

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

3 * * * * *

4
5 **In The Matter of Charges and**)
6 **Complaint Against**)
7 **RICHARD R. HORTON, M.D.,**)
8 **Respondent.**)
9)
10)

Case No. 11-12102-1

FILED

MAR 12 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

11 **SETTLEMENT AGREEMENT**

12 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
13 the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D.,
14 Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., by and through
15 Edward O. Cousineau, J.D., Deputy Executive Director for the Board and counsel for the IC, and
16 Richard R. Horton, M.D. (hereinafter Respondent), by and through his counsel, Stephen K. Lewis,
17 Esq., as follows:

18 **WHEREAS**, on or about June 7, 2011, the Board's IC filed a formal complaint in the
19 above-referenced matter charging Respondent of engaging in conduct that is grounds for discipline
20 under Chapter 630 of the Nevada Revised Statutes (NRS), to wit: a one count violation of
21 NRS 630.3062(1); and

22 **WHEREAS**, Respondent has received and reviewed a copy of the complaint, understands it,
23 and has consulted with competent counsel, Stephen K. Lewis, Esq., concerning the nature and
24 significance of the complaint, and Respondent is fully advised concerning his rights and defenses to
25 the complaint as well as the possible sanctions that may be imposed if the Board finds and concludes
26 that he has engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act
27 (NRS Chapter 630); and

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

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

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

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

24 **WHEREAS**, Respondent understands and agrees that, if the Board does not approve the
25 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
26 enumerated below shall not be binding and enforceable upon him except the provisions as to
27 disqualification of adjudicating panel members in paragraph number 9, and he will be provided with

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1 an opportunity to defend himself against the charges against him at a regularly scheduled hearing in
2 accordance with all applicable laws.

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

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

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

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

23 4. **Acknowledgement of Reasonable Basis to Proceed**. Respondent covenants and
24 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or more
25 instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice
26 Act.

27 5. **Consent to Entry of Order**. In order to resolve the matter of these disciplinary
28 proceedings pending against him without any further costs and expense of providing a defense to the

1 complaint, Respondent hereby agrees and does not contest that an order may be entered herein by the
2 Board against him finding that Respondent engaged in conduct that is grounds for discipline pursuant to
3 the Medical Practice Act, to wit: one count of failing to maintain timely and complete medical records
4 related to his care and treatment of the patient at issue in the associated underlying complaint, a violation
5 of NRS 630.3062(1), that Respondent shall perform a minimum of seventy-five (75) hours of
6 community service, which is to be approved by the Board prior to the accomplishment of the community
7 service, within nine (9) months of acceptance, adoption and approval of this Agreement by the Board,
8 and lastly, that the Respondent agrees to reimburse the Board the reasonable costs and expenses incurred
9 in the investigation and prosecution of this case, the current amount being \$1,204.70. This amount does
10 not include the further costs that may be incurred by the Board to conclude the matter. Respondent
11 agrees to pay these additional costs, in addition to the aforementioned amount, to the Board within sixty
12 (60) days of the acceptance, adoption and approval of this Agreement by the Board.

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

21 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
22 recommend approval and adoption of the terms, covenants and conditions contained herein by the
23 Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the
24 formal complaint. In the course of seeking Board approval, adoption and/or acceptance of this
25 Agreement, counsel for the IC may communicate directly with the Board staff and members of the
26 panel of the Board that would adjudicate this case if it were to go to hearing. Respondent covenants
27 and agrees that such contacts and communication may be made or conducted ex parte, without
28 notice or opportunity to be heard on his part or on the part of his counsel, and that such contacts

1 and communications may include, but not be limited to, matters concerning this Agreement, the
2 complaint, the allegations in the complaint any and all evidence that may exist in support of the
3 complaint, and any and all information of every nature whatsoever related to the complaint or the
4 proceedings herein against Respondent.

5 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
6 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will enter
7 herein an order finding Respondent violated NRS 630.3062(1), ordering that Respondent perform the
8 community service as provided herein, and ordering Respondent to pay the costs and expenses of the
9 investigation and prosecution of this matter as provided herein.

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


19 10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding
20 and enforceable contract upon Respondent and the Board's IC, which contract may be enforced in a
21 court or tribunal having jurisdiction. Additionally, upon receipt of credible information that
22 Respondent has failed to comply with any term or condition of the aforementioned order, the Board
23 shall be authorized to immediately suspend Respondent's license to practice medicine until
24 Respondent complies with the term or condition. Further, failure to comply with the terms recited
25 herein may result in additional disciplinary action being initiated against Respondent for a violation
26 of an Order of the Board in accordance with NRS 630.3065(2)(a). And, any failure to pay any fine,
27 fee, or cost ordered herein may also result in such legal action as determined to be necessary to
28 collect the unpaid fine, fee, or cost.

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

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

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9 Dated this 14th day of February, 2011.

Dated this 8 day of Feb, 2011.

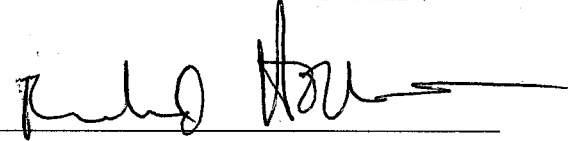
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11 By: 

By: 

12 Edward O. Cousineau, J. D.
13 Attorney for the Investigative Committee
14 of the Nevada State Board of Medical Examiners

Stephen K. Lewis, Esq.
Attorney for Respondent

15 UNDERSTOOD AND AGREED:

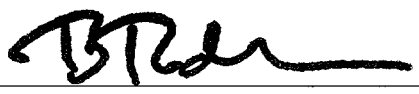
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17 Richard R. Horton, M.D., Respondent

18 Dated this 8 day of February, 2011.
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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 9th day of March 2012, with the final total amount of costs due of \$1,204.70.



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