BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In The Matter of Charges and
Complaint Against

JAMES LEE UNGER, M.D.,
Respondent.

Case No. 10-6159-1

FILED

DEC - 6 2010
NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By:

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., Chairman, Theodore B. Berndt, M.D., Member, and Valerie J. Clark, Member, by and through Bradley O. Van Ry, Deputy General Counsel, and James Lee Unger, M.D. (Respondent), as follows:

WHEREAS, on June 3, 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: failing to use the reasonable care, skill, or knowledge ordinarily used under the same or similar circumstances pursuant to Nevada Revised Statute Section 630.301(4) and Nevada Administrative Code Section 630.040; and,

WHEREAS, the parties agree that a First Amended Complaint shall be filed in this matter by the IC immediately upon receipt by the Board of an executed original of this Agreement. Respondent acknowledges below that he has received and reviewed a draft copy of the First Amended Complaint prior to its filing with the Board; and,

WHEREAS, Respondent acknowledges that he has received and reviewed a copy of the First Amended Complaint, understands the nature and significance of the First Amended
Complaint and is fully advised concerning his rights and defenses to the First Amended 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 and consultation with his counsel, concedes that his conduct violated Nevada Revised Statute Section 630.301(4) and Nevada Administrative Code Section 630.040 as set forth in count I of the Amended 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 First Amended Complaint, 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 failing to use the reasonable care, skill, or knowledge ordinarily used under the same or similar circumstances pursuant to Nevada Revised Statute Section 630.301(4) and Nevada Administrative Code Section 630.040; and,

   It shall be further ordered that Respondent shall pay a fine of $3,000.00. Respondent shall also be ordered to reimburse the Board the reasonable costs and expenses incurred in the
investigation and prosecution of this case, the current amount being $2,079.12, along with the
costs to conclude the matter, if any. The costs and fines shall be paid to the Nevada State Board
of Medical Examiners within thirty (30) days of the Board’s acceptance and approval of this
Agreement; and,

Respondent shall receive a public reprimand from the Board concerning the foregoing
matter; and,

Respondent shall be ordered to attend and participate in six (6) credits of CME in risk
management, medical error prevention as chosen by Respondent from the following pre-
approved and agreed upon CME courses, The Patient Safety Imperative- Harvard Medical
School, Joint Commission's Top 10 Sentinel Events: How to Prevent Fatal Errors, Lean Quality
Improvement: A Practical Approach, Medical Error Prevention and Root Cause Analysis- Net
CE, Risk Management- Net CE, Risk Management Rounds: Pathology- MedRisk, and/or any
related CME within one (1) year of the Board's order in this matter in addition to the annual
CME requirement.

2. **Jurisdiction.** Respondent was at all times mentioned in the First Amended
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 is represented by John Cotton, Esq. and
Christopher Rigler, Esq. in this matter. Respondent acknowledges and agrees that he enters into
this agreement knowingly, willingly and intelligently after full consultation with counsel.

4. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
Agreement knowingly, willingly, and intelligently with knowledge that he did 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 First Amended
Complaint filed herein, the defense of said First Amended Complaint and the adjudication of the
charges in said First Amended 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 First Amended 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 First Amended 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 First Amended Complaint and the allegations therein, any and
all evidence that may exist in support of the First Amended Complaint, and any and all
information of every nature whatsoever related to the underlying 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.

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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.

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 First Amended Complaint. The Investigative Committee hereby agrees to accept this Agreement in full settlement of all claims related to the First Amended Complaint, with the understanding that the final decision rests with the Board.

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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 21st day of October of 2010. Dated this 16th day of October, 2010.

By: [Signature]
Bradley O. Van Ry, Esq. 
Attorney for the Investigative Committee

By: [Signature]
John H. Cotton, Esq. 
Christopher Rigler, Esq. 
Attorneys for Respondent
Read and understood by:

By: James Unger, M.D.
Respondent
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 3rd day of December 2010, with the final total amount of costs due of $2,079.12.

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