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
class 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
limited to the right to a formal hearing on the charges against him, the right to representation by counsel in
the preparation and presentation of his defense, the right to confrontation and cross-examination of
witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written
findings, conclusions and 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 him; and

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

WHEREAS, Respondent understands and agrees that this Agreement is entered into by and
between himself 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 regular meeting duly noticed and scheduled, and 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 him, and

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

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

1. **Jurisdiction.** Respondent is, and at all times mentioned in the Complaint 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 Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

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

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

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

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

5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary proceedings pending against him without any further costs and expense of providing a defense to the
Complaint or to an amended complaint, and in recognition that Respondent has already voluntarily
provided substantial community medical services (consisting of both administrative and clinical non-
surgical activities) at Mike O’Callahan Hospital, Respondent has accomplished various self-initiated
restitution and remedial measures, and the conduct at issue in this matter does not involve any
allegations of malpractice, Respondent hereby agrees and does not contest that an order may be entered
herein by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant
to the Medical Practice Act to wit: his acceptance of payment from an intermediary in 2003 which
exceeded the non-surgical work product performed and his untruthful testimony in a civil matter in that
same year, was in violation of NRS 630.301(9), engaging in conduct that brings the medical profession
into disrepute; that Respondent’s license shall be suspended, with that suspension stayed, and Respondent
be placed on probation for 36 months with the following terms and conditions: (1) that Respondent shall
be issued a formal written public letter of reprimand from the Board which will include language which is
synonymous with the terms of this Agreement; (2) that Respondent shall be fined in the amount of
$5,000.00; (3) that Respondent shall continue to engage in individual outpatient therapy on an as-needed
basis as determined by his therapist throughout the period of his probation; (4) that Respondent shall
undertake, participate as indicated, and complete the attached community service proposal (“CSP”)
consisting of 805 hours of clinical and administrative service which is to be completed as is further
described in the CSP which is incorporated into this Agreement by reference; (5) that Respondent shall
continue to assist the United States Attorney’s Office in its investigation and prosecution to the extent
which has been agreed to between those parties; and (6) that Respondent agrees to pay the aforementioned
fine and the costs of investigation and prosecution of this matter, which are in the amount of $12,375.92,
payable to the Nevada State Board of Medical Examiners within sixty (60) days of acceptance, adoption
and approval of this Agreement by the Board. A final accounting of the additional costs will be
provided to Respondent within thirty (30) days of approval of the matter.

Respondent acknowledges that his on-going active medical licensure in the State of Nevada is
contingent upon his completion of the thirty-six (36) month probation and the aforementioned terms and
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.
6. **Release From Liability.** In execution of this Settlement Agreement, the Respondent, for himself, his 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 settlement 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 Complaint 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 members of the panel of the Board who would adjudicate this case if it were to go to hearing. Respondent acknowledges that such contacts and communication may be made or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel 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 Complaint, and any and all information of every nature whatsoever related to the Complaint or the proceedings herein against Respondent. The IC and its counsel agree that Respondent and his counsel may appear at the Board meeting where this Agreement is discussed, and if requested, to 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 to be entered herein the Board's Order accepting, adopting and approving this Settlement, Waiver and Agreement, ordering full compliance with the terms herein and ordering that this case be closed, subject to the provisions of Section 5.

9. **Effect of Rejection of Agreement by Board.** In the event the Board does not approve, accept 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 against Respondent and participating in the disciplinary proceedings in any role, including adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

Dated this ___ day of April, 2009.

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

Kathleen H. Janssen, Esq.
Attorney for Respondent
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 17th day of April, 2009.

[Signature]

Benjamin Venger, M.D. Respondent