

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

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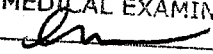
4 **In The Matter of Charges and**)
5 **Complaint Against**)
6 **GARY ROBERTS, C.R.T.,**)
7 **Respondent.**)
8)
9)

Case No. 11-23980-1

FILED

DEC - 5 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

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
13 Theodore B. Berndt, M.D. and Ms. Valerie Clark, BSN, RHU, LUTCF, and
14 Michael J. Fischer, M.D., by and through counsel, Lyn E. Beggs, Esq., and Gary Roberts, C.R.T.
15 (Respondent), as follows:

16 **WHEREAS**, on August 22, 2011, the Board's IC an Order of Summary Suspension,
17 suspending Respondent's license to practice respiratory therapy in Nevada and on
18 August 26, 2011 filed a Complaint in the above referenced matter charging Respondent with
19 engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act
20 (NRS Chapter 630 and NAC Chapter 630) to wit: one count of rendering respiratory care to a
21 patient while under the influence of alcohol or any controlled substance, as more fully set forth in
22 Count I of the Complaint and one count inability to practice to respiratory care with reasonable
23 skill and safety because of use of narcotics, as more fully set forth in Count II of the complaint;

24 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands
25 the nature and significance of the Complaint and is fully advised concerning his rights and
26 defenses to the Complaint as well as the possible sanctions that may be imposed if the Board finds
27 and concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical

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1 Practice Act and after due consideration concedes that he engaged in the conduct set forth in
2 counts I and II of the Complaint; and

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

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

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

16 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
17 proceedings pending against him without any further costs and expense of providing a defense to
18 the Complaint or to any other amended complaints, Respondent hereby agrees that an order may be
19 entered herein by the Board finding that Respondent engaged in conduct that is grounds for
20 discipline pursuant to the Medical Practice Act to wit: one count of rendering respiratory care to a
21 patient while under the influence of alcohol or narcotics and one count of inability to practice
22 respiratory care with reasonable skill and safety because of the use of narcotics as set forth in
23 counts I and II Complaint; and ordering that Respondent's license to practice respiratory care be
24 revoked. Said revocation to be stayed and Respondent to be placed on probation for a period of
25 sixty (60) months with the following terms and conditions:

26 a) Respondent's license shall be suspended for a period of one-hundred-twenty days, said
27 suspension running from the date of the summary suspension of Respondent's license on

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1 August 22, 2011. Said summary suspension shall be lifted and Respondent's license to practice
2 reinstated to the appropriate licensing status on December 19, 2011;

3 b) Respondent shall complete his contract with the PRN-PRN program through Monte
4 Vista Hospital and shall comply with all terms of his contract;

5 c) Respondent shall sign all necessary releases with the PRN-PRN program for the Board
6 to access his records from the PRN-PRN program and any other releases necessary to monitor
7 Respondent's treatment;

8 d) Respondent shall submit to any additional random hair or urine screens as required by
9 the Board and shall be responsible for any costs associated with the required tests;

10 e) Respondent shall provide the Compliance Officer of the Nevada State Board of Medical
11 Examiners with the best and most expeditious manner of contacting him;

12 f) Respondent shall notify any employer of the terms of his probation;

13 g) Respondent shall notify the Compliance Officer of where he will be practicing
14 respiratory care at least forty-eight (48) hours prior to starting to practice;

15 h) Respondent shall notify the Compliance Officer of any change of his address within
16 forty-eight (48) hours;

17 i) Respondent shall pay any costs associated with monitoring of his compliance with these
18 terms of probation. Respondent shall remit to the Nevada State Board of Medical Examiners such
19 costs within thirty (30) days of being presented with an invoice for said compliance costs;

20 j) Respondent shall reimburse the Board the reasonable costs and expenses incurred in the
21 investigation and prosecution of this case, the current amount being \$958.56 These costs shall be
22 paid to the Nevada State Board of Medical Examiners within six months of the acceptance of
23 this Agreement by the Board;

24 k) Any violation of the terms of his contract with the PRN-PRN program or a positive
25 drug screen for any controlled substance or dangerous drug that Respondent does not hold a
26 valid prescription for shall result in the immediate suspension of his license pending proceedings
27 to determine whether or not to impose the stayed revocation of licensure.

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

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

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

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

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

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

24 8. Effect of Rejection of Agreement by Board. In the event the Board does not
25 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be
26 null, void, and of no further force and effect except as to the following covenant and agreement
27 regarding disqualification of adjudicating Board panel members. Respondent agrees that,
28 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing

1 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance
2 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating
3 panel of the Board from considering the charges against Respondent and participating in the
4 disciplinary proceedings in any role, including adjudication of the case, and Respondent further
5 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

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

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

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

27 13. **Failure to comply with terms.** In the event the Board enters its Order approving
28 this Agreement, upon receipt of credible information that Respondent has failed to comply with

1 any term or condition of this Order, the Board may seek to impose the stayed revocation of
2 Respondent's license to practice respiratory care. Failure to comply with the terms recited herein
3 may result in additional disciplinary action being initiated against Respondent for a violation of
4 an Order of the Board in accordance with NRS 630.3065(2)(a). Furthermore, any failure to pay
5 any fine, fee, or cost ordered herein will also result in such legal action as determined to be
6 necessary to collect the unpaid fine, fee, or cost.

7 Dated this 31st day of October of 2011.

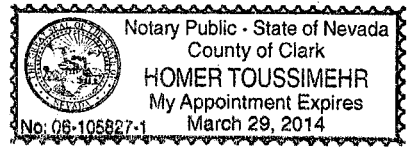
Dated this 27 day of October, 2011.

8 By: [Signature]
9 Lyn E. Beggs, Esq.
Attorney for the Investigative Committee

By: [Signature]
Gary Roberts, C.R.T.
Respondent

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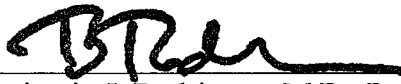
Subscribed and sworn to before me



This 27 day of OCTOBER 2011

[Signature]
Notary Public

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 2nd day of December
3 2011, with the final total amount of costs due of \$958.56.

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