

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

6 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
7 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
8 below shall be binding and enforceable upon him; and,

9 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the
10 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
11 enumerated below shall not be binding and enforceable upon him except the provisions as to
12 disqualification of adjudicating panel members in paragraph number 8, and he will be provided
13 with an opportunity to defend himself against the charges against him as alleged in the formal
14 Complaint at a regularly scheduled hearing in accordance with all applicable laws; and,

15 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
16 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
17 terms, covenants and conditions:

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

22 2. **Representation by Counsel/ Knowing, Willing and Intelligent Agreement.**

23 Respondent is represented by Tracy A. DiFillippo, Esq. in this matter and has had ample
24 opportunity to review this agreement, the formal Complaint filed in this matter and related factual
25 basis with said legal counsel. Respondent further covenants and agrees that he enters into this
26 Agreement knowingly, willingly, and intelligently.

27
28

1 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
2 and conditions contained herein, and the understanding that Respondent knowingly, willingly and
3 intelligently, waives all rights arising under or pursuant to the United States Constitution, the
4 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory
5 rights that may be available to him or that may apply to him in connection with the proceeding on
6 the formal Complaint filed herein, the defense of said formal Complaint and the adjudication of
7 the charges in said formal Complaint, and Respondent further agrees that the matter of the formal
8 Complaint herein may be settled and resolved in accordance with this Agreement without a
9 hearing or any further proceeding, and without the right to judicial review. In the event this
10 Agreement is not approved by the Board, this Agreement shall have no force and effect and shall
11 be *void ab initio*, and Respondent shall have all rights arising under or pursuant to the
12 United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630,
13 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply
14 to him in connection with the proceeding on the formal Complaint filed herein.

15 **4. Consent to Entry of Order.** Respondent is aware that the trier of fact, the Board,
16 may find a factual basis in support of the formal Complaint against Respondent. Accordingly, in
17 order to resolve the matter without incurring further costs and expense of providing a defense to
18 the formal Complaint or to any other further amended complaint, and in exchange for the waiver
19 of the Respondent's foregoing rights, Respondent has entered into this Agreement, and agrees:

20 a. The Board may find that Respondent has engaged in conduct that is grounds
21 for discipline pursuant to the Medical Practice Act, to wit: a violation of NRS Section 630.301(4)
22 by failing to document intraoperative complications and communicate the fact of the intraoperative
23 complications to Patient A; and a violation of NRS Section 630.301(9) by the same aforementioned
24 omissions relating to the diagnosis, treatment and care of Patient A; and,

25 b. Pursuant to NRS §622.400, Respondent shall pay the sum of \$1,394.93, the
26 current amount of the costs incurred by the Board to investigate and prosecute this matter, along
27 with the costs to conclude the matter, if any. The costs shall be paid to the Nevada State Board of
28

1 Medical Examiners within thirty (30) days of the Board's acceptance and approval of this
2 Agreement; and,

3 c. The Board shall issue a public reprimand; and,

4 d. Respondent shall pay a fine of \$5,000.00 for each violation for a total of
5 \$10,000.00 within thirty (30) days of the Board's acceptance and approval of this Agreement; and,

6 e. Respondent shall attend and participate in ten (10) hours of CME total. Six
7 (6) hours of the CME shall be in IOL transplants and four (4) hours shall be in any combination of
8 medical ethics and/or record keeping. All these CMEs shall be in addition to the normal CME
9 requirements and in person. Respondent's attendance and participation in the ordered CME is to
10 be accomplished within one (1) year of the entry of this Agreement, and Respondent is to provide
11 proof of attendance and participation to the Board; and,

12 f. Count III of the Complaint shall be dismissed; and,

13 g. The terms of this Agreement may be reported as allowed by law.

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

22 6. **Procedure of Adoption of Agreement.** The IC and counsel for the IC shall
23 recommend approval and adoption of the terms, covenants and conditions contained herein by the
24 Board in resolution of the formal Complaint pending herein against Respondent. In the course of
25 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
26 communicate directly with the Board staff and members of the panel of the Board who would
27 adjudicate this case if it were to go to hearing.

28

1 Respondent acknowledges that such contacts and communication may be made or
2 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
3 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
4 and communications may include, but not be limited to, matters concerning this Agreement, the
5 formal Complaint, and any and all information of every nature whatsoever related to the formal
6 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
7 Respondent and/or his counsel, if any, may appear at the Board meeting where this Agreement is
8 discussed, and if requested, to respond to any questions that may be addressed to the IC or its
9 counsel.

10 7. Effect of Acceptance of Agreement by Board. In the event the Board approves,
11 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
12 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
13 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
14 ordering that this case be closed.

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

25 9. Binding Effect. Providing this Agreement is approved by the Board, Respondent
26 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
27 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

28

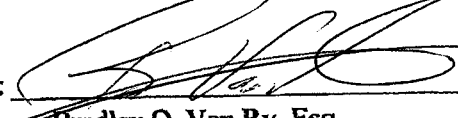
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


10. 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, Washoe County.

11. 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 15th day of August of 2011.

Dated this 29th day of June, 2011.

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

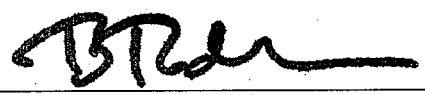
By: 
Tracy A. DiFillippo, Esq.
Attorney for Respondent

Read and understood by:

Dated this 29th day of June, 2011.

By: 
Kenneth Cecil Westfield, M.D.

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 9th day of
3 September 2011, with the final total amount of costs due of \$1,394.93.

4 

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28