

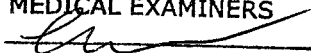
1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**  
2 **OF THE STATE OF NEVADA**

3 \* \* \* \* \*

4  
5 **In The Matter of Charges and** ) **Case No. 11-8522-1**  
6 **Complaint Against** )  
7 **THOMAS EDWARD REMBETSKI, M.D.,** )  
8 **Respondent.** )

**FILED**

**JUN -8 2012**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

10  
11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the  
13 Investigative Committee ("IC") of the Nevada State Board of Medical Examiners ("Board")  
14 composed of Benjamin J. Rodriguez, M.D., Chairman, Beverly A. Neyland, M.D., Member, and  
15 Donna A. Ruthe, Member, in the above-captioned matter, by and through  
16 its counsel, Bradley O. Van Ry, Esq., Board Deputy General Counsel and  
17 Thomas Edward Rembestski, M.D. (Respondent), by and through his counsel  
18 Michael D. Navratil, Esq., as follows:

19 **WHEREAS**, on October 5, 2011, the Board's IC filed a formal Complaint in the  
20 above-referenced matter charging Respondent with engaging in conduct that is grounds for  
21 discipline pursuant to the Nevada Medical Practice Act, i.e., Chapter 630 of the  
22 Nevada Revised Statutes (NRS), to wit: Count I, one count of malpractice, the failure of a  
23 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used  
24 under similar circumstances, a violation of NRS 630.301(4) and as defined by  
25 Nevada Administrative Code (NAC) 630.040;

26 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,  
27 understands it, and has had ample opportunity to consult with his counsel concerning the nature  
28 and significance of the formal Complaint. Respondent is fully aware, therefore, concerning his

1 rights and defenses to the formal Complaint, as well as the possible sanctions that may be imposed  
2 if the Board finds that he has violated one or more provisions of the Medical Practice Act, and  
3 after due consideration, concedes that evidence exists such that the Board may find that he  
4 engaged in conduct which is in violation of the Medical Practice Act as set forth in Count I of the  
5 Complaint;

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

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

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

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

21       **2.     Representation by Counsel/Knowing, Willing and Intelligent Agreement.**  
22 Respondent is represented by legal counsel in this matter and has had ample opportunity to  
23 review this Agreement, the formal Complaint filed in this matter and the related factual basis with  
24 his legal counsel, Michael D. Navratil, Esq. Respondent covenants and agrees that he enters into  
25 this Agreement knowingly, willingly and intelligently.

26       **3.     Waiver of Rights.** In connection with this Agreement, and the terms, covenants  
27 and conditions contained herein, and the understanding that Respondent knowingly, willingly and  
28 intelligently waives all rights arising under or pursuant to the United States Constitution, the

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

12 **4. Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
13 proceedings pending against him without any further costs and expense of providing a defense to the  
14 formal Complaint, Respondent hereby agrees that evidence exists such that the Board may issue an  
15 Order finding that Respondent has engaged in conduct that is grounds for discipline pursuant to  
16 the Nevada Medical Practice Act, to wit<sup>1</sup>: malpractice, the failure of a physician, in treating a  
17 patient, to use the reasonable care, skill, or knowledge ordinarily used under similar  
18 circumstances, a violation of NRS 630.301(4) and as defined by NAC 630.040, as set forth in  
19 Count I of the formal Complaint; and ordering that:

- 20 a. Respondent shall be issued a public reprimand;
- 21 b. Pursuant to NRS 622.400, Respondent shall reimburse the sum of  
22 \$2,185.53, the current amount of the costs incurred by the Board to investigate and prosecute this  
23 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the  
24 Nevada State Board of Medical Examiners within thirty (30) days of the Board's acceptance and  
25 approval of this Agreement;

26 \_\_\_\_\_

27 <sup>1</sup> All admissions made by Respondent are solely for final disposition of this matter and any subsequent related  
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by  
Respondent are not intended or made for any other use, such as in the context of another state or federal government  
regulatory agency proceeding, state or federal civil or criminal court proceeding, or any other state or federal court, or  
any credentialing or privileges matter.

1           c.     Respondent shall attend ten (10) hours of CME in  
2 laparoscopic cholecystectomy and related follow-up, in-person and within one (1) year of the  
3 Board's acceptance and approval of this Agreement and in addition to the normal requirements.  
4 Said CME to be pre-approved by the chair of the IC; and,

5           d.     The terms of this Agreement shall be reported as required by law.

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

14           **6.     Procedure of 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 the  
16 Board in resolution of the formal Complaint pending herein against Respondent. In the course of  
17 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may  
18 communicate directly with the Board staff and members of the panel of the Board who would  
19 adjudicate this case if it were to go to hearing.

20           Respondent acknowledges 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 until the public Board meeting where this Agreement is discussed, and that such contacts  
23 and communications may include, but not be limited to, matters concerning this Agreement, the  
24 formal Complaint, and any and all information of every nature whatsoever related to the  
25 formal Complaint or the proceedings herein against Respondent. The IC and its counsel agree that  
26 Respondent and/or his counsel may appear at the Board meeting where this Agreement is  
27 discussed, and if requested, respond to any questions that may be addressed to the IC or its  
28 counsel.

1           7.     **Effect of Acceptance of Agreement by Board.** In the event the Board approves,  
2 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the  
3 IC will cause to be entered herein the Board's Order accepting, adopting and approving this  
4 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and  
5 ordering that this case be closed, subject to the provisions in Paragraph 4.

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

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


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

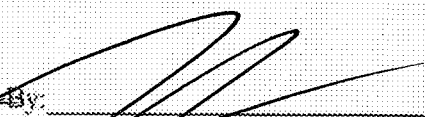
23           11.    **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an  
24 action is commenced in the district court to enforce any provision of this Agreement, the  
25 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

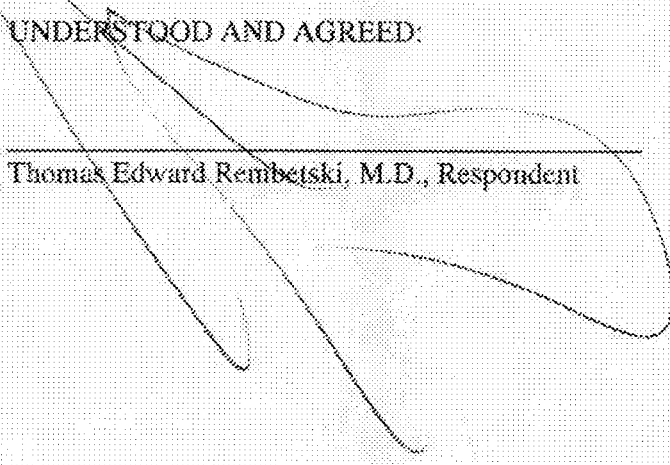
26           12.    **Failure to Comply With Terms.** In the event the Board enters its Order approving  
27 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would  
28 then have grounds, after notice and a hearing, to take disciplinary action against Respondent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

1           12.    Failure to Comply With Terms. In the event the Board enters its Order approving  
2 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would  
3 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in  
4 addition to that included herein for his violation of an Order of the Board in accordance with  
5 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies  
6 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

7 Dated this 4<sup>th</sup> day of June, 2012.      Dated this 12<sup>th</sup> day of JUNE, 2012.

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

By:   
Michael D. Navratil, Esq.  
Attorney for Respondent

12 UNDERSTOOD AND AGREED:  
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16     Thomas Edward Rembetski, M.D., Respondent  
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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 8<sup>th</sup> day of June 2012, with the final total amount of costs due of \$2,185.53.



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