Board of Medical Examiners

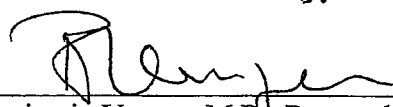


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Kathleen Janssen, Esq.  
Attorney for Respondent

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I, Benjamin Venger, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to the complaint in Nevada State Board of Medical Examiners Case No. 08-9819-01

Dated this 5<sup>th</sup> day of ~~April~~<sup>MAY</sup>, 2009.  
RV

  
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Benjamin Venger, M.D., Respondent