

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

3 \* \* \* \* \*

4 **In The Matter of Charges and** )  
5 **Complaint Against** )  
6 **EDWARD VICTORIA, M.D.,** )  
7 **Respondent.** )

Case No. 11-33039-1

**FILED**

**MAR 14 2011**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

9  
10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of  
12 the Nevada State Board of Medical Examiners (the Board) composed of  
13 Charles N. Held, M.D, Theodore Berndt, M.D. and Ms. Valerie Clark, by and through counsel,  
14 Lyn E. Beggs, Esq., and Edward Victoria, M.D. (Respondent), by and through his counsel, Adam  
15 Schneider, Esq., as follows:

16 **WHEREAS**, on January 5,2011 the Board's IC filed a Complaint in the above-referenced  
17 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the  
18 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count malpractice as  
19 defined by NAC 630.040, a violation of NRS 630.301(4); and

20 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands  
21 it, and has consulted with competent counsel, Adam Schneider, Esq., concerning the nature and  
22 significance of the Complaint and is fully advised concerning his rights and defenses to the  
23 Complaint as well as the possible sanctions that may be imposed if the Board finds and concludes  
24 that he has engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act  
25 and after due consideration concedes that he is in violation of the Medical Practice Act as set forth  
26 in count I of the Complaint; and

27 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by  
28 and between himself and the Board's Investigative Committee, and not with the Board, but that the

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

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

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

12 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary  
13 proceedings pending against him without any further costs and expense of providing a defense to  
14 the Complaint or to any amended complaints, Respondent hereby agrees that an order may be  
15 entered herein by the Board finding that Respondent engaged in conduct that is grounds for  
16 discipline pursuant to the Medical Practice Act, to wit: one count of malpractice, a violation of  
17 NRS 630.301(4), and ordering that Respondent be issued a public reprimand. It is further ordered  
18 that Respondent shall complete eight (8) hours of AMA category 1 continuing medical education  
19 credits, four hours of which should include gastroenterology and/or endoscopic procedures and  
20 complications, including PEG tube placement, with the other four hours focused on Respondent's  
21 area of practice. Said continuing medical education is in addition to that which is required to  
22 maintain licensure and must be pre-approved by the chair of the Investigative Committee and  
23 completed within twelve months of the acceptance of this Agreement by the Board. Finally,  
24 Respondent shall be ordered to reimburse the Board the reasonable costs and expenses incurred in  
25 the investigation and prosecution of this case, the current amount being \$2185.07, not including  
26 any costs that may be necessary to finalize this Agreement. Said costs to be remitted to the Board  
27 within ninety (90) days of the acceptance of this Agreement by the Board.

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

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

20           4.       **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           5.       **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 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 may appear at the Board meeting where this Agreement is discussed  
11 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         6.       **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         7.       **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.

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1           8.     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           9.     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           10.    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           11.    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           12.    Failure to comply with terms. In the event the Board enters its Order approving  
23 this Agreement, should Respondent fail to comply with the terms recited herein, the Board  
24 would then have grounds, after notice and a hearing, to take disciplinary action against  
25 Respondent in addition to that included herein for the Respondent's violation of an Order of the  
26 Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to

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1 reimburse the Board for monies agreed to be paid as a condition of settlement, may subject  
2 Respondent to civil collection efforts.

3 Dated this 7<sup>th</sup> day of Feb of 2011.

Dated this 7 day of Feb, 2011.

4 By: [Signature]  
5 Lyn E. Beggs, Esq.  
6 Attorney for the Investigative Committee

By: [Signature]  
Adam Schneider, Esq.  
Attorney for Respondent

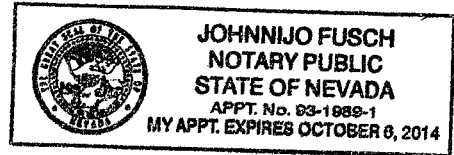
7 UNDERSTOOD AND AGREED:

8 [Signature]  
9 Edward Victoria, M.D., Respondent

10 Dated this 3 day of FEB, 2011.

11 Subscribed and sworn to before me  
12 this 3<sup>rd</sup> day of February 2011.

13  
14 [Signature]  
15 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 11<sup>th</sup> day of  
3 March 2011, with the final total amount of costs due of \$2,185.07.

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