

ORIGINAL

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA

\* \* \* \* \*

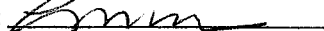
In The Matter of Charges and  
Complaint Against  
ANTONINO GUMINA, M.D.,  
Respondent.

Case No. 10-12370-1

FILED

SEP 13 2010

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (the Board) composed of Charles N. Held, M.D, Theodore B. Berndt, M.D. and Ms. Valerie Clark, BSN, RHU, LUTCF, by and through counsel, Lyn E. Beggs, Esq., and Antonino Gumina, M.D. (Respondent), as follows:

WHEREAS, on April 28, 2010, the Board's IC filed a Complaint in the above referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count of engaging in any sexual activity with a patient who is currently being treated by the practitioner, a violation of NRS 630.301(5); and

WHEREAS, Respondent has received and reviewed a copy of the Complaint, understands the nature and significance of the Complaint and is fully advised concerning his rights and defenses to the 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 Medical Practice Act and after due consideration concedes that he engaged in sexual activity with a patient he was treating as set forth in count I of the Complaint; and

WHEREAS, Respondent understands and agrees that this Agreement is entered into by and between himself and the Board's Investigative Committee, and not with the Board, but that the Investigative Committee will present this Agreement to the Board for consideration in open

1 session at a Board meeting, appropriately noticed, and that the Investigative Committee shall  
2 advocate approval of this Agreement by the Board, but that the Board has the right to decide in its  
3 own discretion whether or not to approve this Agreement; and

4         **WHEREAS**, Respondent and the Investigative Committee each understand and agree that  
5 if the Board approves the terms, covenants and conditions of this Agreement, then the terms,  
6 covenants and conditions enumerated below shall be binding and enforceable upon Respondent  
7 and the Board's Investigative Committee; and

8         **NOW THEREFORE**, in order to resolve the above-captioned case and charges brought  
9 against Respondent by the Board's Investigative Committee in said matter, Respondent and the  
10 Investigative Committee hereby agree to the following terms, covenants and conditions:

11         1.         **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
12 proceedings pending against him without any further costs and expense of providing a defense to  
13 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be  
14 entered herein by the Board finding that Respondent engaged in conduct that is grounds for  
15 discipline pursuant to the Medical Practice Act to wit: one count of engaging in sexual activity  
16 with a patient who is currently being treated by the practitioner as set forth in count I of the  
17 Complaint, a violation of NRS 630.301(5); and ordering that Respondent be issued a public  
18 reprimand and shall pay a fine of \$5,000. Furthermore, Respondent shall be ordered to reimburse  
19 the Board the reasonable costs and expenses incurred in the investigation and prosecution of this  
20 case, the current amount being \$1,607.82. The costs and fines shall be paid to the Nevada State  
21 Board of Medical Examiners within sixty (60) days of the acceptance of this Agreement by the  
22 Board;

23         2.         **Jurisdiction.** Respondent was at all times mentioned in the Complaint filed in the  
24 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada  
25 subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the  
26 Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

27         3.         **Representation by Counsel.** Respondent acknowledges that he is not represented  
28 by counsel and wishes to proceed towards resolution of this matter as set forth in this Agreement

1 without counsel. Respondent understands and acknowledges that he may retain and consult  
2 counsel prior to entering into this Agreement and agrees that if counsel is retained for  
3 representation in this matter prior to entering into this Agreement, that counsel for the Investigative  
4 Committee will be informed of such prior to Respondent executing this Agreement.

5         4.         **Waiver of Rights.** Respondent covenants and agrees that he enters into this  
6 Agreement knowingly, willingly, and intelligently with knowledge that he may consult with  
7 counsel prior to entering into this Agreement. In connection with this Agreement, and the terms,  
8 covenants and conditions contained herein, Respondent knowingly, willingly and intelligently,  
9 waives all rights arising under or pursuant to the United States Constitution, the Constitution of the  
10 state of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or  
11 that may apply to Respondent in connection with the proceeding regarding the Complaint filed  
12 herein, the defense of said Complaint and the adjudication of the charges in said Complaint, and  
13 Respondent further agrees that the matter of the disciplinary action commenced by the filing of the  
14 complaint herein may be settled and resolved in accordance with this Agreement without a hearing  
15 or any further proceeding, and without the right to judicial review. In the event this Agreement is  
16 not approved by the Board, this Agreement shall have no force and effect and Respondent shall  
17 have all rights arising under or pursuant to the United States Constitution, the Constitution of the  
18 State of Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or  
19 that may apply to Respondent in connection with the proceeding on the complaint filed herein.

20         5.         **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and  
21 agrees that the Board's Investigative Committee has a reasonable basis to believe that Respondent  
22 violated one or more provisions of the Medical Practice Act.

23         6.         **Procedure for Adoption of Agreement.** It is expressly understood that this  
24 Agreement will only become effective if the Board approves the recommendation of the  
25 Investigative Committee for acceptance. The Investigative Committee and counsel for the  
26 Investigative Committee shall recommend approval of the terms, covenants and conditions  
27 contained herein by the Board in resolution of the disciplinary proceedings pending herein  
28 against Respondent pursuant to the Complaint. In the course of seeking Board approval of this

1 Agreement, counsel for the Investigative Committee may communicate directly with the Board  
2 staff and members of the panel of the Board who would adjudicate this case if it were to go to  
3 hearing. Respondent covenants and agrees that such contacts and communication may be made  
4 or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his  
5 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such  
6 contacts and communications may include, but not be limited to, matters concerning this  
7 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in  
8 support of the Complaint, and any and all information of every nature whatsoever related to the  
9 complaint against Respondent. The Investigative Committee and its counsel agree that  
10 Respondent and his counsel, if any, may appear at the Board meeting where this Agreement is  
11 discussed in order to respond to any and all questions that may be addressed to the Investigative  
12 Committee or its counsel at such meeting.

13         7.         **Effect of Acceptance of Agreement by Board.** In the event the Board approves  
14 the terms, covenants and conditions set out in this Agreement, counsel for the Investigative  
15 Committee will cause to be entered herein the Board's Order approving this Settlement, Waiver  
16 and Consent Agreement, ordering full compliance with the terms herein and ordering that this  
17 case be closed, subject to the provisions in Paragraph 1.

18         8.         **Effect of Rejection of Agreement by Board.** In the event the Board does not  
19 approve the terms, covenants and conditions set out in this Agreement, this Agreement shall be  
20 null, void, and of no further force and effect except as to the following covenant and agreement  
21 regarding disqualification of adjudicating Board panel members. Respondent agrees that,  
22 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing  
23 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance  
24 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating  
25 panel of the Board from considering the charges against Respondent and participating in the  
26 disciplinary proceedings in any role, including adjudication of the case, and Respondent further  
27 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

28 ///

1           9.     **Release From Liability.** In execution of this Agreement, the Respondent, for  
2 himself, his executors, successors and assigns, hereby releases and forever discharges the state  
3 of Nevada, the Board, the Nevada Attorney General, and each of their members, agents and  
4 employees in their representative capacities, and in their individual capacities absent evidence of  
5 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments,  
6 executions, claims and demands whatsoever, known and unknown, in law or equity, that  
7 Respondent ever had, now has, may have or claim to have, against any or all of the persons or  
8 entities named in this paragraph arising out of or by reason of this investigation, this disciplinary  
9 action, this settlement or its administration, in connection with the complaint. The Investigative  
10 Committee hereby agrees to accept this Agreement in full settlement of all claims related to the  
11 complaint, with the understanding that the final decision rests with the Board.

12           10.    **Binding Effect.** Respondent covenants and agrees that this Agreement is a  
13 binding and enforceable contract upon Respondent and the Board's Investigative Committee,  
14 which contract may be enforced in a court or tribunal having jurisdiction.

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

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

22           13.    **Failure to comply with terms.** In the event the Board enters its Order approving  
23 this Agreement, upon receipt of credible information that Respondent has failed to comply with  
24 any term or condition of this Order, the Board shall be authorized to immediately suspend  
25 Respondent's license until Respondent complies with the term or condition. Failure to comply  
26 with the terms recited herein may result in additional disciplinary action being initiated against  
27 Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).

28 ///

1 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in such legal  
2 action as determined to be necessary to collect the unpaid fine, fee, or cost.

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

Dated this 19<sup>th</sup> day May of 2010.

By: *Lyn E. Beggs*  
Lyn E. Beggs, Esq.  
Attorney for the Investigative Committee

Dated this 19 day of MAY, 2010.

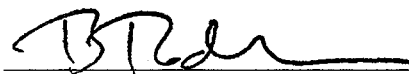
By: *[Signature]*  
Antonino Gumina, M.D.  
Respondent

Subscribed and sworn to before me  
This 19<sup>th</sup> day of May 2010.

*[Signature]*  
Notary Public



1 IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is  
2 approved and accepted by the Nevada State Board of Medical Examiners on the 10<sup>th</sup> day of  
3 September, 2010, with the final total amount of costs due of \$1,607.82.

4 

5 \_\_\_\_\_  
6 Benjamin J. Rodriguez, M.D., Vice 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