

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

3 \* \* \* \* \*

**FILED**

MAR 14 2011

4 **In The Matter of Charges and** )  
5 )  
6 **Complaint Against** )  
7 )  
8 **SEAN BEATY, M.D.,** )  
9 **Respondent.** )  
10 \_\_\_\_\_ )

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

Case No. 10-31729-1

11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is entered into by and between the Investigative Committee of the  
13 Nevada State Board of Medical Examiners (the Board) composed of Benjamin J. Rodriguez, M.D,  
14 Chairman, Van V. Heffner, Member, and Beverly A Neyland, M.D., Member, by and through  
15 Deputy General Counsel of the Investigative Committee, Bradley O. Van Ry, Esq., and  
16 Sean Beaty, M.D., (Respondent), as follows:

17 **WHEREAS**, on May 17, 2010, the Board's Investigative Committee filed a Complaint in  
18 the above referenced matter charging Respondent with engaging in conduct that is grounds for  
19 discipline pursuant to the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit:  
20 one count of malpractice, a violation of NAC §630.380(1)(f); and

21 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands  
22 it, and has had the opportunity to consult with legal counsel of his choosing, concerning the nature  
23 and significance of the Complaint and Respondent is fully advised concerning his rights and  
24 defenses to the complaint as well as the possible sanctions that may be imposed if the Board finds  
25 and concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical  
26 Practice Act and after due consideration and consultation with legal counsel of his choice,  
27 concedes that his care of the patient at issue fell below the standard of care and accordingly  
28 constitutes malpractice as set forth in count I of the Complaint; and

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

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

11           **NOW THEREFORE**, in order to resolve the above-captioned case and charge(s) brought  
12 against Respondent by the Board’s Investigative Committee in said matter, Respondent and the  
13 Investigative Committee hereby agree to the following terms, covenants and conditions:

14           1.       **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
15 proceedings pending against him without any further costs and expense of providing a defense to  
16 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be  
17 entered herein by the Board finding that Respondent engaged in conduct that is grounds for  
18 discipline pursuant to the Medical Practice Act to wit: one count of malpractice as set forth in  
19 count I of the Complaint, a violation of NAC §630.301(4) and NAC 630.040;

20           That Respondent be issued a public reprimand; that Respondent be ordered to reimburse  
21 the Board the reasonable costs and expenses incurred in the investigation and prosecution of this  
22 case, the current amount being \$2,122.12 to be paid to the Nevada State Board of Medical  
23 Examiners within sixty (60) days of the acceptance, adoption and approval of this Agreement by  
24 the Board; that Respondent further be ordered to complete six (6) credits of continuing medical  
25 education (CME) regarding the management of barium enemas following endoscopy and  
26 colonoscopy. The CME course(s) are to be pre-approved by the Board, the Investigative  
27 Committee and/or its staff and to be completed within twelve (12) months of the adoption and  
28

1 approval of this Agreement by the Board. Said CMEs shall be in addition to any other continuing  
2 medical education required as a condition of licensure.

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

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

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

27 5. **Procedure for Adoption of Agreement.** It is expressly understood that this  
28 Agreement will only become effective if the Board approves the recommendation of the

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

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

22         7.         **Effect of Rejection of Agreement by Board.** In the event the Board does not  
23 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be  
24 null, void, and of no further force and effect except as to the following covenant and agreement  
25 regarding disqualification of adjudicating Board panel members. Respondent agrees that,  
26 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing  
27 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance  
28 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating

1 panel of the Board from considering the charges against Respondent and participating in the  
2 disciplinary proceedings in any role, including adjudication of the case, and Respondent further  
3 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

15 9. **Binding Effect.** Respondent acknowledges covenants and agrees that this  
16 Agreement is a binding and enforceable contract upon Respondent and the Board's Investigative  
17 Committee, which contract may be enforced in any court of law or tribunal having jurisdiction.

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

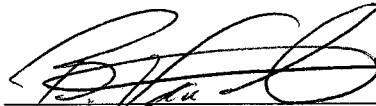
23 11. **Attorneys' Fees and Costs.** Respondent acknowledges, covenants and agrees  
24 that in the event an action is commenced in the district court to enforce any provision of this  
25 Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

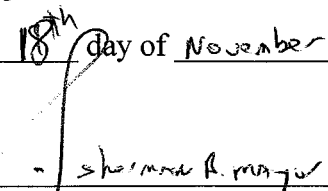
26 12. **Failure to comply with terms.** In the event the Board enters its Order approving  
27 this Agreement, should Respondent fail to comply with the terms recited herein, the Board  
28 would then have grounds, after notice and a hearing, to take disciplinary action against

1 Respondent in addition to that included herein for Respondent's violation of an Order of the  
2 Board in accordance with NRS §630.3065(2)(a). Moreover, the failure of Respondent to  
3 reimburse the Board for monies agreed to be paid as a condition of settlement may subject  
4 Respondent to civil collection efforts.

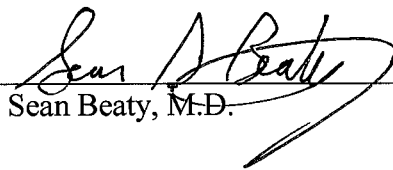
5 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in  
6 such legal action as determined to be necessary to collect the unpaid fine, fee, or cost.

7 Dated this 27<sup>th</sup> day of November of 2010. Dated this 18<sup>th</sup> day of November, 2010.

8  
9 By:   
10 \_\_\_\_\_  
11 Bradley O. Van Ry, Esq.  
12 Attorney for the Investigative Committee

By:   
13 \_\_\_\_\_  
14 Sherman B. Mayor, Esq.  
15 Attorney for Respondent

16 Read and understood by:

17  
18 By:   
19 \_\_\_\_\_  
20 Sean Beaty, M.D.

21  
22  
23  
24  
25  
26  
27  
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

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 11<sup>th</sup> day of March 2011, with the final total amount of costs due of \$2,122.12.

  
\_\_\_\_\_  
Charles N. Held, M.D., President  
NEVADA STATE BOARD OF MEDICAL EXAMINERS