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Assistant Attorney General
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Attorney General
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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSES OF)
BENJAMIN H. VENGER) **STIPULATION AND ORDER**
TO PRACTICE AS A PHYSICIAN/SURGEON)
AND TO ADMINISTER AND PRESCRIBE) **CASE NO. DOPL 2009- 361**
CONTROLLED SUBSTANCES)
IN THE STATE OF UTAH)

BENJAMIN H. VENGER (“Respondent”) and the **DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of the State of Utah (“Division”) stipulate and agree as follows:

1. Respondent admits the jurisdiction of the Division over Respondent and over the subject matter of this action.
2. Respondent acknowledges that Respondent enters into this Stipulation knowingly and voluntarily.

3. Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter.

4. Respondent understands that Respondent is entitled to a hearing before the State of Utah's Physician Licensing Board ("Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses. Respondent understands that by signing this document Respondent hereby waives the right to a hearing, the right to present evidence on Respondent's own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing. Respondent understands that by signing this document Respondent waives all rights to any administrative and judicial review as set forth in §§ 63G-4-301 through 63G-4-405 and Utah Administrative Code R156-46b-12 through R156-46b-15. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann. § 63G-4-102(4).

5. Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter.

6. Respondent understands that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document. The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's license, to other persons and entities.

7. Respondent admits the following facts are true:

- a. Respondent was first licensed to practice as physician/surgeon and to administer and prescribe controlled substances in the State of Utah on or about May 28, 1997.
- b. In 2003 Respondent accepted payment from an intermediary which exceeded the non-surgical work product performed and Respondent testified untruthfully in a civil matter that same year.
- c. Pursuant to the events described above, on or about May 5, 2009 Respondent voluntarily entered into an agreement with the Board of Medical Examiners in the State of Nevada whereby Respondent's license to practice as a physician in the State of Nevada was disciplined. A copy of the Nevada Settlement, Waiver, and Consent Agreement is attached as Exhibit A.

8. Respondent admits that Respondent's conduct described above is unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (d), and (h). Respondent agrees by engaging in such conduct the Division is justified in taking disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a) and (b). Respondent agrees that an Order, which constitutes disciplinary action against Respondent's license by the Division pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's license:

- (1) Respondent's licenses to practice as a physician/surgeon and to administer and prescribe controlled substances shall be publicly reprimanded for the conduct described above.
- (2) If Respondent practices as a physician/surgeon or administer or prescribes controlled substances in the State of Utah, Respondent shall meet with the Board within thirty (30) days of any such activity. Respondent shall continue to meet with the Board or with the Division, as directed by the Division, as the Division may direct while Respondent is practicing in the State of Utah.
- (3) Respondent shall successfully and timely complete all terms and conditions contained in Exhibit A. Respondent shall submit a report to the

Division and Board within 30 days of the effective date of this Stipulation and Order listing the terms and conditions of Exhibit A that Respondent has already completed as of the date of the report. On or about June 1, 2010, and once every six months thereafter until Respondent's probation is complete, Respondent shall submit a report to the Division and Board confirming that Respondent is complying with the terms and conditions of Exhibit A.

- (4) Respondent shall immediately notify the Division in writing of any change in Respondent's residential or business address.

9. Upon approval by the Director of the Division, this Stipulation and Order shall be the final compromise and settlement of this non-criminal administrative matter. Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudice they might otherwise have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification.

10. Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice.

11. This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation. Respondent agrees not to take any action or make any public statement, that creates, or tends to create, the impression that any of the matters set forth in this Stipulation and Order are without factual basis. A public statement includes statements to one or more Board members during a meeting of the Board.

Any such action or statement shall be considered a violation of this Stipulation and Order.

12. The accompanying Order becomes effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent shall comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall comply with and timely complete all the terms and conditions of probation. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Board. Failure to comply with and timely complete a term or condition shall constitute a violation of the Stipulation and Order and may subject Respondent to revocation or other sanctions.

13. If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

14. Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

BY: 
NOEL TAXIN
Bureau Manager

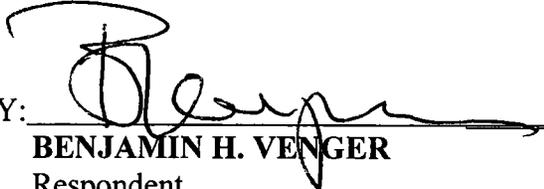
DATE: 11/23/09

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 
L. MITCHELL JONES
Counsel for the Division

DATE: 23 Nov 2009

RESPONDENT

BY: 
BENJAMIN H. VENGER
Respondent

DATE: 11/17/09

ORDER

THE ABOVE STIPULATION, in the matter of **BENJAMIN H. VENGER**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(7) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 23 day of November, 2009.

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK B. STEINAGEL
Director

Investigator Sandy Hess

EXHIBIT A

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*Before the Board of Medical Examiners
of the State of Nevada*

In The Matter of Charges and
Complaint Against
BENJAMIN VENGER, M.D.,
Respondent.

Case No. 08-9819-1

**FILED
MAY 14 2009**

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

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 (the Board) composed of Charles N. Field, M.D., Benjamin J. Rodriguez, M.D., and Jean Stoess, M.A., by and through General Counsel, Edward O. Cousineau, and Benjamin Venger, M.D., (Respondent), through his counsel of record, Kathleen Janssen, Esq., as follows:

WHEREAS, on June 26, 2008, the Board's IC filed a formal Complaint in the above-referenced matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (NRS Chapter 630), to wit: one count of engaging in conduct that violates NRS 630.301(7), one count of engaging in conduct that violates NRS 630.301(9), and one count of engaging in conduct that violates NRS 630.306(2)(a); and

WHEREAS, Respondent has received a copy of the Complaint, reviewed it, understands it, and has consulted with competent counsel Kathleen Janssen, Esq., concerning 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

1 limited to the right to a formal hearing on the charges against him, the right to representation by counsel in
2 the preparation and presentation of his defense, the right to confrontation and cross-examination of
3 witnesses against him, the right to present evidence and witnesses on his own behalf, the right to written
4 findings, conclusions and order regarding a final decision by the Board, and the right to judicial review of
5 any final decision by the Board that is adverse to him; and

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

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

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

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

25 NOW THEREFORE, in order to resolve the charges alleged by the Board's IC in Case No. 08-
26 9819-1, Respondent and the IC hereby agree to the following terms, covenants and conditions:

27 1. Jurisdiction. Respondent is, and at all times mentioned in the Complaint filed in the
28 above-captioned matter was, a physician licensed to practice medicine in the State of Nevada subject to

1 the jurisdiction of the Board to hear and adjudicate charges of violations of the Medical Practice Act
2 (NRS 630), and to impose sanctions as provided by the Act.

3 2. Representation by Counsel. Respondent is represented by counsel herein, whom
4 Respondent covenants and agrees is fully capable, competent, and fully advised in these circumstances and
5 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and
6 intelligently after full consultation with counsel.

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

19 Furthermore, all admissions made by Respondent are solely for final disposition of this matter and
20 any subsequent related administrative proceedings or civil litigation involving the Board and Respondent.
21 Therefore, said admissions by Respondent are not intended or made for any other use, such as in the
22 context of hospital peer review proceedings, another state or federal regulatory proceeding, civil or
23 criminal court proceeding, in the State of Nevada or any other state or federal court.

24 4. Acknowledgement of Reasonable Basis to Proceed. Respondent covenants and agrees
25 that the Board's IC had a reasonable basis to believe that Respondent engaged in conduct that is grounds
26 for discipline pursuant to the provisions of the Medical Practice Act.

27 5. Consent to Entry of Order In order to resolve the matter of these disciplinary
28 proceedings pending against him without any further costs and expense of providing a defense to the

1 Complaint or to an amended complaint, and in recognition that Respondent has already voluntarily
2 provided substantial community medical services (consisting of both administrative and clinical non-
3 surgical activities) at Mike O'Callahan Hospital, Respondent has accomplished various self-initiated
4 restitution and remedial measures, and the conduct at issue in this matter does not involve any
5 allegations of malpractice, Respondent hereby agrees and does not contest that an order may be entered
6 herein by the Board finding that Respondent engaged in conduct that is grounds for discipline pursuant
7 to the Medical Practice Act to wit: his acceptance of payment from an intermediary in 2003 which
8 exceeded the non-surgical work product performed and his untruthful testimony in a civil matter in that
9 same year, was in violation of NRS 630.301(9), engaging in conduct that brings the medical profession
10 into disrepute; that Respondent's license shall be suspended, with that suspension stayed, and Respondent
11 be placed on probation for 36 months with the following terms and conditions: (1) that Respondent shall
12 be issued a formal written public letter of reprimand from the Board which will include language which is
13 synonymous with the terms of this Agreement; (2) that Respondent shall be fined in the amount of
14 \$5,000.00; (3) that Respondent shall continue to engage in individual outpatient therapy on an as-needed
15 basis as determined by his therapist throughout the period of his probation; (4) that Respondent shall
16 undertake, participate as indicated, and complete the attached community service proposal ("CSP")
17 consisting of 805 hours of clinical and administrative service which is to be completed as is further
18 described in the CSP which is incorporated into this Agreement by reference; (5) that Respondent shall
19 continue to assist the United States Attorney's Office in its investigation and prosecution to the extent
20 which has been agreed to between those parties; and (6) that Respondent agrees to pay the aforementioned
21 fine and the costs of investigation and prosecution of this matter, which are in the amount of \$12,375.92,
22 payable to the Nevada State Board of Medical Examiners within sixty (60) days of acceptance, adoption
23 and approval of this Agreement by the Board. A final accounting of the additional costs will be
24 provided to Respondent within thirty (30) days of approval of the matter.

25 Respondent acknowledges that his on-going active medical licensure in the State of Nevada is
26 contingent upon his completion of the thirty-six (36) month probation and the aforementioned terms and
27 that Respondent's failure to comply with these terms in the entirety will result in the summary suspension
28 of his medical license for failure to comply with an order of the Board.

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

9 7. Procedure for Adoption of Agreement. The IC and counsel for the IC shall
10 recommend approval and adoption of the terms, covenants and conditions contained herein by the
11 Board in resolution of the Complaint pending herein against Respondent. In the course of seeking Board
12 approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly
13 with the Board staff and members of the panel of the Board who would adjudicate this case if it were to
14 go to hearing. Respondent acknowledges that such contacts and communication may be made or
15 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his counsel
16 until the public Board meeting where this Agreement is discussed, and that such contacts and
17 communications may include, but not be limited to, matters concerning this Agreement, the Complaint,
18 and any and all information of every nature whatsoever related to the Complaint or the proceedings
19 herein against Respondent. The IC and its counsel agree that Respondent and his counsel may appear at
20 the Board meeting where this Agreement is discussed, and if requested, to respond to any questions that
21 may be addressed to the IC or its counsel.

22 8. Effect of Acceptance of Agreement by Board. In the event the Board approves,
23 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the IC
24 will cause to be entered herein the Board's Order accepting, adopting and approving this Settlement,
25 Waiver and Agreement, ordering full compliance with the terms herein and ordering that this case be
26 closed, subject to the provisions of Section 5.

27 9. Effect of Rejection of Agreement by Board. In the event the Board does not approve,
28 accept and adopt the terms, covenants and conditions set out in this Agreement, this Agreement shall be

1 null, void, and of no further force and effect except as to the following covenant and agreement
 2 regarding disqualification of adjudicating Board panel members. Respondent agrees that,
 3 notwithstanding rejection of this Agreement by the Board, nothing contained herein and nothing that
 4 occurs pursuant to efforts of the IC or its counsel to seek acceptance and adoption of this Agreement by
 5 the Board shall disqualify any member of the adjudicating panel of the Board from considering the
 6 charges against Respondent and participating in the disciplinary proceedings in any role, including
 7 adjudication of the case, and Respondent further agrees that he shall not seek to disqualify any such
 8 member absent evidence of bad faith.

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

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

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

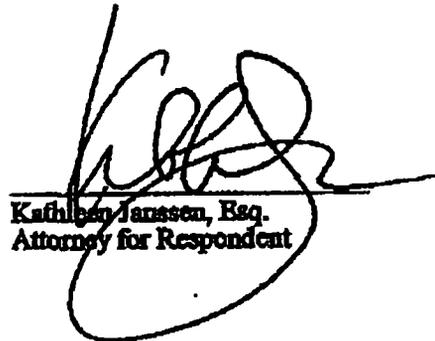
19 **13. Failure to comply with terms.** In the event the Board enters its Order approving this
 20 Agreement, should Respondent fail to comply with the terms recited herein, the Board would then have
 21 grounds, after notice and a hearing, for disciplinary action, including the revocation of his active-
 22 medical-licensure in the State of Nevada, for Respondent's violation of an Order of the Board. NRS

23 630.3065(2)(a)

24 Dated this 6th day of May 2009.

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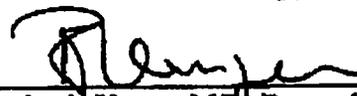
26 Edward O. Cousineau
 27 Attorney for the Investigative Committee of the
 28 Nevada State Board of Medical Examiners


 Kathleen Janssen, Esq.
 Attorney for Respondent

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I, Benjamin Venger, M.D., hereby agree to the foregoing Settlement, Consent and Waiver as to the complaint in Nevada State Board of Medical Examiners Case No. 08-9819-01

Dated this ^{MAY} 5TH day of April, 2009.
EV


Benjamin Venger, M.D., Respondent