

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

3 * * * * *

4 **In The Matter of Charges and**)
5 **Complaint Against**)
6 **ABDEL KHALEK, M.D.,**)
7 **Respondent.**)

Case No. 10-8734-1

FILED

MAR 14 2011

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 (the Board), composed of
14 Charles N. Held, M.D., Chairman, Theodore B. Berndt, M.D., Member, and Valerie J. Clark,
15 Member, by and through Bradley O. Van Ry, Deputy General Counsel, and Abdel Khalek, M.D.
16 (Respondent), as follows:

17 **WHEREAS**, on October 7, 2010, the Board's IC filed a Complaint in the above referenced
18 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
19 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: the failure to maintain
20 timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care
21 of a patient, a violation of NRS §630.3062(1).

22 **WHEREAS**, Respondent is represented by John J. Savage, Esq. of John H. Cotton &
23 Associates, LTD., and has received and reviewed a copy of the Complaint, understands the nature
24 and significance of the Complaint and is fully advised concerning his rights and defenses to the
25 Complaint as well as the possible sanctions that may be imposed if the Board finds and concludes
26 that he has engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act
27 and after due consideration concedes that he his conduct violated NRS §630.3062(1) of the
28 Medical Practice Act as set forth above and as set forth in count I of the Complaint; and,

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

7 **WHEREAS**, Respondent and the Investigative Committee each understand and agree that
8 if the Board approves the terms, covenants and conditions of this Agreement, then the terms,
9 covenants and conditions enumerated below shall be binding and enforceable upon Respondent
10 and the Board's Investigative Committee; and,

11 **NOW THEREFORE**, in order to resolve the above-captioned case and charges brought
12 against Respondent by the Board's Investigative Committee in said matter, Respondent and the
13 Investigative Committee hereby agree to the following terms, covenants and conditions:

14 1. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
15 proceedings pending against him without any further costs and expense of providing a defense to
16 the Complaint or to any amended complaints, Respondent hereby agrees to not contest an order
17 being entered herein by the Board that Respondent engaged in conduct that is grounds for
18 discipline pursuant to the Medical Practice Act to wit:

19 One count of the failure to maintain timely, legible, accurate and complete medical records
20 relating to the diagnosis, treatment and care of a patient, a violation of NRS §630.3062(1) as set
21 forth in the Complaint, and ordering that Respondent be issued a public reprimand and shall pay
22 a fine of \$2,500.00.

23 Furthermore, Respondent shall be ordered to reimburse the Board the reasonable costs
24 and expenses incurred in the investigation and prosecution of this case, the current amount being
25 \$2,084.06, along with the costs to conclude the matter, if any. The costs and fines shall be paid
26 to the Nevada State Board of Medical Examiners within thirty (30) days of the Board's
27 acceptance and approval of this Agreement.

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1 Additionally, should Respondent renew his license to practice medicine, he shall be
2 ordered to participate in, and complete, a continuing medical education (CME) class(es) of six
3 (6) credits concerning medical records and billing as part of the 20 CME credits required to
4 maintain licensure in the state of Nevada.

5 2. **Jurisdiction.** Respondent was at all times mentioned in the Complaint filed in the
6 above-captioned matter was, a physician licensed to practice medicine in the state of Nevada
7 subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the
8 Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

9 3. **Representation by Counsel.** Respondent is represented by John J. Savage, Esq. of
10 John Cotton & Associates, LTD. in this matter. Respondent acknowledges and agrees that he
11 enters into this agreement knowingly, willingly and intelligently after full consultation with
12 counsel.

13 4. **Waiver of Rights.** Respondent covenants and agrees that he enters into this
14 Agreement knowingly, willingly, and intelligently after consultation with counsel prior to entering
15 into this Agreement. In connection with this Agreement, and the terms, covenants and conditions
16 contained herein, Respondent knowingly, willingly and intelligently, waives all rights arising under
17 or pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter
18 630 and NRS Chapter 233B that may be available to Respondent or that may apply to Respondent
19 in connection with the proceeding regarding the Complaint filed herein, the defense of said
20 Complaint and the adjudication of the charges in said Complaint, and Respondent further agrees
21 that the matter of the disciplinary action commenced by the filing of the complaint herein may be
22 settled and resolved in accordance with this Agreement without a hearing or any further
23 proceeding, and without the right to judicial review. In the event this Agreement is not approved by
24 the Board, this Agreement shall have no force and effect and Respondent shall have all rights
25 arising under or pursuant to the United States Constitution, the Constitution of the State of Nevada,
26 NRS Chapter 630 and NRS Chapter 233B that may be available to Respondent or that may apply
27 to Respondent in connection with the proceeding on the complaint filed herein.
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1 5. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
2 agrees that the Board's Investigative Committee has a reasonable basis to believe that Respondent
3 violated one or more provisions of the Medical Practice Act.

4 6. **Procedure for Adoption of Agreement.** It is expressly understood that this
5 Agreement will only become effective if the Board approves the recommendation of the
6 Investigative Committee for acceptance. The Investigative Committee and counsel for the
7 Investigative Committee shall recommend approval of the terms, covenants and conditions
8 contained herein by the Board in resolution of the disciplinary proceedings pending herein
9 against Respondent pursuant to the Complaint. In the course of seeking Board approval of this
10 Agreement, counsel for the Investigative Committee may communicate directly with the Board
11 staff and members of the panel of the Board who would adjudicate this case if it were to go to
12 hearing. Respondent covenants and agrees that such contacts and communication may be made
13 or conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
14 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such
15 contacts and communications may include, but not be limited to, matters concerning this
16 Agreement, the Complaint and the allegations therein, any and all evidence that may exist in
17 support of the Complaint, and any and all information of every nature whatsoever related to the
18 complaint against Respondent. The Investigative Committee and its counsel agree that
19 Respondent and his counsel, if any, may appear at the Board meeting where this Agreement is
20 discussed in order to respond to any and all questions that may be addressed to the Investigative
21 Committee or its counsel at such meeting.

22 7. **Effect of Acceptance of Agreement by Board.** In the event the Board approves
23 the terms, covenants and conditions set out in this Agreement, counsel for the Investigative
24 Committee will cause to be entered herein the Board's Order approving this Settlement, Waiver
25 and Consent Agreement, ordering full compliance with the terms herein and ordering that this
26 case be closed, subject to the provisions in Paragraph 1.

27 8. **Effect of Rejection of Agreement by Board.** In the event the Board does not
28 approve 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
4 that occurs pursuant to efforts of the Investigative Committee or its counsel to seek acceptance
5 and adoption of this Agreement by the Board shall disqualify any member of the adjudicating
6 panel of the Board from considering the charges against Respondent and participating in the
7 disciplinary proceedings in any role, including adjudication of the case, and Respondent further
8 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

20 10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a
21 binding and enforceable contract upon Respondent and the Board's Investigative Committee,
22 which contract may be enforced in a court or tribunal having jurisdiction.

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

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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 11th day of March 2011, with the final total amount of costs due of \$2,084.06.



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