

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

FILED

3 * * * * *

SEP 13 2010

4 **In The Matter of Charges and**)

5 **Complaint Against**)

6 **MICHAEL ROSENMAN, M.D.,**)

7 **Respondent.**)
8)
9)

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

Case No. 10-11476-1

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
12 the Nevada State Board of Medical Examiners (the Board) composed of Charles N. Held, M.D,
13 Chairman, Theodore B. Berndt, M.D., Member, and Valerie J. Clark, Member, by and through
14 undersigned counsel, Bradley O. Van Ry, Esq., and Michael Rosenman, M.D., (Respondent) as
15 follows:

16 **WHEREAS**, on April 15, 2010, the Board's IC filed a Complaint in the above referenced
17 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
18 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count of charging for
19 services which were not rendered, a violation of NRS §630.305(1)(d); and one count of engaging
20 in any conduct which is intended to deceive, a violation of
21 NRS §630.306(2)(a), and;

22 **WHEREAS**, Respondent denies that he charged for services which were not rendered or
23 that his conduct intended to deceive, and;

24 **WHEREAS**, Respondent does admit to a violation of NRS §630.3062(1) by failing to
25 maintain timely, legible, accurate and complete medical records related to the diagnosis of a
26 patient, and;

27 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands
28 it, and has been afforded the opportunity to consult with competent counsel, concerning the nature

1 and significance of the Complaint and Respondent is fully advised concerning his rights and
2 defenses to the complaint as well as the possible sanctions that may be imposed if the Board finds
3 and concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical
4 Practice Act and after due consideration and consultation with his counsel, concedes that his
5 conduct violated NRS §630.3062(1) of the Medical Practice Act as set forth above; and

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

11 **WHEREAS**, Respondent and the IC each understand and agree that if the Board approves
12 the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
13 enumerated below shall be binding and enforceable upon Respondent and the Board's IC; and

14 **NOW THEREFORE**, in order to resolve the above-captioned case and charge(s) brought
15 against Respondent by the Board's Investigative Committee in said matter, Respondent and the IC
16 hereby agree to the following terms, covenants and conditions:

17 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
18 proceedings pending against him without any further costs and expense of providing a defense to
19 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be
20 entered herein by the Board finding that Respondent engaged in conduct that is grounds for
21 discipline pursuant to the Medical Practice Act to wit: one count of failure to maintain timely,
22 legible, accurate and complete medical records, a violation of NRS §630.3062(1).

23 That the Board shall issue a public reprimand against Respondent, that Respondent shall
24 reimburse the Board the reasonable costs and expenses incurred in the investigation and
25 prosecution of this case, the current amount being \$2, 940.50 although this amount does not
26 include the further costs to be incurred by the Board to conclude the matter. Respondent agrees to
27 pay these additional costs in addition to the aforementioned amount. Respondent shall also pay a
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1 fine of \$2,500.00. The aforementioned costs and fine shall be paid to the Nevada State Board of
2 Medical Examiners within ninety (90) days of the acceptance of this Agreement by the Board;

3 2. **Jurisdiction.** Respondent was, at all times mentioned in the Complaint filed in the
4 above-captioned matter, a physician licensed in the state of Nevada subject to the jurisdiction of
5 the Board to hear and adjudicate charges of violations of the Medical Practice Act
6 (NRS 630 & NAC 630), and to impose sanctions as provided by the Act.

7 3. **Representation of Counsel.** Respondent is represented by Maria Nutile, Esq.
8 Respondent acknowledges and agrees that he enters into this agreement knowingly, willingly and
9 intelligently after full consultation with counsel.

10 4. **Waiver of Rights.** Respondent acknowledges, covenants and agrees that he enters
11 into this Agreement knowingly, willingly, and intelligently with knowledge that he may consult
12 with counsel prior to entering into this Agreement. In connection with this Agreement, and the
13 terms, covenants and conditions contained herein, Respondent knowingly, willingly and
14 intelligently, upon and with the advice of above identified counsel, waives all rights arising under
15 or pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter
16 630 and NRS Chapter 233B that may be available to Respondent or that may apply to Respondent
17 in connection with the proceeding regarding the Complaint filed herein, the defense of said
18 Complaint and the adjudication of the charges in said Complaint. Respondent further agrees that
19 the matter of the disciplinary action commenced by the filing of the complaint herein may be
20 settled and resolved in accordance with this Agreement without a hearing or any further proceeding
21 and without the right to judicial review.

22 In the event this Agreement is not approved by the Board, this Agreement shall have no
23 force and effect and Respondent shall have all rights arising under or pursuant to the United States
24 Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and
25 NRS Chapter 233B that may be available to Respondent or that may apply to Respondent in
26 connection with the related proceeding filed herein.

1 5. **Acknowledgement of Reasonable Basis to Proceed.** Respondent acknowledges,
2 covenants and agrees that the Board's IC has a reasonable basis to believe that Respondent violated
3 the Medical Practice Act.

4 6. **Procedure for Adoption of Agreement.** It is expressly understood that this
5 Agreement will only become effective if the Board approves the recommendation of the IC for
6 acceptance. The IC, and counsel for the IC, shall recommend approval of the terms, covenants
7 and conditions contained herein by the Board in resolution of the disciplinary proceedings
8 pending herein against Respondent pursuant to the complaint. In the course of seeking Board
9 approval of this Agreement, counsel for the IC may communicate directly with the Board staff
10 and members of the panel of the Board who would adjudicate this case if it were to go to
11 hearing. Respondent acknowledges, covenants and agrees that such contacts and communication
12 may be made or conducted ex parte, without notice or opportunity to be heard on his part or on
13 the part of his counsel, until the public Board meeting where this Agreement is discussed, and
14 that such contacts and communications may include, but not be limited to, matters concerning
15 this Agreement, the Complaint and the allegations therein, any and all evidence that may exist in
16 support of the Complaint, and any and all information of every nature whatsoever related to the
17 complaint against Respondent. The IC and its counsel agree that Respondent and his counsel
18 may appear at the Board meeting where this Agreement is discussed in order to respond to any
19 and all questions that may be addressed to the IC or its counsel at such meeting.

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

25 8. **Effect of Rejection of Agreement by Board.** In the event the Board does not
26 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be
27 null, void, and of no further force and effect except as to the following covenant and agreement
28 regarding disqualification of adjudicating Board panel members. Respondent agrees that,

1 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing
2 that occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this
3 Agreement by the Board shall disqualify any member of the adjudicating panel of the Board
4 from considering the charges against Respondent and participating in the disciplinary
5 proceedings in any role, including adjudication of the case, and Respondent further agrees that
6 he shall not seek to disqualify any such member absent evidence of bad faith.

7 9. **Release From Liability.** In execution of this Agreement, the Respondent, for
8 himself, his executors, successors and assigns, hereby releases and forever discharges the state
9 of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
10 employees in their representative capacities, and in their individual capacities absent evidence of
11 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,
12 executions, claims and demands whatsoever, known and unknown, in law or equity, that
13 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
14 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
15 action, this settlement or its administration, in connection with the complaint. The IC hereby
16 agrees to accept this Agreement in full settlement of all claims related to the complaint, with the
17 understanding that the final decision rests with the Board.

18 10. **Binding Effect.** Respondent acknowledges, covenants and agrees that this
19 Agreement is a binding and enforceable contract upon Respondent and the Board's IC, which
20 contract may be enforced in any court of law or tribunal having jurisdiction.

21 11. **Forum Selection Clause.** Respondent acknowledges, covenants and agrees that
22 in the event either party is required to seek enforcement of this Agreement in the district court,
23 he consents to such jurisdiction, and further acknowledges, covenants and agrees that exclusive
24 jurisdiction shall be in the Second Judicial District Court of the State of Nevada in and for the
25 County of Washoe.

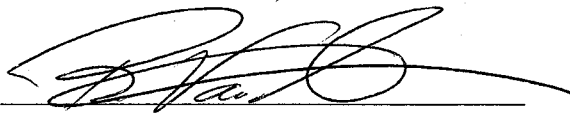
26 12. **Attorneys' Fees and Costs.** Respondent acknowledges, covenants and agrees
27 that in the event an action is commenced in the district court to enforce any provision of this
28 Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

1 13. **Failure to comply with terms.** In the event the Board enters its Order approving
2 this Agreement, should Respondent fail to comply with the terms recited herein, the Board
3 would then have grounds, after notice and a hearing, to take disciplinary action against
4 Respondent in addition to that included herein for Respondent's violation of an Order of the
5 Board in accordance with NRS §630.3065(2)(a). Moreover, the failure of Respondent to
6 reimburse the Board for monies agreed to be paid as a condition of settlement may subject
7 Respondent to civil collection efforts.

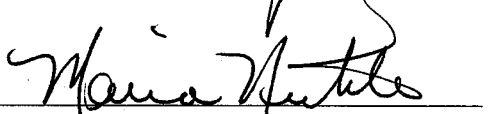
8 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in
9 such legal action as determined to be necessary to collect the unpaid fine, fee, or cost.

10 Dated this 2nd day July of 2010.

Dated this 30th day of June, 2010.

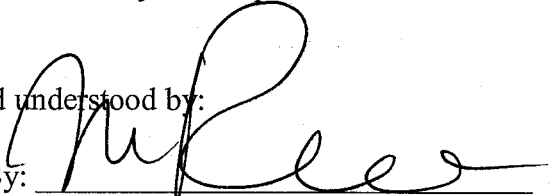
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12 By: 

13 Bradley O. Van Ry, Esq.
14 Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners

15 By: 

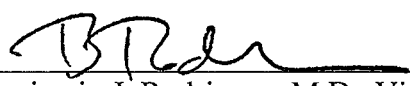
16 Maria Nutile, Esq.
17 Attorney for Respondent

18 Read and understood by:

19 By: 

20 Michael Rosenman, M.D.
21 Respondent
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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 10th day of
3 September, 2010, with the final total amount of costs due of \$2,940.50.

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

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