BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In The Matter of Charges and

Complaint Against

EUGENE GREGORY PORRECA, M.D.,

Respondent.

Case No. 11-8513-1
FILED
MAR 11 2013
NEVADA STATE BOARD OF MEDICAL EXAMINERS

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed of Benjamin J. Rodriguez, M.D., Chairman, Beverly A. Neyland, M.D., Member, and Donna A. Ruthe, Member, in the above-captioned matter, by and through, Bradley O. Van Ry, Esq., Board General Counsel and Attorney for the IC, and Eugene Gregory Porreca, M.D. (Respondent), by and through Patricia Egan Daehnke, Esq., Counsel for Respondent, as follows:

WHEREAS, on May 6, 2011, the Board’s IC filed a formal Complaint in the above-referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act (MPA), Chapter 630 of the Nevada Revised Statutes (NRS), to wit: Count I, one count of malpractice, defined by Nevada Administrative Code (NAC) 630.040 as the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances, a violation of NRS 630.301(4); Count II, one count of failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1);
WHEREAS, Respondent has received a copy of the formal Complaint, reviewed it, understands it, and has had ample opportunity to consult with his counsel concerning the nature and significance of the formal Complaint. Respondent is fully aware concerning his rights and defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the Board finds and concludes that he has engaged in conduct that is grounds for discipline pursuant to the MPA;

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

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

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

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

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

   Respondent is represented by legal counsel in this matter and has had ample opportunity to review this Agreement, the formal Complaint filed in this matter and the related factual basis with said legal counsel, Patricia Daehnke. Respondent covenants and agrees that he enters into this Agreement knowingly, willingly and intelligently.
3. **Waiver of Rights.** Respondent waives all rights in connection with this Agreement, and the terms, covenants and conditions contained herein, and with the understanding that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant to the United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply to him in connection with the proceedings on the formal Complaint filed herein, the defense of said formal Complaint and the adjudication of the charges in said formal Complaint.

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

4. **Consent to Entry of Order.** Respondent concedes only that the Board has sufficient evidence to proceed with its formal Complaint against him, but does not concede or admit to such allegations, which he expressly denies, and which, but for his desire to reach this compromise, he would contest at the formal hearing of this matter. Accordingly, in order to resolve the matter without incurring further costs and expense of providing a defense to the formal Complaint or to any other further amended complaint, and in exchange for the waiver of the Respondent’s foregoing rights, Respondent has entered into this Agreement¹, and agrees that:

   a. The Board may find that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, to wit: malpractice, defined by NAC 630.040 as the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used

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¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related 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 proceeding, or any credentialing or privileges matter.
under similar circumstances, a violation of NRS 630.301(4), as set forth in Count I of the formal Complaint;

b. Respondent shall receive a public reprimand;

c. Pursuant to NRS 622.400, Respondent shall reimburse the Board the sum of $4,725.00, the current amount of the costs incurred by the Board to investigate and prosecute this matter, along with the costs to conclude the matter, if any. The costs shall be paid to the Board within ninety (90) days of the Board's acceptance and approval of this Agreement;

d. Respondent shall complete ten (10) hours of Continuing Medical Education (CME) related to vascular injuries and perfusion abnormalities and treatment, in any combination of on-line and in-person. The ten (10) hours of CME are to be in addition to any CME requirements that are regularly imposed upon Respondent as a condition of licensure in the State of Nevada and shall be completed within one (1) year of the Board's acceptance and approval of this Agreement;

e. Count II of the Complaint shall be dismissed; and,

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

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

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

Respondent acknowledges that such contacts and communication may be made or
carried out ex parte, without notice or opportunity to be heard on his part, or on the part of his
counsel, if any, until the public Board meeting where this Agreement is discussed, and that such
contacts and communications may include, but not be limited to, matters concerning this
Agreement, the formal Complaint, and any and all information of every nature whatsoever related
to the formal Complaint or the proceedings herein against Respondent. The IC and its counsel
agree that Respondent and/or his counsel, if any, may appear at the Board meeting where this
Agreement is discussed, and if requested, respond to any questions that may be addressed to the IC
or its counsel.

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

8. **Effect of Rejection of Agreement by Board.** In the event the Board does not
approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
Agreement shall be null, void, and of no further force and effect except as to the following
covenant and agreement regarding disqualification of adjudicating Board panel members.
Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
contained herein and nothing that occurs pursuant to the efforts of the IC or its counsel to seek
acceptance and adoption of this Agreement by the Board shall disqualify any member of the
adjudicating panel of the Board from considering the charges against Respondent and participating
in the disciplinary proceeding in any role, including adjudication of the case. Respondent further
agrees that he shall not seek to disqualify any such member absent evidence of bad faith.
9. **Binding Effect.** If this Agreement is approved by the Board, Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and the Board’s IC which contract may be enforced in a court or tribunal having jurisdiction.

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

11. **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 costs and reasonable attorneys’ fees.

12. **Failure to Comply With Terms.** In the event the Board enters its order approving this Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have grounds, after notice and a hearing, to take disciplinary action against Respondent, including but not limited to, potential revocation of Respondent’s license to practice medicine in the state of Nevada and/or any other discipline authorized by the MPA. In addition, Respondent shall be subject to the discipline outlined herein for a violation of an order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

Dated this \[2^{nd}\] day of \[February, 2013\].

Dated this \[21^{st}\] day of \[February, 2013\].

By: \[Signature\]
Bradley O. Van Ry, Esq.
Attorney for the Investigative Committee

By: \[Signature\]
Patricia Egan Daehnke, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:

\[Signature\]
Eugene Gregory Rosette, M.D., Respondent
IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 8th day of March 2013, with the final total amount of costs due of $4,725.00.

[Signature]

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