BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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In the Matter of Charges and	)	**Case No. 14-19407-1**
Complaint Against	)	FILED
CESAR A. ESTELA, M.D.,	)	MAR - 9 2015
Respondent.	)	NEVADA STATE BOARD OF MEDICAL EXAMINERS By:

SETTLEMENT AGREEMENT

THIS AGREEMENT is hereby entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed at the time of filing the Complaint of Theodore B. Berndt, M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned matter, by and through Erin L. Albright, Esq., Board General Counsel and attorney for the IC, and Cesar A. Estela, M.D. (Respondent), by and through his counsel, Anastasia Noe, Esq., as follows:

WHEREAS, on September 17, 2014, the Board's IC filed a Complaint in the above-captioned matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC), to wit: Count I, one count of failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1), and Count II, one count of malpractice as defined by NAC 630.040, a violation of NRS 630.301(4); and

WHEREAS, Respondent received a copy of the Complaint, reviewed it, understands it, and consulted with competent counsel, Anastasia Noe, Esq., concerning the nature and significance of the Complaint. Respondent is fully advised concerning his rights and defenses to

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the Complaint, as well as the possible sanctions that may be imposed if the Board finds and concludes that he violated one or more provisions of the MPA; 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 MPA and the Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to, the right to a formal hearing on the charges against him, the right to representation by counsel in the preparation and presentation of his defense, the right to confront and cross-examine the witnesses against him, the right to written findings, conclusions and an order regarding a final decision by the Board, and the right to judicial review of any final decision by the Board that is adverse to him; and

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

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

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

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

2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement**.

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Respondent is represented by above-identified counsel herein, whom Respondent covenants and agrees is fully capable, competent and fully advised in these circumstances, and Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly, and intelligently after full consultation with and upon advice of above-identified counsel.

3. Waiver of Rights. In connection with this Agreement, and the terms, covenants and conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of above-identified counsel, waives all rights in connection with this Agreement, and the terms, covenants and conditions contained herein, and with the understanding that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant to the United States Constitution, the constitution of the state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply to him in connection with the proceedings on the Complaint filed herein, the defense of said Complaint, the adjudication of the charges in said Complaint, and the imposition of sanctions.

Respondent agrees that the matter of the Complaint herein may be settled and resolved in accordance with this Agreement without a hearing or any further proceedings, and without the right to judicial review.

4. Acknowledgement of Reasonable Basis to Proceed. Respondent covenants and agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

5. Consent to Entry of Order. In order to resolve the matter of these disciplinary proceedings pending against him without incurring any further costs and expense of providing a defense to the Complaint, Respondent hereby agrees that the Board may issue an Order finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, to wit: one count of malpractice[1] as defined by NAC 630.040, a violation of NRS 630.301(4), as contained in Count II of the Complaint, and agrees[2] that:

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[1] The finding of malpractice does not arise from an incident of patient harm.

[2] All agreements and admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said agreements and 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 proceeding, or any other state or federal court.

a. Respondent shall be issued a public reprimand;

b. Pursuant to NRS 622.400, Respondent shall reimburse the sum of Two Thousand and 00/100 Dollars ($2,000.00), the current amount of the costs incurred by the Board to investigate and prosecute this matter. The costs shall be paid to the Board within sixty (60) days of the Board's acceptance, adoption and approval of this Agreement;

c. The remaining Count shall be dismissed with prejudice; and

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

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

7. Procedure of Adoption of Agreement. The IC and counsel for the IC shall recommend approval and adoption of the terms, covenants and conditions contained herein by the Board in resolution of the Complaint pending herein against Respondent. In the course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff and the adjudicating members of the Board.

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

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

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

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

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

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

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13. **Failure to Comply With Terms**. In the event the Board enters its order approving this Agreement, should Respondent fail to comply with any term or condition recited herein, the IC shall be authorized to immediately suspend Respondent's license to practice medicine in the state of Nevada pending an order to show cause hearing, which will be duly noticed. Further, failure to comply with the terms recited herein may result in additional disciplinary action being initiated against Respondent for a 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 this Agreement may subject Respondent to civil collection efforts.

Dated this 11th day of Feb., 2015.

By: _____
Erin L. Albright, Esq.
Attorney for the Investigative Committee

Dated this 5th day of Feb, 2015.

By: _____
Anastasia Noe, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:

_____
Cesar A. Estela, M.D., Respondent
Dated this 2 day of 5, 2015.

IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 6th day of March 2015, with the final total amount of costs due of $2,000.00.

Michael L. Fischer, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS