

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

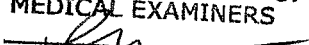
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6 **In the Matter of Charges and**)
7 **Complaint Against**)
8 **BENJAMIN VENGER, M.D.,**)
9 **Respondent.**)
10 _____)

Case No. 10-9819-1

FILED

NOV 30 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

11
12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of the
14 Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D.,
15 Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fisher, M.D., by and through
16 Edward O. Cousineau, Esq., Deputy Executive Director for the Board and counsel for the IC, and
17 Benjamin Venger, M.D. (Respondent), by and through David J. Mortensen, Esq., as follows:

18 **WHEREAS**, on February 22, 2011, the Board's IC filed an Amended Complaint in the above-
19 referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to
20 the Medical Practice Act, Nevada Revised Statutes (NRS) Chapter 630, to wit: one count of malpractice, as
21 Respondent failed to use the reasonable care, skill, or knowledge ordinarily used in similar circumstances;
22 and

23 **WHEREAS**, Respondent has received and reviewed a copy of the Amended Complaint,
24 understands it, and has been afforded the opportunity to consult with counsel concerning the nature and
25 significance of the Complaint, and Respondent fully understands his rights and defenses regarding the
26 Amended Complaint, as well as the possible sanctions that may be imposed if the Board finds and
27 concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical Practice
28 Act; and

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1 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United States
2 Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act
3 and the Administrative Procedures Act (NRS Chapter 233B), the right to a formal hearing on the charges
4 against him, the right to representation by counsel in the preparation and presentation of his defense, the
5 right to confrontation and cross-examination of witnesses against him, the right to written findings of fact,
6 conclusions of law and order regarding a final decision by the Board, and the right to judicial review of any
7 final decision by the Board that is adverse to him; and

8 **WHEREAS**, Respondent, based upon his understanding of the relevant facts and circumstances,
9 and subject to the conditions set forth in this Agreement, desires to waive all of his rights under the United
10 States Constitution, the Constitution of the state of Nevada, the Medical Practice Act and the Nevada
11 Administrative Procedures Act, including but not limited to the right to a hearing on the charges and a
12 written findings of fact, conclusions of law and order, and he desires to settle and resolve this matter of the
13 formal Complaint against him by way of and in accordance with this Agreement; and

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

19 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms, covenants
20 and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be
21 binding and enforceable upon him; and

22 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the terms,
23 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below
24 shall not be binding and enforceable upon him, except the provisions as to disqualification of adjudicating
25 panel members in paragraph number 9, and he will be provided with an opportunity to defend himself
26 against the charges against him at a regularly scheduled hearing in accordance with all applicable laws.

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1 **NOW, THEREFORE**, in order to resolve the pending Amended Complaint and charges brought
2 against him by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the
3 following terms, covenants and conditions:

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

8 2. **Representation by Counsel**. Respondent is represented by counsel named herein, whom
9 Respondent covenants and agrees is fully capable, competent and advised in these circumstances and
10 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly and
11 intelligently, after full consultation with and upon the advice of counsel.

12 3. **Waiver of Rights**. In connection with this Agreement, and the terms, covenants and
13 conditions contained herein, Respondent knowingly, voluntarily and intelligently waives all rights arising
14 under or pursuant to the United States Constitution, the Constitution of the state of Nevada,
15 NRS Chapter 630 and NRS Chapter 233B that may be available to him or that may apply to him in
16 connection with the proceedings on the Complaint filed herein, the defense of said Complaint, the
17 adjudication of the charges in said Complaint, and the imposition of sanctions, and Respondent further
18 agrees that the matter of the disciplinary action commenced by the Complaint herein may be settled and
19 resolved in accordance with this Agreement without a hearing or any further proceeding, and without the
20 right to judicial review.

21 4. **No Admission of Liability**. This Agreement is neither an admission of liability by
22 Respondent nor a concession by the IC that its claims as alleged in the underlying Amended Complaint
23 are not well founded.

24 5. **Consent to Entry of Order**. In order to resolve the matter of these disciplinary
25 proceedings pending against him without any further costs and expense of providing a defense to the
26 Amended Complaint, Respondent, while not admitting or denying the allegations set forth in the Amended
27 Complaint, hereby agrees to a stipulated resolution, to wit: that in treating the patients referenced in the
28 Amended Complaint filed by the IC, Respondent failed to maintain timely, legible, accurate and

1 complete medical records, a violation of NRS 630.3062(1). In recognition of such, Respondent agrees
2 to perform 100 hours of community service without compensation, in a manner and capacity mutually
3 and reasonably agreed to by Respondent and the Board, and approved by the Board in advance of its
4 completion, within eighteen months of the adoption of this Agreement; to donate \$5,000.00 to a charity
5 mutually agreeable to the parties; and to reimburse the Board the reasonable costs and expenses incurred
6 in the investigation and prosecution of this case in the current amount of \$9,324.17, plus any additional
7 reasonable costs that may be accrued prior to the entry of the Board's Order relating to this matter. The
8 aforementioned costs are to be paid to the Board within 60 days of the acceptance, adoption and
9 approval of this Agreement by the Board. A final accounting of the additional costs will be provided to
10 Respondent in the entry of the Board's Order relating to the matter.

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

19 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
20 recommend approval and adoption of the terms, covenants and conditions contained herein by the
21 Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the
22 Amended Complaint. In the course of seeking Board approval, adoption and/or acceptance of this
23 Agreement, counsel for the IC may communicate directly with the Board staff and members of the
24 panel of the Board that would adjudicate this case if it were to go to hearing. Respondent covenants
25 and agrees that such contacts and communication may be made or conducted ex parte, without notice or
26 opportunity to be heard on his part, and that such contacts and communications may include, but not be
27 limited to, matters concerning this Agreement, the Amended Complaint, the allegations in the Amended
28 Complaint, any and all evidence that may exist in support of the Amended Complaint, and any and all

1 information of every nature whatsoever related to the Complaint or the proceedings herein against
2 Respondent.

3 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
4 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will enter
5 an order consistent with the terms noted previously in paragraph number 5 and dismissing the
6 underlying Complaint.

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

17 10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and
18 enforceable contract upon Respondent and the Board's IC, which contract may be enforced in a court or
19 tribunal having jurisdiction. Further, failure to comply with the terms recited herein may result in
20 additional disciplinary action being initiated against Respondent for a violation of an order of the Board
21 in accordance with NRS 630.3065(2)(a). Additionally, failure to pay any fee or cost ordered herein may
22 also result in such legal action as determined to be necessary to collect the unpaid fee or cost.

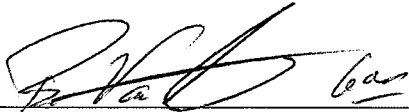
23 11. **Forum Selection Clause.** Respondent covenants and agrees that in the event either
24 party is required to seek enforcement of this Agreement in the district court, he consents to such
25 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the Second Judicial District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

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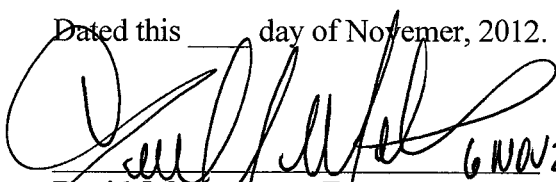
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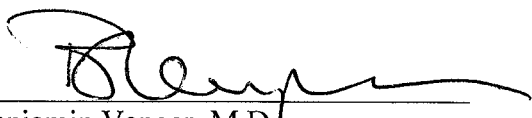
1 12. Attorneys' Fees and Costs. Respondent and the Board's IC covenant and agree that in
2 the event an action is commenced in the district court to enforce any provision of this Agreement, the
3 prevailing party shall be entitled to recover reasonable costs and attorneys' fees.

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5 Dated this 14th day of November, 2012.

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

Dated this ___ day of November, 2012.

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8 David J. Mortensen, Esq.
9 Attorney for Benjamin Venger, M.D.

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12 Benjamin Venger, M.D.
13 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 30th day of
3 November 2012, with the final total amount of costs due of \$9,324.17.

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