

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

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6 **In the Matter of Charges and** ) **Case No. 12-8148-1**  
7 **Complaint Against** )  
8 **STEVEN VICTOR KOZMARY, M.D.,** )  
9 **Respondent.** )

**FILED**

**MAR 11 2013**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

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12 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee  
14 (IC) of the Nevada State Board of Medical Examiners (Board), composed of  
15 Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and  
16 Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through,  
17 Bradley O. Van Ry, Esq., Board General Counsel and Attorney for the IC, and  
18 Steven Victor Kozmary, M.D., (Respondent), by and through Vicki Myckowiak, Esq., Counsel for  
19 Respondent, as follows:

20 **WHEREAS**, on February 15, 2012, the Board's IC filed a formal Complaint in the  
21 above-captioned matter charging Respondent with engaging in conduct that is grounds for  
22 discipline pursuant to the Nevada Medical Practice Act (MPA), Chapter 630 of the  
23 Nevada Revised Statutes (NRS), to wit: Count I, one count of the failure to maintain timely,  
24 legible, accurate and complete medical records relating to the diagnosis, treatment and care of a  
25 patient, a violation of NRS 630.3062(1); Count II, one count of engaging in conduct that brings the  
26 medical profession into disrepute, a violation of NRS 630.301(9).

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

1 and significance of the formal Complaint. Respondent is fully aware concerning his rights and  
2 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 MPA;

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

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

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

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

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

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

1 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply  
2 to him in connection with the proceedings on the formal Complaint filed herein, the defense of  
3 said formal Complaint and the adjudication of the charges in said formal Complaint.

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

11 **4. Consent to Entry of Order.** Respondent does not concede or admit to the  
12 allegations in the Complaint, which he expressly denies, and which, but for his desire to reach this  
13 compromise, he would contest at the formal hearing of this matter. Accordingly, in order to  
14 resolve the matter without incurring further costs and expense of providing a defense to the formal  
15 Complaint or to any other further amended complaint, and in exchange for the waiver of the  
16 Respondent's foregoing rights, Respondent has entered into this Agreement<sup>1</sup>, and agrees that:

17 a. The Board may find that Respondent engaged in conduct that is grounds for  
18 discipline pursuant to the MPA, to wit: the failure to maintain timely, legible, accurate and  
19 complete medical records relating to the diagnosis, treatment and care of a patient, a violation of  
20 NRS Section 630.3062(1), as set forth in Count I of the formal Complaint;

21 b. Pursuant to NRS 622.400, Respondent shall reimburse the Board the sum of  
22 \$607.10, 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 Board within thirty (30) days of the Board's acceptance and approval of this Agreement;

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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  
proceeding, or any credentialing or privileges matter.

1           c.     Respondent shall pay a fine of \$500.00 to the  
2 Board within thirty (30) days of the Board's acceptance and approval of this Agreement;

3           d.     Respondent shall attend five (5) hours of CME in Electronic Medical  
4 Records in addition to the normal requirements for licensure, and within one (1) year of the  
5 Board's acceptance and approval of this Agreement;

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

7           f.     The terms of this Agreement shall not be reported to the  
8 National Practitioner Data Bank or the Healthcare Integrity & Protection Data Bank.

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

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

23           Respondent acknowledges that such contacts and communication may be made or  
24 conducted ex parte, without notice or opportunity to be heard on his part, or on the part of his  
25 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such  
26 contacts and communications may include, but not be limited to, matters concerning this  
27 Agreement, the formal Complaint, and any and all information of every nature whatsoever related  
28 to the formal Complaint or the proceedings herein against Respondent. The IC and its counsel

1 agree that Respondent and/or his counsel, if any, may appear at the Board meeting where this  
2 Agreement is discussed, and if requested, respond to any questions that may be addressed to the IC  
3 or its counsel.

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

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

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

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


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

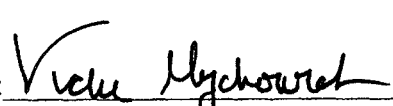
1           **12.    Failure to Comply With Terms.** In the event the Board enters its order approving  
2 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would  
3 then have grounds, after notice and a hearing, to take disciplinary action against Respondent,  
4 including but not limited to, potential revocation of Respondent's license to practice medicine in  
5 the state of Nevada and/or any other discipline authorized by the MPA. If Respondent is licensed  
6 to practice medicine in another state and becomes subject to another state's disciplinary action  
7 during the pendency of this Agreement, Respondent shall notify the Board within thirty (30) days  
8 as required by the MPA. Respondent shall also remain in full compliance with the other state's  
9 discipline.

10           In addition, Respondent shall be subject to the discipline outlined herein for a violation of  
11 an order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of  
12 Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement may  
13 subject Respondent to civil collection efforts.

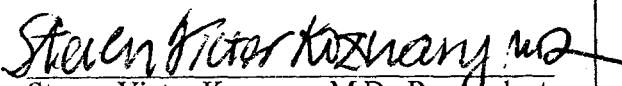
14 Dated this 7<sup>th</sup> day of February, 2013.

Dated this 4 day of February, 2013.

15  
16 By:   
17       Bradley O. Van Ry, Esq.  
18       Attorney for the Investigative Committee

By:   
Vicki Myckowiak, Esq.  
Attorney for Respondent

19 UNDERSTOOD AND AGREED:

20   
21 Steven Victor Kozmary, M.D., Respondent

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1 **IT IS HEREBY ORDERED** that the foregoing Settlement Agreement is approved and accepted by the  
2 Nevada State Board of Medical Examiners on the 8<sup>th</sup> day of March 2013, with the final total amount of  
3 costs due of \$607.10.

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