

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

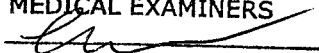
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4 **In The Matter of Charges and**)
5)
6 **Complaint Against**)
7)
8 **THOMAS EDWARD REMBETSKI, M.D.,**)
9 **Respondent.**)

Case No. 11-8522-1

FILED

JUN -8 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
13 Investigative Committee ("IC") of the Nevada State Board of Medical Examiners ("Board")
14 composed of Benjamin J. Rodriguez, M.D., Chairman, Beverly A. Neyland, M.D., Member, and
15 Donna A. Ruthe, Member, in the above-captioned matter, by and through
16 its counsel, Bradley O. Van Ry, Esq., Board Deputy General Counsel and
17 Thomas Edward Rembestski, M.D. (Respondent), by and through his counsel
18 Michael D. Navratil, Esq., as follows:

19 **WHEREAS**, on October 5, 2011, the Board's IC filed a formal Complaint in the
20 above-referenced matter charging Respondent with engaging in conduct that is grounds for
21 discipline pursuant to the Nevada Medical Practice Act, i.e., Chapter 630 of the
22 Nevada Revised Statutes (NRS), to wit: Count I, one count of malpractice, the failure of a
23 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used
24 under similar circumstances, a violation of NRS 630.301(4) and as defined by
25 Nevada Administrative Code (NAC) 630.040;

26 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,
27 understands it, and has had ample opportunity to consult with his counsel concerning the nature
28 and significance of the formal Complaint. Respondent is fully aware, therefore, concerning his

1 rights and defenses to the formal Complaint, as well as the possible sanctions that may be imposed
2 if the Board finds that he has violated one or more provisions of the Medical Practice Act, and
3 after due consideration, concedes that evidence exists such that the Board may find that he
4 engaged in conduct which is in violation of the Medical Practice Act as set forth in Count I of the
5 Complaint;

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

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

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

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

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

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

1 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory
2 rights that may be available to him or that may apply to him in connection with the proceedings on
3 the formal Complaint filed herein, the defense of said formal Complaint and the adjudication of
4 the charges in said formal Complaint. Respondent further agrees that the matter of the
5 formal Complaint herein may be settled and resolved in accordance with this Agreement without a
6 hearing or any further proceedings, and without the right to judicial review. In the event this
7 Agreement is not approved by the Board, this Agreement shall have no force and effect and shall
8 be *void ab initio*, and Respondent shall have all rights arising under or pursuant to the
9 United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630,
10 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply
11 to him in connection with the proceeding on the formal 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 evidence exists such that the Board may issue an
15 Order finding that Respondent has engaged in conduct that is grounds for discipline pursuant to
16 the Nevada Medical Practice Act, to wit¹: malpractice, the failure of a physician, in treating a
17 patient, to use the reasonable care, skill, or knowledge ordinarily used under similar
18 circumstances, a violation of NRS 630.301(4) and as defined by NAC 630.040, as set forth in
19 Count I of the formal Complaint; and ordering that:

- 20 a. Respondent shall be issued a public reprimand;
- 21 b. Pursuant to NRS 622.400, Respondent shall reimburse the sum of
22 \$2,185.53, the current amount of the costs incurred by the Board to investigate and prosecute this
23 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the
24 Nevada State Board of Medical Examiners within thirty (30) days of the Board's acceptance and
25 approval of this Agreement;

26 _____

27 ¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by
Respondent are not intended or made for any other use, such as in the context of another state or federal government
regulatory agency proceeding, state or federal civil or criminal court proceeding, or any other state or federal court, or
any credentialing or privileges matter.

1 c. Respondent shall attend ten (10) hours of CME in
2 laparoscopic cholecystectomy and related follow-up, in-person and within one (1) year of the
3 Board's acceptance and approval of this Agreement and in addition to the normal requirements.
4 Said CME to be pre-approved by the chair of the IC; and,

5 d. The terms of this Agreement shall be reported as required by law.

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

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

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

1 7. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
2 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
3 IC will cause to be entered herein the Board's Order accepting, adopting and approving this
4 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
5 ordering that this case be closed, subject to the provisions in Paragraph 4.

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

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

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


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

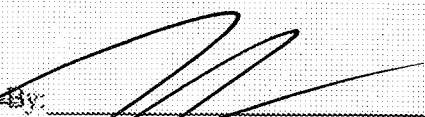
26 12. **Failure to Comply With Terms.** In the event the Board enters its Order approving
27 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would
28 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in

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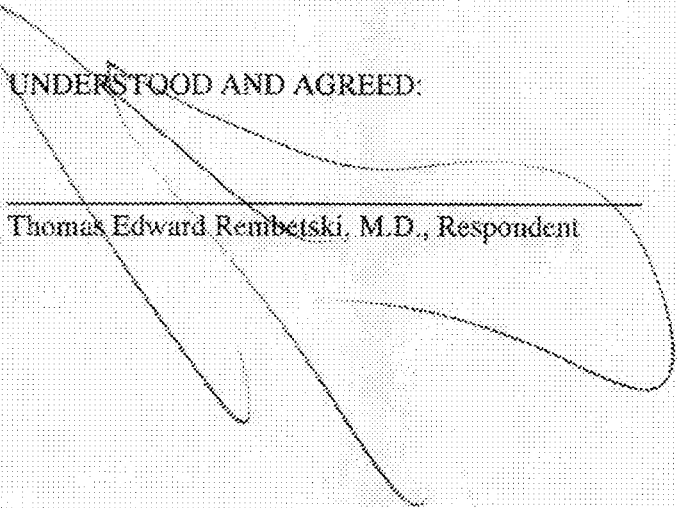
12. Failure to Comply With Terms. In the event the Board enters its Order approving this Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have grounds, after notice and a hearing, to take disciplinary action against Respondent in addition to that included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

Dated this 4th day of June, 2012. Dated this 12th day of JUNE, 2012.

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

By: 
Michael D. Navratil, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:


Thomas Edward Rembetski, M.D., Respondent

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IT IS HEREBY ORDERED that the foregoing Settlement, Waiver and Consent Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 8th day of June 2012, with the final total amount of costs due of \$2,185.53.



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