

1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**  
2 **OF THE STATE OF NEVADA**

3 \* \* \* \* \*

4 **In The Matter of Charges and** )  
5 **Complaint Against** ) **Case No. 08-9241-1**  
6 **ELADIO SANTANA CARRERA, M.D.,** ) **FILED**  
7 **Respondent.** ) **JUL 01 2009**  
8 **NEVADA STATE BOARD OF**  
9 **MEDICAL EXAMINERS**

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of the  
12 Nevada State Board of Medical Examiners (the Board) composed of Charles N. Held, M.D, Chairman,  
13 Benjamin Rodriguez, M.D, member, and Jean Stoess, M.A., member, by and through counsel  
14 Lyn E. Beggs, Esq., and Eladio Santana Carrera, M.D. (Respondent), by and through his counsel  
15 David Mortensen, Esq., and Thomas F. Pitaro, Esq., as follows:

16 **WHEREAS**, in June 2009, the Board's IC filed a Second Amended Complaint in the above  
17 referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to  
18 the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: three counts of engaging in  
19 conduct that brings the medical profession in to disrepute, violations of NRS 630.301 (9); and

20 **WHEREAS**, Respondent has received and reviewed a copy of the Second Amended Complaint,  
21 understands it, and has consulted with competent counsel David J. Mortensen, Esq. and Thomas F. Pitaro,  
22 Esq., concerning the nature and significance of the Second Amended Complaint and Respondent is fully  
23 advised concerning his rights and defenses to the complaint as well as the possible sanctions that may be  
24 imposed if the Board finds and concludes that he has engaged in conduct that is grounds for discipline  
25 pursuant to the Medical Practice Act and after due consideration and consultation with his counsel,  
26 concedes that the Board has evidence contending that Respondent brought the medical profession into  
27 disrepute as set forth in counts I, II and III of the Second Amended Complaint; and

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1           **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and  
2 between himself and the Board's Investigative Committee, and not with the Board, but that the Investigative  
3 Committee will present this Agreement to the Board for consideration in open session at a Board meeting,  
4 appropriately noticed, and that the Investigative Committee shall advocate approval of this Agreement by  
5 the Board, but that the Board has the right to decide in its own discretion whether or not to approve this  
6 Agreement; and

7           **WHEREAS**, Respondent and the Investigative Committee each understand and agree that if the  
8 Board approves the terms, covenants and conditions of this Agreement, then the terms, covenants and  
9 conditions enumerated below shall be binding and enforceable upon Respondent and the Board's  
10 Investigative Committee; and

11           **NOW THEREFORE**, in order to resolve the above-captioned case and charges brought against  
12 Respondent by the Board's Investigative Committee in said matter, Respondent and the Investigative  
13 Committee hereby agree to the following terms, covenants and conditions:

14           1.       **Consent to Entry of Order.** In order to resolve the matter of these disciplinary proceedings  
15 pending against him without any further costs and expense of providing a defense to the Second Amended  
16 Complaint or to any further amended complaints, Respondent hereby agrees that an order may be entered  
17 herein by the Board finding that there is evidence that Respondent engaged in conduct that is grounds for  
18 discipline pursuant to the Medical Practice Act to wit: three counts of engaging in conduct that brought the  
19 medical profession into disrepute as set forth in counts I, II and III of the Second Amended Complaint,  
20 violations of NRS 630.301(9); and ordering that Respondent be placed on twenty-four (24) months of  
21 probation with the following conditions:

- 22           a.       that Respondent shall be issued a public reprimand;
- 23           b.       that Respondent shall be fined \$5000 per count for a total of \$15,000 to be paid within  
24 twelve (12) months of the acceptance of this agreement by the Board;
- 25           c.       that Respondent shall not participate in any practice of gastroenterology without an  
26 appropriate level of control regarding practices and policies which affect patients during the time of his  
27 probation;

28       ///

1 d. that Respondent shall agree to testify truthfully as a fact witness at the Board disciplinary  
2 hearings regarding matters pertaining to the Endoscopy Center of Southern Nevada, the time and date of  
3 which are yet to be fixed. The Investigative Committee is satisfied that Dr. Carrera could provide testimony  
4 that may be valuable and important in formal disciplinary proceedings relating to the Endoscopy Center of  
5 Southern Nevada. If Respondent's testimony in such proceedings is materially different than the  
6 information provided to the Investigative Committee, Respondent agrees that he shall be subject to the  
7 imposition of further discipline by the Board in this matter, the nature of which shall be determined, by the  
8 Board after a hearing, and that Respondent shall be ordered to appear before the Board before the  
9 imposition of any such additional discipline;

10 e. that Respondent shall reimburse the Board the reasonable costs and expenses incurred in the  
11 investigation and prosecution of this case, the amount to be negotiated and to be paid to the Nevada State  
12 Board of Medical Examiners within twelve (12) months of the acceptance of this Agreement by the  
13 Board;

14 f. that Respondent shall contact the Compliance Officer of the Nevada State Board of  
15 Medical Examiners (hereinafter "Compliance Officer") within thirty (30) days of the approval and  
16 acceptance of this Agreement in order to provide information regarding the most expeditious method of  
17 contacting him;

18 g. that Respondent shall agree to pay the reasonable costs, if any, of monitoring his probation  
19 to the Nevada State Board of Medical Examiners and shall pay said costs within thirty (30) days of the  
20 due date of any invoice presented by the Board.

21 h. that the temporary restraining order and preliminary injunction currently in place and  
22 initiated by the Attorney General's office on behalf of the Board against Dr. Carrera in Clark County  
23 District Court case number A561921 shall be lifted and the case dismissed with prejudice, all parties to  
24 bear there own costs and attorney fees in the District Court matter.

25 2. **Jurisdiction.** Respondent is, and at all times mentioned in the complaint filed in the above-  
26 captioned matter was, a physician licensed to practice medicine in the state of Nevada subject to the  
27 jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act (NRS  
28 (NRS 630), and to impose sanctions as provided by the Act.

1           3.       **Waiver of Rights.** Respondent covenants and agrees that he enters into this Agreement  
2 knowingly, willingly, and intelligently with knowledge that he may consult with counsel prior to entering  
3 into this Agreement. In connection with this Agreement, and the terms, covenants and conditions contained  
4 herein, Respondent knowingly, willingly and intelligently, with the advice of above identified counsel,  
5 waives all rights arising under or pursuant to the United States Constitution, the Constitution of the state of  
6 Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to his or that may apply to his in  
7 connection with the proceeding regarding the complaint filed herein, the defense of said complaint and the  
8 adjudication of the charges in said complaint, and Respondent further agrees that the matter of the  
9 disciplinary action commenced by the filing of the complaint herein may be settled and resolved in  
10 accordance with this Agreement without a hearing or any further proceeding, and without the right to  
11 judicial review. In the event this Agreement is not approved by the Board, this Agreement shall have no  
12 force and effect and Respondent shall have all rights arising under or pursuant to the United States  
13 Constitution, the Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may  
14 be available to his or that may apply to his in connection with the proceeding on the complaint filed herein.

15           4.       **Acknowledgement of Basis to Proceed.** Respondent recognizes that the Board's  
16 Investigative Committee has a basis to believe that Respondent violated one or more provisions of the  
17 Medical Practice Act.

18           5.       **Procedure for Adoption of Agreement.** It is expressly understood that this Agreement  
19 will only become effective if the Board approves the recommendation of the Investigative Committee for  
20 acceptance. The Investigative Committee and counsel for the Investigative Committee shall recommend  
21 approval and adoption of the terms, covenants and conditions contained herein by the Board in resolution  
22 of the disciplinary proceedings pending herein against Respondent pursuant to the complaint. In the  
23 course of seeking Board approval of this Agreement, counsel for the Investigative Committee may  
24 communicate directly with the Board staff and members of the panel of the Board who would adjudicate  
25 this case if it were to go to hearing. Respondent covenants and agrees that such contacts and  
26 communication may be made or conducted ex parte, without notice or opportunity to be heard on his part  
27 or on the part of his counsel, until the public Board meeting where this Agreement is discussed, and that  
28 such contacts and communications may include, but not be limited to, matters concerning this  
Agreement, the complaint and the allegation therein, any and all evidence that may exist in support of

1 the complaint, and any and all information of every nature whatsoever related to the complaint against  
2 Respondent. The Investigative Committee and its counsel agree that Respondent and his counsel may  
3 appear at the Board meeting where this Agreement is discussed in order to respond to any and all  
4 questions that may be addressed to the Investigative Committee or its counsel at such meeting.

5 6. **Effect of Acceptance of Agreement by Board.** In the event the Board approves, accepts  
6 and adopts the terms, covenants and conditions set out in this Agreement, counsel for the Investigative  
7 Committee will cause to be entered herein the Board's Order approving this Settlement, Waiver and  
8 Consent Agreement, ordering full compliance with the terms herein and ordering that this case be closed,  
9 subject to the provisions in Paragraph 1.

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

20 8. **Release From Liability.** In execution of this Agreement, the Respondent, for himself, his  
21 executors, successors and assigns, hereby releases and forever discharges the state of Nevada, the Board,  
22 the Nevada Attorney General, and each of their members, agents and employees in their representative  
23 capacities, and in their individual capacities absent evidence of bad faith, from any and all manner of  
24 actions, causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known  
25 and unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against  
26 any or all of the persons or entities named in this paragraph arising out of or by reason of this  
27 investigation, this disciplinary action, this settlement or its administration, in connection with the  
28 complaint so long as the agreement as stated is adopted in full, and without alteration, by the Board. The  
Investigative Committee hereby agrees to accept this Agreement in full settlement of all claims related to  
claims related to the complaint, with the understanding that the final decision rests with the Board.

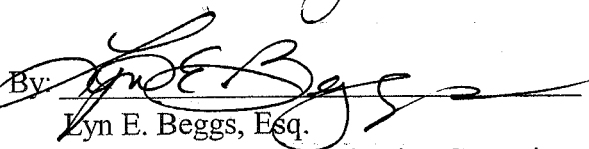
1           9.     **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and  
2 enforceable contract upon Respondent and the Board's Investigative Committee, which contract may be  
3 enforced in a court or tribunal having jurisdiction.

4           10.    **Forum Selection Clause.** Respondent covenants and agrees that in the event either  
5 party is required to seek enforcement of this Agreement in the district court, he consents to such  
6 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District  
7 Court of the State of Nevada in and for the County of Washoe.

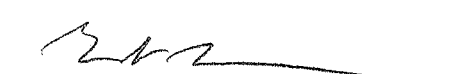
8           11.    **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an  
9 action is commenced in the district court to enforce any provision of this Agreement, the prevailing  
10 party shall be entitled to recover reasonable costs and attorneys' fees.

11           12.    **Failure to comply with terms.** In the event the Board enters its Order approving this  
12 Agreement, upon receipt of credible information that Respondent has failed to comply with any term or  
13 condition of this Order, the Board's President, Vice-President, or Secretary/Treasurer shall be  
14 authorized to immediately suspend Respondent's license until Respondent complies with the term or  
15 condition. Failure to comply with the terms recited herein may result in additional disciplinary action  
16 being initiated against Respondent for a violation of an Order of the Board in accordance with  
17 NRS 630.3065(2)(a). Furthermore, any failure to pay any fine, fee, or cost ordered herein will also  
18 result in such legal action as determined to be necessary to collect the unpaid fine, fee, or cost.

19  
20 Dated this 24<sup>th</sup> day of June of 2009.

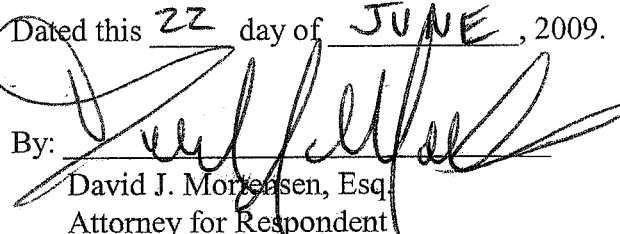
21  
22 By:   
23 Lyn E. Beggs, Esq.  
24 Attorney for the Investigative Committee  
of the Nevada State Board of Medical  
Examiners

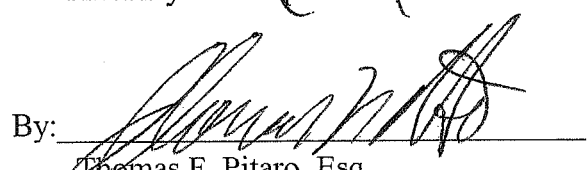
25 **UNDERSTOOD AND AGREED:**

26   
27 Eladio Santana Carrera, M.D. Respondent

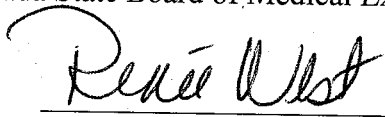
28 Dated this 22 day of JUNE, 2009

Dated this 22 day of JUNE, 2009.

21  
22 By:   
23 David J. Mortensen, Esq.  
24 Attorney for Respondent

25 By:   
26 Thomas F. Pitaro, Esq.  
27 Attorney for Respondent

1 **IT IS HEREBY ORDERED** that the foregoing Settlement, Waiver and Consent Agreement is  
2 approved and accepted by the Nevada State Board of Medical Examiners on the 1<sup>st</sup> day of July, 2009.

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5 RENEE WEST, Secretary/Treasurer  
6 Nevada State Board of Medical Examiners

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