

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 **ERIC LAWRENCE GOLDBERG, M.D.,** )  
8 **Respondent.** )

Case No. 12-29614-1

**FILED**

SEP 11 2012

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

10  
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 ("Board"), composed of  
14 Benjamin J. Rodriguez, M.D., Chairman, Beverly A. Neyland, M.D., Member, and  
15 Donna A. Ruthe, M.D., Member, in the above-captioned matter, by and through its counsel,  
16 Bradley O. Van Ry, Esq., Board Deputy General Counsel, and Eric Lawrence Goldberg, M.D.  
17 ("Respondent"), by and through his counsel, Edward J. Lemons, Esq., as follows:

18 **WHEREAS**, on March 14, 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, i.e., Chapter 630 of the  
21 Nevada Revised Statutes (NRS), to wit: Count I, one count of malpractice, the failure of a  
22 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used  
23 under similar circumstances as defined by Nevada Administrative Code (NAC) 630.040, a  
24 violation of NRS 630.301(4);

25 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,  
26 understands it, and has had ample opportunity to consult with his counsel concerning the nature  
27 and significance of the formal Complaint. Respondent is fully aware concerning his rights and  
28 defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the

1 Board finds and concludes that he has violated one or more provisions of the  
2 Medical Practice Act, and after due consideration, concedes that he engaged in conduct which is in  
3 violation of the Medical Practice Act as set forth in Count I;

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

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

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

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

20         **2.         Representation by Counsel/Knowing, Willing and Intelligent Agreement.**  
21 Respondent is represented by legal counsel in this matter and has had ample opportunity to  
22 review this Agreement, the formal Complaint filed in this matter and the related factual basis with  
23 said legal counsel, Edward J. Lemons, Esq. Respondent covenants and agrees that he enters into  
24 this Agreement knowingly, willingly and intelligently.

25         **3.         Waiver of Rights.** Respondent waives all rights in connection with this  
26 Agreement, and the terms, covenants and conditions contained herein, and with the understanding  
27 that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant  
28 to the United States Constitution, the constitution of the state of Nevada, NRS Chapter 630,

1 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply  
2 to him in connection with the proceedings on the formal Complaint filed herein, the defense of  
3 said formal Complaint and the adjudication of the charges in said formal Complaint.

4 Respondent agrees that the matter of the formal Complaint herein may be settled and  
5 resolved in accordance with this Agreement without a hearing or any further proceedings, and  
6 without the right to judicial review. In the event this Agreement is not approved by the Board, this  
7 Agreement shall have no force and effect and shall be *void ab initio*, and Respondent shall have all  
8 rights arising under or pursuant to the United States Constitution, the constitution of the state of  
9 Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be  
10 available to him or that may apply to him in connection with the proceeding on the formal  
11 Complaint filed herein.

12 **4. 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 the  
14 formal Complaint, Respondent hereby agrees that:

15 a. The Board may issue an Order finding that Respondent has engaged in  
16 conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act, to wit: the  
17 failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge  
18 ordinarily used under similar circumstances as defined by NAC 630.040, a violation of  
19 NRS 630.301(4), as set forth in Count I of the formal Complaint;

20 b. Respondent shall be issued a public reprimand;

21 c. Respondent shall attend ten (10) hours of CME in  
22 reading abdominal CT scans and/or diagnosing renal cell carcinoma, in-person and be within one  
23 (1) year of the Board's acceptance and approval of this Agreement, and that this CME shall be in  
24 addition to the normal requirements for licensure;

25 d. Pursuant to NRS 622.400, Respondent shall reimburse the sum of  
26 \$1,254.40, the current amount of the costs incurred by the Board to investigate and prosecute this  
27 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the  
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1 Nevada State Board of Medical Examiners within thirty (30) days of the Board's acceptance and  
2 approval of this Agreement; and,

3 e. The terms of this Agreement shall be reported as required by law.

4 **5. Release From Liability.** In execution of this Agreement, the Respondent, for  
5 himself, his executors, successors and assigns, hereby releases and forever discharges the state of  
6 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and  
7 employees in their representative capacities, and ~~in~~ their individual capacities, from any and all  
8 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands  
9 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have  
10 or claim to have, against any or all of the persons or entities named in this paragraph arising out of  
11 or by reason of this investigation, this Agreement or its administration.

12 **6. Procedure of Adoption of Agreement.** The IC and counsel for the IC shall  
13 recommend approval and adoption of the terms, covenants and conditions contained herein by the  
14 Board in resolution of the formal Complaint pending herein against Respondent. In the course of  
15 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may  
16 communicate directly with the Board staff and members of the panel of the Board who would  
17 adjudicate this case if it were to go to hearing.

18 Respondent acknowledges that such contacts and communication may be made or  
19 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his  
20 counsel until the public Board meeting where this Agreement is discussed, and that such contacts  
21 and communications may include, but not be limited to, matters concerning this Agreement, the  
22 formal Complaint, and any and all information of every nature whatsoever related to the formal  
23 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that  
24 Respondent and/or his counsel may appear at the Board meeting where this Agreement is  
25 discussed, and if requested, respond to any questions that may be addressed to the IC or its  
26 counsel.

27 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,  
28 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the

1 IC will cause to be entered herein the Board's order accepting, adopting and approving this  
2 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and  
3 ordering that this case be closed, subject to the provisions in Paragraph 4.

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

14       **9. Binding Effect.** Providing this Agreement is approved by the Board, Respondent  
15 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent  
16 and the Board's IC, which contract may be enforced in a court or tribunal having jurisdiction.

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

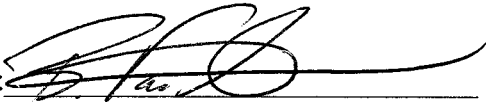
21       **11. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an  
22 action is commenced in the district court to enforce any provision of this Agreement, the  
23 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

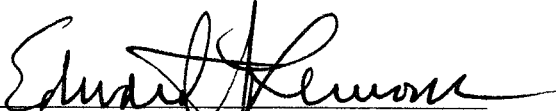
24       **12. Failure to Comply With Terms.** In the event the Board enters its order approving  
25 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would  
26 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in  
27 addition to that included herein for the subject's violation of an order of the Board in accordance  
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1 with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies  
2 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.


3 Dated this 20<sup>th</sup> day of July, 2012.

Dated this 20<sup>th</sup> day of July, 2012.

4  
5 By:   
6 Bradley O. Van Ry, Esq.  
7 Attorney for the Investigative Committee

By:   
Edward J. Lemons, Esq.  
Attorney for Respondent

8 UNDERSTOOD AND AGREED:  
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11 Eric Lawrence Goldberg, M.D., Respondent 7/17/12

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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 7<sup>th</sup> day of  
3 September 2012, with the final total amount of costs due of \$1,254.40.

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