

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

3 * * * * *

4 **In The Matter of Charges and**)
5)
6 **Complaint Against**)
7 **JAMES LEE UNGER, M.D.,**)
8)
9 **Respondent.**)
10 _____)

Case No. 10-6159-1
FILED

DEC - 6 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: _____

11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
13 (IC) of the Nevada State Board of Medical Examiners (the Board), composed of
14 Charles N. Held, M.D., Chairman, Theodore B. Berndt, M.D., Member, and
15 Valerie J. Clark, Member, by and through Bradley O. Van Ry, Deputy General Counsel, and
16 James Lee Unger, M.D. (Respondent), as follows:

17 **WHEREAS**, on June 3, 2010, the Board's IC filed a Complaint in the above referenced
18 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
19 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: failing to use the
20 reasonable care, skill, or knowledge ordinarily used under the same or similar circumstances
21 pursuant to Nevada Revised Statute Section 630.301(4) and Nevada Administrative Code
22 Section 630.040; and,

23 **WHEREAS**, the parties agree that a First Amended Complaint shall be filed in this matter
24 by the IC immediately upon receipt by the Board of an executed original of this Agreement.
25 Respondent acknowledges below that he has received and reviewed a draft copy of the First
26 Amended Complaint prior to its filing with the Board; and,

27 **WHEREAS**, Respondent acknowledges that he has received and reviewed a copy of the
28 First Amended Complaint, understands the nature and significance of the First Amended

1 Complaint and is fully advised concerning his rights and defenses to the First Amended Complaint
2 as well as the possible sanctions that may be imposed if the Board finds and concludes that he has
3 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act and after
4 due consideration and consultation with his counsel, concedes that his conduct violated Nevada
5 Revised Statute Section 630.301(4) and Nevada Administrative Code Section 630.040 as set
6 forth in count I of the Amended Complaint; and,

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

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

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

20 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
21 proceedings pending against him without any further costs and expense of providing a defense to
22 the First Amended Complaint, Respondent hereby agrees that an order may be entered herein by
23 the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant to the
24 Medical Practice Act to wit: one count of failing to use the reasonable care, skill, or knowledge
25 ordinarily used under the same or similar circumstances pursuant to Nevada Revised Statute
26 Section 630.301(4) and Nevada Administrative Code Section 630.040; and,

27 It shall be further ordered that Respondent shall pay a fine of \$3,000.00. Respondent
28 shall also be ordered to reimburse the Board the reasonable costs and expenses incurred in the

1 investigation and prosecution of this case, the current amount being \$2,079.12, along with the
2 costs to conclude the matter, if any. The costs and fines shall be paid to the Nevada State Board
3 of Medical Examiners within thirty (30) days of the Board's acceptance and approval of this
4 Agreement; and,

5 Respondent shall receive a public reprimand from the Board concerning the foregoing
6 matter; and,

7 Respondent shall be ordered to attend and participate in six (6) credits of CME in risk
8 management, medical error prevention as chosen by Respondent from the following pre-
9 approved and agreed upon CME courses, The Patient Safety Imperative- Harvard Medical
10 School, Joint Commission's Top 10 Sentinel Events: How to Prevent Fatal Errors, Lean Quality
11 Improvement: A Practical Approach, Medical Error Prevention and Root Cause Analysis- Net
12 CE, Risk Management- Net CE, Risk Management Rounds: Pathology- MedRisk, and/or any
13 related CME within one (1) year of the Board's order in this matter in addition to the annual
14 CME requirement.

15 2. **Jurisdiction.** Respondent was at all times mentioned in the First Amended
16 Complaint 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
18 violations of the Medical Practice Act (NRS 630), and to impose sanctions as provided by the
19 Act.

20 3. **Representation by Counsel.** Respondent is represented by John Cotton, Esq. and
21 Christopher Rigler, Esq. in this matter. Respondent acknowledges and agrees that he enters into
22 this agreement knowingly, willingly and intelligently after full consultation with counsel.

23 4. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
24 Agreement knowingly, willingly, and intelligently with knowledge that he did consult with counsel
25 prior to entering into this Agreement. In connection with this Agreement, and the terms, covenants
26 and conditions contained herein, Respondent knowingly, willingly and intelligently, waives all
27 rights arising under or pursuant to the United States Constitution, the Constitution of the state of
28 Nevada, NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or that

1 may apply to Respondent in connection with the proceeding regarding the First Amended
2 Complaint filed herein, the defense of said First Amended Complaint and the adjudication of the
3 charges in said First Amended Complaint, and Respondent further agrees that the matter of the
4 disciplinary action commenced by the filing of the complaint herein may be settled and resolved in
5 accordance with this Agreement without a hearing or any further proceeding, and without the right
6 to judicial review. In the event this Agreement is not approved by the Board, this Agreement shall
7 have no force and effect and Respondent shall have all rights arising under or pursuant to the
8 United States Constitution, the Constitution of the State of Nevada, NRS Chapter 630 and
9 NRS Chapter 233B that may be available to Respondent or that may apply to Respondent in
10 connection with the proceeding on the First Amended Complaint filed herein.

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

14 6. **Procedure for Adoption of Agreement.** It is expressly understood that this
15 Agreement will only become effective if the Board approves the recommendation of the
16 Investigative Committee for acceptance. The Investigative Committee and counsel for the
17 Investigative Committee shall recommend approval of the terms, covenants and conditions
18 contained herein by the Board in resolution of the disciplinary proceedings pending herein
19 against Respondent pursuant to the First Amended Complaint. In the course of seeking Board
20 approval of this Agreement, counsel for the Investigative Committee may communicate directly
21 with the Board staff and members of the panel of the Board who would adjudicate this case if it
22 were to go to hearing. Respondent covenants and agrees that such contacts and communication
23 may be made or conducted ex parte, without notice or opportunity to be heard on his part or on
24 the part of his counsel, if any, until the public Board meeting where this Agreement is discussed,
25 and that such contacts and communications may include, but not be limited to, matters
26 concerning this Agreement, the First Amended Complaint and the allegations therein, any and
27 all evidence that may exist in support of the First Amended Complaint, and any and all
28 information of every nature whatsoever related to the underlying complaint against Respondent.

1 The Investigative Committee and its counsel agree that Respondent and his counsel, if any, may
2 appear at the Board meeting where this Agreement is discussed in order to respond to any and
3 all questions that may be addressed to the Investigative Committee or its counsel at such
4 meeting.

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

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

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

1 action, this settlement or its administration, in connection with the First Amended Complaint.
2 The Investigative Committee hereby agrees to accept this Agreement in full settlement of all
3 claims related to the First Amended Complaint, with the understanding that the final decision
4 rests with the Board.

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


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

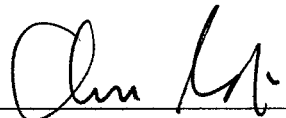
13 12. **Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event
14 an action is commenced in the district court to enforce any provision of this Agreement, the
15 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

16 13. **Failure to comply with terms.** In the event the Board enters its Order approving
17 this Agreement, upon receipt of credible information that Respondent has failed to comply with
18 any term or condition of this Order, the Board shall be authorized to immediately suspend
19 Respondent's license until Respondent complies with the term or condition. Failure to comply
20 with the terms recited herein may result in additional disciplinary action being initiated against
21 Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a).
22 Furthermore, any failure to pay any fine, fee, or cost ordered herein will also result in such legal
23 action as determined to be necessary to collect the unpaid fine, fee, or cost.

24 Dated this 21st day of October of 2010.

Dated this 10th day of October, 2010.

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26 By: 
27 Bradley O. Van Ry, Esq.
28 Attorney for the Investigative Committee

By: 
John H. Cotton, Esq.
Christopher Rigler, Esq.
Attorneys for Respondent

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Read and understood by:

By: James L Unger
James Unger, M.D.
Respondent

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 3rd day of
3 December 2010, with the final total amount of costs due of \$2,079.12.

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