BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In The Matter of Charges and Complaint Against
ANTONINO GUMINA, M.D.,

Respondent. Case No. 10-12370-1

FILED
SEP 13 2010
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:追捧

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is 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, Theodore B. Berndt, M.D. and Ms. Valerie Clark, BSN, RHU, LUTCF, by and through counsel, Lyn E. Beggs, Esq., and Antonino Gumina, M.D. (Respondent), as follows:

WHEREAS, on April 28, 2010, the Board’s IC filed a 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 and NAC Chapter 630) to wit: one count of engaging in any sexual activity with a patient who is currently being treated by the practitioner, a violation of NRS 630.301(5); and

WHEREAS, Respondent has received and reviewed a copy of the Complaint, understands the nature and significance of the Complaint and 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 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act and after due consideration concedes that he engaged in sexual activity with a patient he was treating as set forth in count I of the Complaint; and

WHEREAS, Respondent understands and agrees that this Agreement is entered into by and between himself and the Board’s Investigative Committee, and not with the Board, but that the Investigative Committee will present this Agreement to the Board for consideration in open
session at a Board meeting, appropriately noticed, and that the Investigative Committee 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 and the Investigative Committee each understand and agree 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 Respondent and the Board’s Investigative Committee; and

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

1. **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 any amended complaints, Respondent hereby agrees 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: one count of engaging in sexual activity with a patient who is currently being treated by the practitioner as set forth in count I of the Complaint, a violation of NRS 630.301(5); and ordering that Respondent be issued a public reprimand and shall pay a fine of $5,000. Furthermore, Respondent shall be ordered to reimburse the Board the reasonable costs and expenses incurred in the investigation and prosecution of this case, the current amount being $1,607.82. The costs and fines shall be paid to the Nevada State Board of Medical Examiners within sixty (60) days of the acceptance of this Agreement by the Board;

2. **Jurisdiction.** Respondent was 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.

3. **Representation by Counsel.** Respondent acknowledges that he is not represented by counsel and wishes to proceed towards resolution of this matter as set forth in this Agreement
without counsel. Respondent understands and acknowledges that he may retain and consult
counsel prior to entering into this Agreement and agrees that if counsel is retained for
representation in this matter prior to entering into this Agreement, that counsel for the Investigative
Committee will be informed of such prior to Respondent executing this Agreement.

4. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
Agreement knowingly, willingly, and intelligently with knowledge that he may consult with
counsel prior to entering into this Agreement. In connection with this Agreement, and the terms,
covenants and conditions contained herein, Respondent knowingly, willingly and intelligently,
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 Respondent or
that may apply to Respondent in connection with the proceeding regarding 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 disciplinary action commenced by the filing 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 Respondent or
that may apply to Respondent in connection with the proceeding on the complaint filed herein.

5. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
agrees that the Board’s Investigative Committee has a reasonable basis to believe that Respondent
violated one or more provisions of the Medical Practice Act.

6. **Procedure for Adoption of Agreement.** It is expressly understood that this
Agreement will only become effective if the Board approves the recommendation of the
Investigative Committee for acceptance. The Investigative Committee and counsel for the
Investigative Committee shall recommend approval of the terms, covenants and conditions
contained herein by the Board in resolution of the disciplinary proceedings pending herein
against Respondent pursuant to the Complaint. In the course of seeking Board approval of this
Agreement, counsel for the Investigative Committee 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 covenants and agrees 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, if any, 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 the allegations therein, any and all evidence that may exist in support of the Complaint, and any and all information of every nature whatsoever related to the complaint against Respondent. The Investigative Committee and its counsel agree that Respondent and his counsel, if any, may appear at the Board meeting where this Agreement is discussed in order to respond to any and all questions that may be addressed to the Investigative Committee or its counsel at such meeting.

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

8. **Effect of Rejection of Agreement by Board.** In the event the Board does not approve 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 Investigative Committee 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.

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9. **Release From Liability.** In execution of this 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 absent evidence of bad faith, 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 disciplinary action, this settlement or its administration, in connection with the complaint. The Investigative Committee hereby agrees to accept this Agreement in full settlement of all claims related to the complaint, with the understanding that the final decision rests with the Board.

10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and the Board’s Investigative Committee, 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 reasonable costs and attorneys’ fees.

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

Dated this 19th day of May of 2010.

By: Lyn E. Beggs, Esq.
Attorney for the Investigative Committee

Dated this 19th day of May, 2010.

By: Antonio Zumina, M.D.
Respondent

Subscribed and sworn to before me
This 19th day of May 2010.

Notary Public

[Seal]
LAURA G. SEBALA
Notary Public State of Nevada
No. 07-1121-1
IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 10th day of September, 2010, with the final total amount of costs due of $1,607.82.

Benjamin J. Rodriguez, M.D., Vice President
NEVADA STATE BOARD OF MEDICAL EXAMINERS