

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 **EDWARD M. ZIMMERMAN, M.D.,** )  
8 **Respondent** )

Case No. 12-11216-1

**FILED**

**JUN - 7 2013**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

10  
11 **SETTLEMENT AGREEMENT**

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

18 **WHEREAS**, on November 5, 2012, the Board's IC filed a formal Complaint in the  
19 above-referenced matter charging Respondent with engaging in conduct that is grounds for  
20 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the  
21 Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), to wit: Count I, one  
22 count of false, deceptive or misleading advertising, a violation of NRS 630.304(2), referencing  
23 NAC 630.190(1)(c), (e), (f) and (g) and NAC 630.190(2); and

24 **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,  
25 understands it, and consulted with competent counsel, Michelle R. Schwarz, Esq., concerning the  
26 nature and significance of the formal Complaint. Respondent is fully advised concerning his  
27 rights and defenses to the formal Complaint, as well as the possible sanctions that may be imposed

28 ///

1 if the Board finds and concludes that he violated one or more provisions of the  
2 MPA; and

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

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

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

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

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

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

24       3.     **Waiver of Rights**. Respondent waives all rights in connection with this  
25 Settlement, and the terms, covenants and conditions contained herein, and with the understanding  
26 that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant  
27 to the United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter  
28 233B, and any other statutory rights that may be available to him or that may apply to him in

1 connection with the proceedings on the formal Complaint filed herein, the defense of said formal  
2 Complaint and the adjudication of the charges in said formal Complaint.

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

10 **4. Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
11 proceedings pending against him without incurring any further costs and expense of providing a  
12 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order  
13 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the  
14 MPA, and agrees that:

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

19 b. Respondent shall be issued a public reprimand;

20 c. Respondent shall complete in person five (5) hours of Continuing Medical  
21 Education (CME) regarding the subject of marketing and advertising within one (1) year of the  
22 acceptance, adoption and approval of this Settlement by the Board. The aforementioned hours of  
23 CME shall be in addition to any CME requirements that are regularly imposed upon Respondent  
24 as a condition of licensure in the state of Nevada and shall be approved by the Board prior to their  
25 completion;

26 d. Respondent shall pay a fine of One Thousand Dollars and 00/100  
27 (\$1,000.00) to the Board within thirty (30) days of the Board's acceptance, adoption and approval  
28 of this Settlement;

1 e. Pursuant to NRS 622.400, Respondent shall reimburse the sum of \$666.40,  
2 the current amount of the costs incurred by the Board to investigate and prosecute this matter,  
3 along with the costs to conclude the matter, if any. The costs shall be paid to the  
4 Board within thirty (30) days of the Board's acceptance, adoption and approval of this Settlement;

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

6 **5. Release From Liability.** In execution of this Settlement, the Respondent, for  
7 himself, his executors, successors and assigns, hereby releases and forever discharges the state of  
8 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 Settlement or its administration.

14 **6. Procedure for Adoption of Settlement.** 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 Settlement, 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 Settlement is discussed, and that such contacts  
23 and communications may include, but not be limited to, matters concerning this Settlement, the  
24 formal Complaint, and any and all information of every nature whatsoever related to the formal  
25 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 Settlement is

27 ///  
28

1 discussed, and if requested, respond to any questions that may be addressed to the IC or its  
2 counsel.

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

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

19       **9. Binding Effect.** If this Settlement is approved by the Board, Respondent  
20 covenants and agrees that this Settlement 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  
23 either party is required to seek enforcement of this Settlement in the district court, he consents to  
24 such 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.

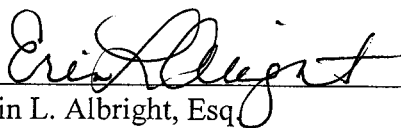
26       **11. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an  
27 action is commenced in the district court to enforce any provision of this Settlement, the  
28 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

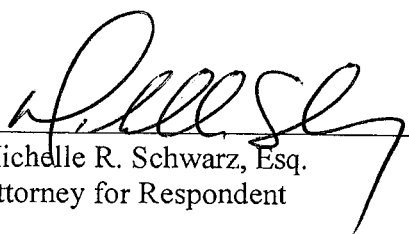
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

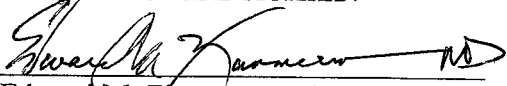
**12. Failure to Comply With Terms.** In the event the Board enters its order approving this Settlement, should Respondent fail to comply with the terms recited herein, the Board would then have grounds, after notice and a hearing, to take disciplinary action against Respondent, including, but not limited 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 20<sup>th</sup> day of March, 2013.


Dated this 7 day of March, 2013.

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

By:   
Michelle R. Schwarz, Esq.  
Attorney for Respondent

**UNDERSTOOD AND AGREED:**  
  
Edward M. Zimmerman, M.D., Respondent  
Dated this 14 day of MARCH, 2013.

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 7<sup>th</sup> day of June 2013, with the final total amount of  
3 costs due of \$666.40.

4 

5 \_\_\_\_\_  
6 Benjamin J. Rodriguez, M.D., President  
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28