

1 nature and significance of the formal Complaint. Respondent is fully aware concerning his rights
2 and defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the
3 Board finds and concludes that he violated one or more provisions of the
4 MPA, and after due consideration, concedes that he engaged in conduct which is in violation of
5 the MPA as set forth in Count I;

6 **WHEREAS**, Respondent understands and agrees that this Settlement, Waiver and Consent
7 Agreement (Agreement) is entered into by and between himself and the Board's IC, and not with
8 the Board, but that the IC will present this Agreement to the Board for consideration in open
9 session at a meeting duly noticed and scheduled. Respondent understands that the IC shall
10 advocate approval of this Agreement by the Board, but that the Board has the right to decide in its
11 own discretion whether or not to approve this Agreement; and

12 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
13 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
14 below shall be binding and enforceable upon him.

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 MPA, and to impose sanctions as provided by the MPA.

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

23 Respondent acknowledges that he is not represented by counsel and wishes to proceed
24 towards a resolution of this matter, as set forth in this Agreement, without counsel. Respondent
25 understands and acknowledges that he may retain and consult counsel prior to entering into this
26 Agreement. Respondent agrees that if counsel is retained for representation in this matter prior to
27 entering into this Agreement, that counsel for the IC will be informed of such representation prior
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1 to Respondent executing this Agreement. Respondent covenants and agrees that he enters into
2 this Agreement knowingly, willingly and intelligently.

3 **3. Waiver of Rights.** Respondent waives all rights in connection with this
4 Agreement, and the terms, covenants and conditions contained herein, and with the understanding
5 that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant
6 to the United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter
7 233B, and any other statutory rights that may be available to him or that may apply to him in
8 connection with the proceedings on the formal Complaint filed herein, the defense of said formal
9 Complaint and the adjudication of the charges in said formal Complaint.

10 Respondent agrees that the matter of the formal Complaint herein may be settled and
11 resolved in accordance with this Agreement without a hearing or any further proceedings, and
12 without the right to judicial review. In the event this Agreement is not approved by the Board,
13 this Agreement shall have no force and effect and shall be *void ab initio*, and Respondent shall
14 have all rights arising under or pursuant to the United States Constitution, the constitution of the
15 state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be
16 available to him or that may apply to him in connection with the proceeding on the formal
17 Complaint filed herein.

18 **4. Consent to Entry of Order.** In order to resolve the matter of these disciplinary
19 proceedings pending against him without incurring any further costs and expense of providing a
20 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order
21 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the
22 MPA, and agrees that:

23 a. The Board may find a violation of the MPA against Respondent based on
24 the disciplinary action taken by the Idaho State Board of Medicine against Respondent, a violation
25 of NRS 630.301(3), as set forth in Count I of the formal Complaint;

26 b. Count II of the formal Complaint shall be dismissed;

27 c. Respondent shall be issued a public reprimand;

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1 d. Pursuant to NRS 622.400, Respondent shall reimburse the sum of \$512.31,
2 the current amount of the costs incurred by the Board to investigate and prosecute this matter,
3 along with the costs to conclude the matter, if any. The costs shall be paid to the
4 Nevada State Board of Medical Examiners within sixty (60) days of the Board's acceptance and
5 approval of this Agreement;

6 e. Respondent shall remain compliant with the probationary terms set forth by
7 the Idaho State Board of Medicine, Case Number 2011-BOM-6844, and which were adopted on
8 February 14, 2012. Any violation of said probationary terms shall be considered a violation of the
9 MPA, with authorized action pursuant to the MPA and paragraph 12 contained herein; and

10 f. The terms of this Agreement shall be reported as required by law.

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

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

25 Respondent acknowledges that such contacts and communication may be made or
26 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
27 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
28 and communications may include, but not be limited to, matters concerning this Agreement, the

1 formal Complaint, and any and all information of every nature whatsoever related to the formal
2 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
3 Respondent and/or his counsel may appear at the Board meeting where this Agreement is
4 discussed, and if requested, respond to any questions that may be addressed to the IC or its
5 counsel.

6 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
7 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
8 IC will cause to be entered herein the Board's order accepting, adopting and approving this
9 Agreement, ordering full compliance with the terms herein and ordering that this case be closed,
10 subject to the provisions in Paragraph 4.

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

22 **9. Binding Effect.** If this Agreement is approved by the Board, Respondent
23 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
24 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

25 **10. Forum Selection Clause.** Respondent covenants and agrees that in the event
26 either party is required to seek enforcement of this Agreement in the district court, he consents to
27 such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
28 Second Judicial District Court of the state of Nevada in and for the county of Washoe.

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 30th day of
3 November 2012, with the final total amount of costs due of \$512.31.



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

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