

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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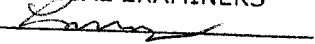
In The Matter of Charges and)
)
Complaint Against)
)
SALVADOR BORROMEEO, M.D.,)
)
Respondent.)
_____)

Case No. 09-12423-1

FILED

SEP 13 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

SETTLEMENT, WAIVER AND CONSENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed of Charles N. Held, M.D., Theodore B. Berndt, M.D., and Valerie J. Clark, BSN, RHU, LUTCF, by and through Edward Cousineau, Deputy Executive Director for the Board and counsel for the IC, and Salvador Borromeo, M.D. (Respondent), by and through his counsel, Jill Chase, Esq., as follows:

WHEREAS, on or about October 16, 2009, the IC of the Board filed a formal complaint in the above referenced matter charging Respondent of engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (Nevada Revised Statutes Chapter 630) to wit: a one count violation of NRS 630.301(4); and

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands the nature and significance of the Complaint, and Respondent 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 violated one or more provisions of the Medical Practice Act; and

WHEREAS, Respondent understands and agrees that he has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to the right to a formal hearing on the charges against him, the right to representation by counsel in the preparation and presentation of his defense, the right to

1 confrontation and cross-examination of witnesses against him, the right to present evidence and
2 witnesses on his own behalf, the right to written findings, conclusions and order regarding a final
3 decision by the Board, and the right to judicial review of any final decision by the Board that is
4 adverse to him; and

5 **WHEREAS**, provided this Agreement is approved by the Board, Respondent agrees to
6 waive all of his rights under the United States Constitution, the Constitution of the state of Nevada,
7 the Medical Practice Act, and the Nevada Administrative Procedures Act, including but not limited
8 to the right to a hearing on the charges and written findings of fact, conclusions of law and order, and
9 he agrees to settle and resolve this matter of the formal complaint against him by way of, and in
10 accordance with, this Settlement, Waiver and Consent Agreement; and

11 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by and
12 between himself and the Board's IC, and not with the Board, but that the IC will present this
13 Agreement to the Board for consideration in open session at a regularly-scheduled quarterly meeting,
14 duly noticed, and that the IC shall advocate approval of this Agreement by the Board, but that the
15 Board has the right to decide in its own discretion whether or not to approve this Agreement; and

16 **WHEREAS**, Respondent and the IC each understand and agree that if the Board approves
17 the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
18 enumerated below shall be binding and enforceable upon Respondent and the Board's IC; and

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

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

26 2. **Representation by Counsel.** Respondent is represented by counsel named herein,
27 whom Respondent covenants and agrees is fully capable, competent and fully advised in these
28 circumstances and Respondent further covenants and agrees that he enters into this Agreement

1 knowingly, willingly, and intelligently after full consultation with and upon the advice of said
2 counsel.

3 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and
4 conditions contained herein, Respondent knowingly, willingly and intelligently, waives all rights
5 arising under or pursuant to the United States Constitution, the Constitution of the state of Nevada,
6 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in
7 connection with the proceeding on the complaint filed herein, the defense of said complaint and the
8 adjudication of the charges in said complaint, and Respondent further agrees that the matter of the
9 disciplinary action commenced by complaint herein may be settled and resolved in accordance with
10 this Agreement without a hearing or any further proceeding, and without the right to judicial review.

11 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
12 agrees that the Board's IC has a reasonable basis to believe that Respondent violated a provision of
13 the Medical Practice Act.

14 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
15 proceedings pending against him without any further cost and expense of providing a defense to the
16 complaint, Respondent hereby agrees that an order may be entered herein by the Board against him,
17 finding that Respondent has violated the Medical Practice Act to wit: that in treating the patient
18 referenced in the original complaint filed by the IC, Respondent's associated medical record
19 keeping related to the underlying patient was deficient, and therefore a violation of
20 NRS 630.3062(1), that Respondent shall be publicly reprimanded, and that within one year of the
21 acceptance, adoption and approval of this Agreement, Respondent shall complete ten (10) hours of
22 Continuing Medical Education (CME) regarding the subject of medical record keeping, which are
23 to be approved by the IC Chairman in advance of their accomplishment. The aforementioned
24 CME's are to be in addition to any CME requirements that are regularly imposed upon
25 Respondent as a condition of licensure in the State of Nevada. And, Respondent shall reimburse
26 the Board the reasonable costs and expenses incurred in the investigation and prosecution of this case
27 in the current amount of \$ 2,725.78, plus any additional costs that may be accrued subsequent
28 in the disposition of this matter. The aforementioned costs are to be paid to the Nevada State

1 Board of Medical Examiners within sixty (60) days of the acceptance, adoption and approval of
2 this Agreement by the Board. A final accounting of the additional costs will be provided to
3 Respondent in the entry of the Board's Order relating to the matter.

4 6. Procedure for Adoption of Agreement. The IC and counsel for the IC shall
5 recommend approval and adoption of the terms, covenants and conditions contained herein by the
6 Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to
7 the formal complaint. In the course of seeking Board approval, adoption and/or acceptance of this
8 Agreement, counsel for the IC may communicate directly with the Board staff and members of the
9 panel of the Board who would adjudicate this case if it were to go to hearing. Respondent
10 covenants and agrees that such contacts and communication may be made or conducted ex parte,
11 without notice or opportunity to be heard on his part or on the part of his counsel, and that such
12 contacts and communications may include, but not be limited to, matters concerning this
13 Agreement, the complaint, the allegations in the complaint, any and all evidence that may exist in
14 support of the complaint, and any and all information of every nature whatsoever related to the
15 complaint against Respondent.

16 7. Board Approval Required. This Agreement will be placed on the next available
17 Agenda of a regularly scheduled and duly noticed quarterly Board meeting. It is expressly
18 understood that this Agreement will only become effective if the Board approves the
19 recommendation of the IC for acceptance.

20 8. Effect of Acceptance of Agreement by Board. In the event the Board approves,
21 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
22 IC will cause to be entered herein the Board's Order consistent with the terms of paragraph 5
23 above.

24 9. Effect of Rejection of Agreement by Board. In the event the Board does not
25 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
26 Agreement shall be null, void, and of no further force and effect except as to the following
27 covenant and agreement regarding disqualification of adjudicating Board panel members.
28 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing

1 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
2 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
3 adjudicating panel of the Board from considering the charges against Respondent and participating
4 in the disciplinary proceedings in any role, including adjudication of the case, and Respondent
5 further agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

6 10. **Release From Liability.** In execution of this Agreement, 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 absent evidence of
10 bad faith, from any and all manner of actions, causes of action, suits, debts, judgments, executions,
11 claims and demands whatsoever, known and unknown, in law or equity, that Respondent ever had,
12 now has, may have or claim to have, against any or all of the persons or entities named in this
13 paragraph arising out of or by reason of this investigation, this disciplinary action, this settlement
14 or its administration, in connection with the complaint. The IC hereby agrees to accept this
15 Agreement in full settlement of all claims related to the complaint, with the understanding that the
16 final decision rests with the Board.

17 11. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding
18 and enforceable contract upon Respondent and the Board's IC, which contract may be enforced in
19 a court or tribunal having jurisdiction.

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

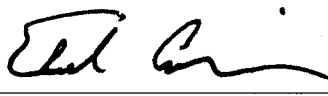
24 13. **Attorneys Fees and Costs.** Respondent covenants and agrees that in the event an
25 action is commenced in the district court to enforce any provision of this Agreement, the
26 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

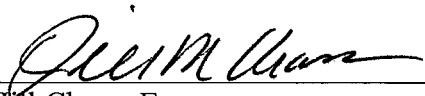
27 14. **Failure to comply with terms.** In the event the Board enters its Order approving
28 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

1 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in
2 addition to that included herein for the subject's violation of an Order of the Board in accordance
3 with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
4 agreed to be paid as a condition of settlement, may subject Respondent to civil collection efforts.

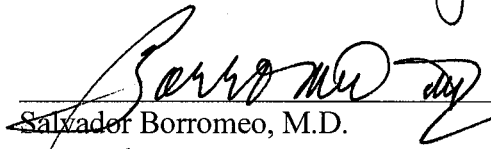
5 Dated this 24th day of August, 2010.

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7 _____
8 Edward O. Cousineau
9 Attorney for the Investigative Committee
of the Nevada State Board of Medical Examiners

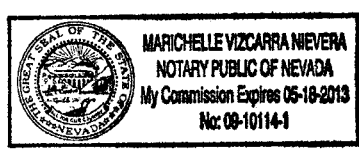

_____ Jill Chase, Esq.
Attorney for Salvador Borromeo, M.D.

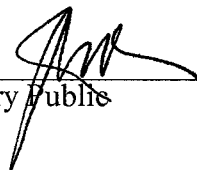
10 I am in agreement with all of the terms of the foregoing Settlement, Waiver and Consent
11 Agreement.

12 Dated this 6 day of August, 2010.

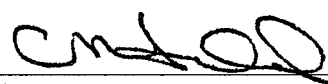
13 
14 _____
15 Salvador Borromeo, M.D.
16 Respondent

Signature of Salvador Borromeo, M.D.
subscribed and sworn to before me
this 6 day of AUGUST 2010.




_____ 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 10th day of
3 September, 2010, with the final total amount of costs due of \$2,725.78.

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6 Charles N. Held, M.D., President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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