BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

** ** ** **

In the Matter of Charges and
Complaint Against
EDWARD M. ZIMMERMAN, M.D.,
Respondent

Case No. 12-11216-1

FILED
JUN:- 7 2013
NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By:

SETTLEMENT AGREEMENT

THIS SETTLEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through Erin L. Albright, Esq., Board Deputy General Counsel and attorney for the IC, and Edward M. Zimmerman, M.D. (Respondent), as follows:

WHEREAS, on November 5, 2012, 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), i.e., Chapter 630 of the Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), to wit: Count I, one count of false, deceptive or misleading advertising, a violation of NRS 630.304(2), referencing NAC 630.190(1)(c), (e), (f) and (g) and NAC 630.190(2); and

WHEREAS, Respondent received a copy of the formal Complaint, reviewed it, understands it, and consulted with competent counsel, Michelle R. Schwarz, Esq., concerning the nature and significance of the formal Complaint. Respondent is fully advised 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 violated one or more provisions of the MPA; and

WHEREAS, Respondent understands and agrees that this Settlement Agreement ("Settlement") is entered into by and between himself and the Board’s IC, and not with the Board, but that the IC will present this Settlement 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 Settlement by the Board, but that the Board has the right to decide in its own discretion whether or not to approve this Settlement; and

WHEREAS, Respondent understands and agrees that if the Board approves the terms, covenants and conditions of this Settlement, 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 MPA.

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

   Respondent is represented by counsel herein, whom Respondent covenants and agrees is fully capable, competent and fully advised in these circumstances, and Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and intelligently after full consultation with and upon advice of above-identified counsel.

3. **Waiver of Rights.** Respondent waives all rights in connection with this Settlement, 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 Settlement without a hearing or any further proceedings, and
without the right to judicial review. In the event this Settlement is not approved by the Board, this
Settlement 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. In order to resolve the matter of these disciplinary
proceedings pending against him without incurring any further costs and expense of providing a
defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order
finding that Respondent engaged in conduct that is grounds for discipline pursuant to the
MPA, and agrees that:

a. The Board may find Respondent engaged in conduct that is grounds for
discipline pursuant to the MPA, to wit: one count of false, deceptive or misleading advertising, a
violation of NRS 630.304(2), referencing NAC 630.190(1)(c), (e), (f) and (g) and
NAC 630.190(2);

b. Respondent shall be issued a public reprimand;

c. Respondent shall complete in person five (5) hours of Continuing Medical
Education (CME) regarding the subject of marketing and advertising within one (1) year of the
acceptance, adoption and approval of this Settlement by the Board. The aforementioned hours of
CME shall 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 approved by the Board prior to their
completion;

d. Respondent shall pay a fine of One Thousand Dollars and 00/100
($1,000.00) to the Board within thirty (30) days of the Board’s acceptance, adoption and approval
of this Settlement;
c. Pursuant to NRS 622.400, Respondent shall reimburse the sum of $666.40, 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 thirty (30) days of the Board’s acceptance, adoption and approval of this Settlement;

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

5. **Release From Liability.** In execution of this Settlement, 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 Settlement or its administration.

6. **Procedure for Adoption of Settlement.** 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 Settlement, 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 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel until the public Board meeting where this Settlement is discussed, and that such contacts and communications may include, but not be limited to, matters concerning this Settlement, 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 may appear at the Board meeting where this Settlement is
discussed, and if requested, respond to any questions that may be addressed to the IC or its
counsel.

7. **Effect of Acceptance of Settlement by Board.** In the event the Board approves,
accepts and adopts the terms, covenants and conditions set out in this Settlement, counsel for the
IC will cause to be entered herein the Board’s order accepting, adopting and approving this
Settlement, 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 Settlement by Board.** In the event the Board does not
approve, accept and adopt the terms, covenants and conditions set out in this Settlement, this
Settlement shall be null, void, and of no further force and effect except as to the following
covenant and Settlement regarding disqualification of adjudicating Board panel members.
Respondent agrees that, notwithstanding rejection of this Settlement by the Board, nothing
contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
acceptance and adoption of this Settlement 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 Settlement is approved by the Board, Respondent
covenants and agrees that this Settlement 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 Settlement 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 Settlement, 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 Settlement, 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, the revocation of Respondent's license to practice medicine in the state of Nevada and 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 20th day of March 2013. Dated this 7th day of March, 2013.

By: [Signature]
Erin L. Albright, Esq.
Attorney for the Investigative Committee

By: [Signature]
Michelle R. Schwarz, Esq.
Attorney for Respondent

**UNDERSTOOD AND AGREED:**

Edward M. Zimmerman, M.D., Respondent
Dated this 14th day of March, 2013.
IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 7th day of June 2013, with the final total amount of costs due of $666.40.

[Signature]

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