

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
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(775) 688-2559

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

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**In The Matter of Charges and)
Complaint Against)
ERNESTO RUBIO, M.D.,)
Respondent.)**

Case No. 09-11658-1

FILED

MAR 14 2011

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., Valerie J. Clark, BSN, RHU, LUTCF, and Theodore B. Berndt, M.D., by and through Edward O. Cousineau, Deputy Executive Director for the Board and counsel for the IC, and Ernesto Rubio, M.D., (Respondent), through his counsel of record, Jonathan D. Ballard, Esq., as follows:

WHEREAS, on September 8, 2009, 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 malpractice, a violation of NRS 630.301(4); and

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands it, and has consulted with competent counsel Jonathan D. Ballard, 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

1 Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B)
2 including but not limited to the right to a formal hearing on the charges against him, the right to
3 representation by counsel in the preparation and presentation of his defense, the right to
4 confrontation and cross-examination of witnesses against him, the right to present evidence and
5 witnesses on his own behalf, the right to written findings, conclusions and order regarding a final
6 decision by the Board, and the right to judicial review of any final decision by the Board that is
7 adverse to him; and

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

14 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and
15 between himself and the Board's IC, and not with the Board, but that the IC will present this
16 Agreement to the Board for consideration in open session at a regular meeting duly noticed and
17 scheduled, and that the IC shall advocate approval of this Agreement by the Board, but that the
18 Board has the right to decide in its own discretion whether or not to approve this Agreement; and

19 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
20 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
21 below shall be binding and enforceable upon him, and

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

1 **NOW THEREFORE**, in order to resolve Case No. 09-11658-1 and charges alleged by the
2 Board's IC in the above captioned matter, Respondent and the IC hereby agree to the following
3 terms, covenants and conditions:

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

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

12 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and
13 conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of
14 above identified counsel, waives all rights arising under or pursuant to the United States
15 Constitution, the Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that
16 may be available to him or that may apply to him in connection with the proceeding on the
17 Complaint filed herein, the defense of said Complaint and the adjudication of the charges in said
18 Complaint, and Respondent further agrees that the matter of the Complaint herein may be settled
19 and resolved in accordance with this Agreement without a hearing or any further proceeding, and
20 without the right to judicial review. In the event this Agreement is not approved by the Board, this
21 Agreement shall have no force and effect and Respondent shall have all rights arising under or
22 pursuant to the United States Constitution, the Constitution of the State of Nevada, NRS Chapter
23 630 and NRS Chapter 233B that may be available to him or that may apply to him in connection
24 with the proceeding on the Complaint filed herein.

25 4. **No Admission of Liability** This Agreement is neither an admission of liability
26 by Respondent nor a concession by the IC that its claims as alleged in the underlying complaint
27 are not well founded.
28

1 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
2 proceedings pending against him to avoid the delay, uncertainty, inconvenience, and expense of
3 litigation of the underlying claims by the IC, the parties agree and Respondent does not contest
4 that an order may be entered herein by the Board finding that the underlying complaint,
5 Case No. 09-11658-1, is to be dismissed with prejudice and that the Board will be paid
6 \$3,519.97, as reimbursement of costs and fees incurred in the investigation and associated
7 prosecution of the matter. Further, reimbursement of the costs and fees are to be paid to the Board
8 within sixty (60) days of acceptance, adoption and approval of this Agreement by the Board. The
9 settlement shall not be disclosed by the Board to the National Practitioner's Data Bank.

10 6. **Release From Liability.** In execution of this Settlement Agreement, the
11 Respondent, for himself, his executors, successors and assigns, hereby releases and forever
12 discharges the state of Nevada, the Board, the Nevada Attorney General, and each of their
13 members, agents and employees in their representative capacities, and in their individual
14 capacities, from any and all manner of actions, causes of action, suits, debts, judgments,
15 executions, claims and demands whatsoever, known and unknown, in law or equity, that
16 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
17 entities named in this paragraph arising out of or by reason of this investigation, this settlement
18 or its administration.

19 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
20 recommend approval and adoption of the terms, covenants and conditions contained herein by
21 the Board in resolution of the Complaint pending herein against Respondent. In the course of
22 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
23 communicate directly with the Board staff and members of the panel of the Board who would
24 adjudicate this case if it were to go to hearing. Respondent acknowledges that such contacts and
25 communication may be made or conducted ex parte, without notice or opportunity to be heard on
26 his part or on the part of his counsel until the public Board meeting where this Agreement is
27 discussed, and that such contacts and communications may include, but not be limited to, matters
28 concerning this Agreement, the Complaint, and any and all information of every nature

1 whatsoever related to the Complaint or the proceedings herein against Respondent. The IC and
2 its counsel agree that Respondent and his counsel may appear at the Board meeting where this
3 Agreement is discussed, and if requested, to respond to any questions that may be addressed to
4 the IC or its counsel.

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

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

21 10. **Binding Effect.** Providing this Agreement is approved by the Board, Respondent
22 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
23 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

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

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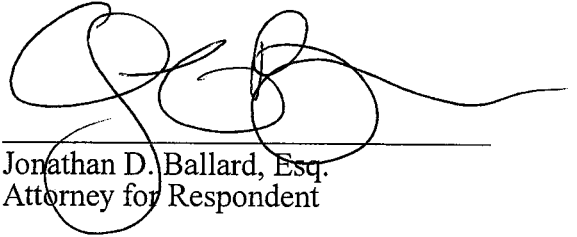
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12. Attorneys Fees and Costs. Respondent covenants and agrees that in the event an action is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys'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

Dated this 31st day of January, 2011.



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



Jonathan D. Ballard, Esq.
Attorney for Respondent

I, Ernesto Rubio, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to the complaint in Nevada State Board of Medical Examiners Case No. 09-11658-1.

Dated this 19 day of January, 2011.



Ernesto Rubio, M.D., 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 11th day of
3 March 2011, with the final total amount of costs due of \$3,519.97.

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