BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In The Matter of Charges and
Complaint Against
GARY ROBERTS, C.R.T.,
Respondent.

Case No. 11-23980-1

FILED
DEC - 5 2011
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

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

WHEREAS, on August 22, 2011, the Board’s IC an Order of Summary Suspension,
suspending Respondent’s license to practice respiratory therapy in Nevada and on
August 26, 2011 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 rendering respiratory care to a
patient while under the influence of alcohol or any controlled substance, as more fully set forth in
Count I of the Complaint and one count inability to practice to respiratory care with reasonable
skill and safety because of use of narcotics, as more fully set forth in Count II of the complaint;

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

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Practice Act and after due consideration concedes that he engaged in the conduct set forth in
counts I and II 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 other 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 rendering respiratory care to a
patient while under the influence of alcohol or narcotics and one count of inability to practice
respiratory care with reasonable skill and safety because of the use of narcotics as set forth in
counts I and II Complaint; and ordering that Respondent’s license to practice respiratory care be
revoked. Said revocation to be stayed and Respondent to be placed on probation for a period of
sixty (60) months with the following terms and conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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2. **Jurisdiction.** Respondent was at all times mentioned in the Complaint filed in the above-captioned matter was, a respiratory therapist licensed to practice respiratory care 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.

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 may seek to impose the stayed revocation of
Respondent's license to practice respiratory care. 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 31st day of October, 2011.

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

Dated this 27th day of October, 2011.

By: Gary Roberts, C.R.T.
   Respondent

Subscribed and sworn to before me

This 27th day of October, 2011.

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

[Signature]

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