

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

3 * * * * *

4 **In The Matter of Charges and**)
5 **Complaint Against**) **Case No. 11-18873-1**
6 **ANTHONY LEE, M.D.,**)
7 **Respondent.**)

FILED

SEP 12 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

9
10 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
12 the Nevada State Board of Medical Examiners (the Board) composed of
13 Benjamin J. Rodriguez, M.D., Beverly Neyland, M.D., and Ms. Donna Ruthe by and through
14 counsel, Lyn E. Beggs, Esq., and Anthony Lee, M.D. (Respondent), by and through his counsel
15 John Cotton, Esq., as follows:

16 **WHEREAS**, on July 25, 2011, the Board's IC filed a Complaint in the above referenced
17 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
18 Medical Practice Act (NRS Chapter 630 and NAC Chapter 630) to wit: one count of failure to
19 maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment
20 and care of a patient, a violation of NRS 630.3062(1); and

21 **WHEREAS**, Respondent has received and reviewed a copy of the Complaint, understands
22 it, and has consulted with competent counsel, John Cotton, Esq., concerning the nature and
23 significance of the Complaint and Respondent is fully advised concerning his rights and defenses
24 to the complaint as well as the possible sanctions that may be imposed if the Board finds and
25 concludes that he has engaged in conduct that is grounds for discipline pursuant to the Medical
26 Practice Act. Respondent has reviewed all the relevant facts and circumstances of this matter and
27 after due consideration and consultation with his counsel, after due consideration concedes that
28 there exists enough evidence that the Board could consider the allegations set forth in count I of the

1 Complaint, and if the allegations were proven, make a finding that he violated the Medical Practice
2 Act, specifically that he failed to keep accurate and complete records as alleged in count I of the
3 Complaint.

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

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

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

17 1. **Consent to Entry of Order**. In order to resolve the matter of these disciplinary
18 proceedings pending against him without any further costs and expense of providing a defense to
19 the Complaint or to any amended complaints, Respondent neither admits nor denies the allegations
20 contained in the Complaint, but hereby agrees a stipulated resolution in this matter is fair and
21 appropriate and that an order may be entered herein by the Board finding that Respondent engaged
22 in conduct that is grounds for discipline pursuant to the Medical Practice Act to wit: one count of
23 failing to maintain timely, legible, accurate and complete medical records relating to the diagnosis,
24 treatment and care of a patient as set forth in count I of the Complaint, a violation of NRS
25 630.3062(1). It shall be order that Respondent be issued a public reprimand and that Respondent
26 shall reimburse the Board the reasonable costs and expenses incurred in the investigation and
27 prosecution of this case, the current amount being \$719.39, not including any costs that may be
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1 necessary to finalize this Agreement. The costs and fines shall be paid to the Nevada State Board
2 of Medical Examiners within ninety (90) days of the acceptance of this Agreement by the Board.

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

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

22 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
23 agrees that the Board's Investigative Committee has a reasonable basis to believe that Respondent
24 violated one or more provisions of the Medical Practice Act.

25 5. **Procedure for Adoption of Agreement.** It is expressly understood that this
26 Agreement will only become effective if the Board approves the recommendation of the
27 Investigative Committee for acceptance. The Investigative Committee and counsel for the
28 Investigative Committee shall recommend approval of the terms, covenants and conditions

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

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

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

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

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

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

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

24 12. **Failure to comply with terms.** In the event the Board enters its Order approving
25 this Agreement, should Respondent fail to comply with the terms recited herein, the Board
26 would then have grounds, after notice and a hearing, to take disciplinary action against
27 Respondent in addition to that included herein for the subject's violation of an Order of the
28 Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to

1 reimburse the Board for monies agreed to be paid as a condition of settlement, may subject
2 Respondent to civil collection efforts.

3 Dated this 15th day of August 2011.

Dated this 12th day of August, 2011.

5 By: [Signature]
6 Lyn E. Beggs, Esq.
7 Attorney for the Investigative Committee

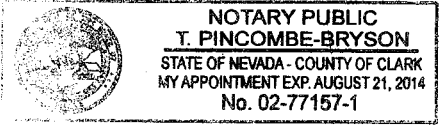
By: [Signature] 11455 Per
John Cotton, Esq.
Attorney for Respondent

8 UNDERSTOOD AND AGREED:

9 [Signature]
10 Anthony Lee, M.D. Respondent

11 Dated this 11 day of August, 2011.

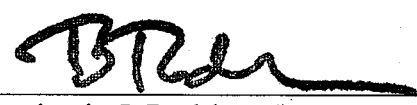
13 Subscribed and sworn to before me
14 this 11th day of August 2011.



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16 [Signature]
17 Notary Public

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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 9th day of
3 September 2011, with the final total amount of costs due of \$719.39.

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

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