

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

3 * * * * *

4 **In The Matter of Charges and**)
5)
6 **Complaint Against**)
7)
8 **ROBERT FEINGOLD, M.D.,**)
9 **Respondent.**)

Case No. 07-11221-1

FILED

JUN -8 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee of the
12 Nevada State Board of Medical Examiners, composed of Benjamin J. Rodriguez, M.D.,
13 Beverly A. Neyland, M.D. and Ms. Donna A. Ruthe, by and through counsel, Lyn E. Beggs, Esq.,
14 and Robert Feingold, M.D. (Respondent), by and through his counsel, Tracy Singh, R.N., J.D., as
15 follows:

16 **WHEREAS**, on March 2, 2011, the Board's Investigative Committee filed a First
17 Amended Complaint in the above-referenced matter charging Respondent with engaging in
18 conduct that is grounds for discipline pursuant to the Medical Practice Act (Nevada Revised
19 Statutes (NRS) Chapter 630), to wit: three counts of engaging in conduct which is a violation of
20 the standards of practice established by regulation of the Board as set forth in counts I, II, and III of
21 the First Amended Complaint, violations of NRS 630.306(2)(b); one count of failing to maintain
22 timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care
23 of a patient as set forth in count IV of the First Amended Complaint, a violation of
24 NRS 630.3062(1); two counts of malpractice as defined by Nevada Administrative Code (NAC)
25 630.040 and as set forth in counts V and VI of the First Amended Complaint; and one count of
26 continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the
27 same circumstances by physicians in good standing practicing in the same specialty or field as set
28 forth in count VII of the First Amended Complaint, a violation of NRS 630.306(7); and

1 **WHEREAS**, Respondent has received and reviewed a copy of the First Amended
2 Complaint, understands it, and has consulted with competent counsel concerning the nature and
3 significance of the First Amended Complaint and Respondent is fully advised concerning his rights
4 and defenses to the First Amended Complaint, as well as the possible sanctions that may be
5 imposed if the Board finds and concludes that he has engaged in conduct that is grounds for
6 discipline pursuant to the Medical Practice Act. Respondent has reviewed all the relevant facts
7 and circumstances of this matter and, after due consideration and consultation with his counsel,
8 concedes that there exists enough evidence that the Board could consider the allegations set forth
9 in the First Amended Complaint, and if the allegations were proven, make a finding that he
10 violated the Medical Practice Act, specifically, that he engaged in conduct which is a violation of
11 the standards of practice established by regulation of the Board as set forth in counts II and III of
12 the First Amended Complaint and that he failed to maintain timely, legible, accurate and complete
13 medical records relating to the diagnosis, treatment and care of a patient as set forth in count IV of
14 the First Amended Complaint.

15 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by
16 and between himself and the Board's Investigative Committee, and not with the Board, but that the
17 Investigative Committee will present this Agreement to the Board for consideration in open
18 session at a Board meeting, appropriately noticed, and that the Investigative Committee shall
19 advocate approval of this Agreement by the Board, but that the Board has the right to decide in its
20 own discretion whether or not to approve this Agreement; and

21 **WHEREAS**, Respondent and the Investigative Committee each understand and agree that
22 if the Board approves the terms, covenants and conditions of this Agreement, then the terms,
23 covenants and conditions enumerated below shall be binding and enforceable upon Respondent
24 and the Board's Investigative Committee.

25 **NOW, THEREFORE**, in order to resolve the above-captioned case and charges brought
26 against Respondent by the Board's Investigative Committee in said matter, Respondent and the
27 Investigative Committee hereby agree to the following terms, covenants and conditions:

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1 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
2 proceedings pending against him without any further costs and expense of providing a defense to
3 the First Amended Complaint or to any other amended complaints, Respondent hereby agrees that
4 a stipulated resolution in this matter is fair and appropriate and that an order may be entered herein
5 by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant to
6 the Medical Practice Act, to wit: two counts of engaging in conduct which is a violation of the
7 standards of practice established by regulation of the Board as set forth in counts II and III of the
8 First Amended Complaint, violations of NRS 630.306(2)(b), and one count of failing to maintain
9 timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care
10 of a patient as set forth in count IV of the First Amended Complaint, a violation of
11 NRS 630.3062(1). The Board shall further order that the following discipline be imposed:

12 a) Respondent shall pay a fine of \$2,000 for counts II, III and IV, for a total of \$6,000.
13 Said fine shall be remitted to the Board within one-hundred-eighty (180) days of the
14 adoption and acceptance of this Agreement by the Board.

15 b) Respondent shall complete twelve (12) hours of AMA category I continuing
16 medical education (CME) on the topics of medical record keeping and management of
17 weight loss patients. Said CME credits are to be pre-approved by the Chairman of the IC
18 and are in addition to those hours required to maintain licensure. Said CME credits are to
19 be completed within twelve (12) months of the adoption and acceptance of this Agreement
20 by the Board.

21 c) Respondent shall reimburse the Board the reasonable costs and expenses incurred
22 in the investigation and prosecution of this case, the current amount being \$5285.05, not
23 including any costs that may be necessary to finalize this Agreement. The costs shall be
24 paid to the Nevada State Board of Medical Examiners within one-hundred-eighty (180)
25 days of the acceptance of this Agreement by the Board.

26 It is further ordered that counts I, V, VI and VII are hereby dismissed.

27 2. **Jurisdiction.** Respondent, at all times mentioned in the First Amended Complaint
28 filed in the above-captioned matter was, a physician licensed to practice medicine in the state of

1 Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of
2 the Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

3 3. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
4 Agreement knowingly, willingly, and intelligently with the advice of the above identified counsel.
5 In connection with this Agreement, and the terms, covenants and conditions contained herein,
6 Respondent knowingly, willingly and intelligently, waives all rights arising under or pursuant to
7 the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and
8 NRS Chapter 233B that may be available to Respondent or that may apply to Respondent in
9 connection with the proceeding regarding the First Amended Complaint filed herein, the defense of
10 said First Amended Complaint and the adjudication of the charges in said First Amended
11 Complaint, and Respondent further agrees that the matter of the disciplinary action commenced by
12 the filing of the First Amended Complaint herein may be settled and resolved in accordance with
13 this Agreement without a hearing or any further proceeding and without the right to judicial
14 review. In the event this Agreement is not approved by the Board, this Agreement shall have no
15 force and effect and Respondent shall have all rights arising under or pursuant to the United States
16 Constitution, the Constitution of the state of Nevada, NRS Chapter 630 and NRS Chapter 233B
17 that may be available to Respondent or that may apply to Respondent in connection with the
18 proceeding on the First Amended Complaint filed herein.

19 4. **Procedure for Adoption of Agreement.** It is expressly understood that this
20 Agreement will only become effective if the Board approves and adopts the recommendation of
21 the Investigative Committee. The Investigative Committee and counsel for the Investigative
22 Committee shall recommend approval of the terms, covenants and conditions contained herein
23 by the Board in resolution of the disciplinary proceedings pending herein against Respondent
24 pursuant to the First Amended Complaint. In the course of seeking Board approval of this
25 Agreement, counsel for the Investigative Committee may communicate directly with Board staff
26 and members of the panel of the Board who would adjudicate this case if it were to go to
27 hearing. Respondent covenants and agrees that such contacts and communication may be made
28 or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his

1 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such
2 contacts and communications may include, but not be limited to, matters concerning this
3 Agreement, the First Amended Complaint and the allegations therein, any and all evidence that
4 may exist in support of the First Amended Complaint, and any and all information of every
5 nature whatsoever related to the First Amended Complaint against Respondent. The
6 Investigative Committee and its counsel agree that Respondent and his counsel may appear at
7 the Board meeting where this Agreement is discussed in order to respond to any and all
8 questions that may be addressed to the Investigative Committee or its counsel at such meeting.

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

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

24 7. **Release From Liability.** In execution of this Agreement, the Respondent, for
25 himself, his executors, successors and assigns, hereby releases and forever discharges the state
26 of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
27 employees in their representative capacities, and in their individual capacities absent evidence of
28 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,

1 executions, claims and demands whatsoever, known and unknown, in law or equity, that
2 Respondent ever had, now has, may have or claim to have, against any or all of the persons or
3 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary
4 action, this settlement or its administration, in connection with the First Amended Complaint.
5 The Investigative Committee hereby agrees to accept this Agreement in full settlement of all
6 claims related to the First Amended Complaint, with the understanding that the final decision
7 rests with the Board.

8 8. **Binding Effect.** Respondent covenants and agrees that this Agreement is a
9 binding and enforceable contract upon Respondent and the Board's Investigative Committee,
10 which contract may be enforced in a court or tribunal having jurisdiction.

11 9. **Forum Selection Clause.** Respondent covenants and agrees that in the event
12 either party is required to seek enforcement of this Agreement in the district court, he consents
13 to such jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second
14 Judicial District Court of the State of Nevada in and for the County of Washoe.

15 10. **Failure to comply with terms.** In the event the Board enters its Order approving
16 this Agreement, should Respondent fail to comply with the terms recited herein, the Board
17 would then have grounds, after notice and a hearing, to take disciplinary action against
18 Respondent in addition to that included herein for the subject's violation of an Order of the
19 Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to
20 reimburse the Board for monies agreed to be paid as a condition of settlement, may subject
21 Respondent to civil collection efforts.

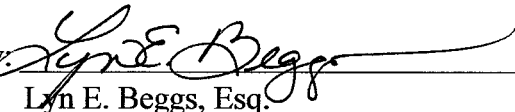
22 11. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an

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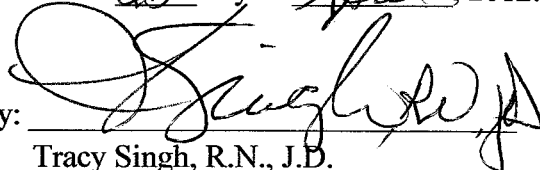
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1 action is commenced in the district court to enforce any provision of this Agreement, the
2 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

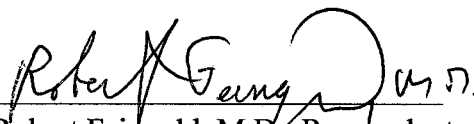
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4 Dated this 30th day of April, 2012.

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6 By: 
7 Lyn E. Beggs, Esq.
8 Attorney for the Investigative Committee
9 of the Nevada State Board of Medical
10 Examiners

Dated this 23rd day of April, 2012.

By: 
Tracy Singh, R.N., J.D.
Attorney for Robert Feingold, M.D.

10 UNDERSTOOD AND AGREED:


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12 
13 Robert Feingold, M.D., Respondent

14 Dated this 20 day of April, 2012.

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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 8th day of June 2012, with the final total amount of costs due of \$5,285.05.



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