

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

3 \* \* \* \* \*

4  
5 In The Matter of Charges and )  
6 )  
7 Complaint Against )  
8 )  
9 **RONALD H. FOOTE, M.D.,** )  
10 )  
11 Respondent. )  
12 \_\_\_\_\_)

Case No. 11-12899-1

**FILED**

**MAR 14 2011**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

13 **SETTLEMENT AGREEMENT**

14 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of  
15 the Nevada State Board of Medical Examiners (Board), composed of Charles N. Held, M.D.,  
16 Valerie J. Clark, BSN, RHU, LUTCF, and Theodore B. Berndt, M.D., by and through  
17 Edward Cousineau, Deputy Executive Director for the Board and counsel for the IC, and  
18 Ronald H. Foote, M.D. (Respondent), by and through his counsel, L. Kristopher Rath, Esq., as  
19 follows:

20 **WHEREAS**, on or about March 31, 2006, the Board entered a Findings of Fact,  
21 Conclusions of Law and Order, wherein it found Respondent in violation of Nevada Revised Statute  
22 (NRS) 630.301(9), and one of the resultant terms of the Order was that Respondent was to continue,  
23 remain compliant, and complete his participation in the Board recognized diversion program he was  
24 enrolled in at the time of the entry of the Findings of Fact, Conclusions of Law and Order, and that  
25 the obligations thereto were to be effective until June 16, 2010; and

26 **WHEREAS**, on or about August 7, 2009, the Board adopted the terms of stipulated  
27 Settlement Agreement which found Respondent in violation of NRS 630.304(1), and one of the  
28 stipulated terms called for Respondent's medical license to be suspended for one year, with that  
suspension stayed, and with probationary terms which included that Respondent shall obey all laws  
and regulations during the stayed suspension; and

1           **WHEREAS**, on or about March 27, 2010, Respondent engaged in conduct which is deemed  
2 to have violated the agreed terms of the previously mentioned Order and Settlement Agreement.

3           **WHEREAS**, Respondent understands and agrees that he has certain rights under the United  
4 States Constitution and the Constitution of the State of Nevada, as well as under the Medical  
5 Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter  
6 233B), including but not limited to the right to a formal hearing on the charges against him the right  
7 to representation by counsel in the preparation and presentation of his defense, the right to  
8 confrontation and cross-examination of witnesses against him, the right to written findings,  
9 conclusions and order regarding a final decision by the Board, and the right to judicial review of any  
10 final decision by the Board that is adverse to him; and

11           **WHEREAS**, Respondent, based on his understanding of the relevant facts and  
12 circumstances, and subject to the conditions set forth in this Agreement, desires to waive all of his  
13 rights under the United States Constitution, the Constitution of the State of Nevada, the Medical  
14 Practice Act and the Nevada Administrative Procedures Act, including but not limited to the right to  
15 a hearing on the charges and written findings of fact, conclusions of law and order, and he desires to  
16 settle and resolve the matter of the formal complaint against him by way of and in accordance with  
17 this Settlement, Waiver and Consent Agreement; and

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

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

26           **WHEREAS**, Respondent understands and agrees that, if the Board does not approve the  
27 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions  
28 enumerated below shall not be binding and enforceable upon him except the provisions as to

1 disqualification of adjudicating panel members in paragraph number 9, and he will be provided  
2 with an opportunity to defend himself against the charges against him at a regularly scheduled  
3 hearing in accordance with all applicable laws.

4 **NOW THEREFORE**, in order to resolve the pending complaint and charges brought  
5 against him by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to  
6 the following terms, covenants and conditions:

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

11 2. **Representation by Counsel.** Respondent is represented by counsel herein, whom  
12 Respondent covenants and agrees is fully capable, competent and fully advised in these  
13 circumstances and Respondent further covenants and agrees that he enters into this Agreement  
14 knowingly, willingly, and intelligently after full consultation with and upon the advice of counsel.

15 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and  
16 conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of  
17 above-identified counsel, waives all rights arising under or pursuant to the United States  
18 Constitution, the Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that  
19 may be available to him or that may apply to him in connection with the proceeding on the  
20 complaint filed herein, the defense of said complaint, the adjudication of the charges in said  
21 complaint and the imposition of sanctions, and Respondent further agrees that the matter of the  
22 disciplinary action commenced by complaint herein may be settled and resolved in accordance with  
23 this Agreement without a hearing or any further proceeding and without the right to judicial review.

24 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and  
25 agrees that the Board's IC had a reasonable basis to believe that Respondent engaged in one or more  
26 instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice  
27 Act. All admissions made by Respondent are solely for final disposition of this matter and any  
28 subsequent related administrative proceedings or civil litigation involving the Board and

1 Respondent. Therefore, said admissions by Respondent are not intended or made for any other  
2 use, such as in the context of another state or federal government regulatory agency proceeding,  
3 state or federal civil or criminal court proceeding, or any other state or federal court. Should the  
4 Board not approve this agreement, Respondent reserves the right to fully defend against the  
5 allegations in the complaint at a formal hearing. Respondent fully reserves his rights to defend  
6 against the allegations in the complaint, should they be raised in any subsequent civil suit to  
7 which the Board is not a party.

8 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
9 proceedings pending against him without any further costs and expense of providing a defense to the  
10 complaint, Respondent hereby agrees, and does not contest, for the sole purpose of this settlement  
11 agreement, that an order may be entered herein by the Board against him finding that Respondent  
12 failed to comply with an order of the Board in two instances, and that both instances were in  
13 violation of NRS 630.3065(2)(a),

14 For the aforementioned violations, Respondent shall:

15 (1) Receive a public reprimand;

16 (2) Pay a fine in the amount of \$2,000.00;

17 (3) Allow his license to be revoked, with that revocation stayed and that Respondent shall be  
18 placed on probation with an obligation to comply with the following terms and conditions:

19 (a) That Respondent agrees to continue, remain compliant, and complete his  
20 participation in the Board recognized diversion program he is currently enrolled in until he is  
21 cleared to exit such program by the NPHP or its successor entity.

22 (b) That Respondent will be responsible for any costs involved in on-going  
23 compliance oversight by the Board and shall reimburse the Board within thirty (30) days of a  
24 request for reimbursement of the same.

25 (4) Pay the costs and expenses incurred in the investigation and prosecution of this case, the  
26 current amount being \$1,328.73. This amount does not include any further costs that may be  
27 incurred by the Board to conclude adjudication of the matter. Respondent agrees to pay the  
28

1   aforementioned fine and costs, within one-hundred and twenty (120) days of the approval and  
2   adoption of this Agreement.

3           (5) On successful completion of the foregoing requirements, Dr. Foote shall be removed  
4   from probation, his license restored to good standing, and his revocation shall be rescinded. The  
5   Board shall issue an order to this effect when the circumstances warrant.

6           6.    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 of  
8   Nevada, the Board, the Nevada Attorney General, and each of their members, agents and  
9   employees in their individual and representative capacities, from any and all manner of actions,  
10   causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and  
11   unknown, in law or equity, that Respondent ever had, now has, may have or claim to have,  
12   against any or all of the persons or entities named in this paragraph arising out of or by reason of  
13   this investigation, this disciplinary action, this settlement or its administration.

14          7.    Procedure for Adoption of Agreement. The IC and counsel for the IC shall  
15   recommend approval and adoption of the terms, covenants and conditions contained herein by  
16   the Board in resolution of the disciplinary proceedings pending herein against Respondent  
17   pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or  
18   acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff  
19   and members of the panel of the Board that would adjudicate this case if it were to go to hearing.  
20   Respondent covenants and agrees that such contacts and communication may be made or  
21   conducted ex parte, without notice or opportunity to be heard on his part or on the part of his  
22   counsel, and that such contacts and communications may include, but not be limited to, matters  
23   concerning this Agreement, the complaint, the allegations in the complaint any and all evidence  
24   that may exist in support of the complaint, and any and all information of every nature  
25   whatsoever related to the complaint or the proceedings herein against Respondent.

26          8.    Effect of Acceptance of Agreement by Board. In the event the Board approves,  
27   accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will  
28   enter herein an order consistent with the terms noted in paragraph 5 above.

1           9.     Effect of Rejection of Agreement by Board. In the event the Board does not  
2 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this  
3 Agreement shall be null, void and of no further force and effect except as to the following  
4 covenant and agreement regarding disqualification of adjudicating Board panel members.  
5 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing  
6 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek  
7 acceptance and adoption of this Agreement by the Board shall disqualify any member of the  
8 adjudicating panel of the Board from considering the charges against Respondent and  
9 participating in the disciplinary proceedings in any role, and Respondent further agrees that he  
10 shall not seek to disqualify any such member.

11           10.    Binding Effect. Respondent covenants and agrees that this Agreement is a  
12 binding and enforceable contract upon Respondent and the Board's IC, which contract may be  
13 enforced in a court or tribunal having jurisdiction. Additionally, upon receipt of credible  
14 information that Respondent has failed to comply with any term or condition of the  
15 aforementioned order, the Board shall be authorized to immediately suspend Respondent's  
16 license to practice medicine. The Board acknowledges and Respondent recognizes that he would  
17 still maintain all statutory and regulatory due process rights available to him after the suspension  
18 except that the suspension shall not be considered to be a summary suspension subject to the  
19 provisions of either NRS 233B.170 or 630.326. Further, failure to comply with the terms recited  
20 herein could result in additional disciplinary action being initiated against Respondent for a  
21 violation of an Order of the Board in accordance with NRS 630.3065(2)(a). And, any failure to  
22 pay any fine, fee, or cost ordered herein may also result in such legal action as determined to be  
23 necessary to collect the unpaid fine, fee, or cost.

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 to  
26 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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OFFICE OF THE GENERAL COUNSEL  
Nevada State Board of Medical Examiners  
1105 Terminal Way #301  
Reno, Nevada 89502  
(775) 688-2559

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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 reasonable costs and attorneys' fees.

Dated this 3<sup>rd</sup> day of March, 2011. Dated this 23<sup>rd</sup> day of Feb., 2011.

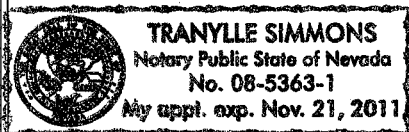
By: [Signature]  
Edward O. Cousineau  
Attorney for the Investigative Committee  
of the Nevada State Board of Medical Examiners

By: [Signature]  
L. Kristopher Rath, Esq.  
Attorney for Respondent

UNDERSTOOD AND AGREED:

[Signature]  
Ronald H. Foote, M.D., Respondent

Dated this 23 day of Feb, 2011.

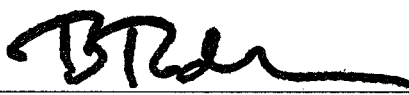


Subscribed and sworn to before me  
this 23 day of February, 2010

[Signature]  
Notary Public

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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 \$1,328.73.



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