

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

* * * * *

In the Matter of Charges and)
)
Complaint Against)
)
ABHINAV SINHA, M.D.,)
)
Respondent)

Case No. 12-27376-1

FILED

MAR 11 2013

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

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 (Board), composed at the time of filing the formal Complaint of Benjamin J. Rodriguez, M.D., Chairman, Beverly A. Neyland, M.D., Member, and Donna A. Ruthe, Member, in the above-captioned matter, by and through its counsel, Erin L. Albright, Esq., Board Deputy General Counsel and attorney for the IC, and Abhinav Sinha, M.D. (Respondent), by and through his counsel, L. Kristopher Rath, Esq., as follows:

WHEREAS, on November 5, 2012, the Board's IC filed a formal 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), to wit: Count I, nine counts of failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient, nine violations of NRS 630.3062(1) and Count II, five counts of malpractice, as defined by Nevada Administrative Code (NAC) 630.040, five violations of NRS 630.301(4);

WHEREAS, Respondent received a copy of the formal Complaint, reviewed it, understands it, and consulted with competent counsel, L. Kristopher Rath, Esq., concerning the nature and significance of the formal Complaint. Respondent is fully advised concerning his

1 rights and defenses to the formal Complaint, as well as the possible sanctions that may be imposed
2 if the Board finds and concludes that he violated one or more provisions of the
3 MPA;

4 **WHEREAS**, Respondent understands and agrees that he has certain rights under the
5 United States Constitution and the Constitution of the state of Nevada, as well as under the MPA
6 and the Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to,
7 the right to a formal hearing on the charges against him, the right to representation by counsel in
8 the preparation and presentation of his defense, the right to confront and cross-examine the
9 witnesses against him, the right to written findings, conclusions and an order regarding a final
10 decision by the Board, and the right to judicial review of any final decision by the Board that is
11 adverse to him;

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

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

21 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
22 Board's IC in the above-captioned matter, Respondent and the IC hereby agree¹ to the following
23 terms, covenants and conditions:

24 **1. Jurisdiction.** Respondent is, and at all times mentioned in the formal Complaint
25 filed in the above-captioned matter was, a physician licensed to practice medicine in the
26

27 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter and any
28 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.

1 state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations
2 of the MPA, and to impose sanctions as provided by the MPA.

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

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

8 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants

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

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

20 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and

21 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or
22 more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

23 **5. Consent to Entry of Order.** In order to resolve the matter of these disciplinary

24 proceedings pending against him without incurring any further costs and expense of providing a
25 defense to the formal Complaint, Respondent hereby agrees that the Board may issue an Order
26 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the
27 MPA, and agrees that:

28 ///

1 a. The Board may find Respondent engaged in conduct that is grounds for
2 discipline pursuant to the MPA, to wit: three counts of failing to maintain timely and complete
3 medical records related to his care and treatment of three patients at issue in the associated,
4 underlying compliant, violations of NRS 630.3062(1), as set forth in Count I of the formal
5 Complaint;

6 b. Respondent shall be issued a public reprimand;

7 c. Respondent shall complete five (5) hours of Continuing Medical Education
8 (CME), in-person, regarding the subject of prescribing controlled substances and five (5) hours of
9 CME, either in-person, on-line or other alternate means, regarding the subject of medical record
10 keeping within one year of the acceptance, adoption and approval of this Agreement by the Board.
11 The aforementioned hours of CME shall be in addition to any CME requirements that are
12 regularly imposed upon Respondent as a condition of licensure in the state of Nevada and shall be
13 approved by the Board prior to their completion;

14 d. Respondent shall pay a fine of One Thousand Dollars and 00/100
15 (\$1,000.00) to the Board within sixty (60) days of the Board's acceptance, adoption and approval
16 of this Agreement;

17 e. Pursuant to NRS 622.400, Respondent shall reimburse the sum of
18 \$3,249.96, the current amount of the costs incurred by the Board to investigate and prosecute this
19 matter, along with the costs to conclude the matter, if any. A final accounting of the total costs
20 shall be provided to Respondent in the entry of the Board's Order relating to this matter. The
21 costs shall be paid to the Board within sixty (60) days of the Board's acceptance, adoption and
22 approval of this Agreement;

23 f. Count II of the formal Complaint shall be dismissed;

24 g. Six of the nine counts of failure to maintain timely, legible, accurate and
25 complete medical records relating to the diagnosis, treatment and care of a patient set forth in
26 Count I of the formal Complaint shall be dismissed; and

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

28 ///

1 **6. Release From Liability.** In execution of this Agreement, the Respondent, for
2 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
4 employees in their representative capacities, and in their individual capacities, from any and all
5 manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
6 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have
7 or claim to have, against any or all of the persons or entities named in this paragraph arising out of
8 or by reason of this investigation, this Agreement or its administration.

9 **7. Procedure of 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 formal Complaint pending herein against Respondent. In the course of
12 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
13 communicate directly with the Board staff and the adjudicating members of the Board.

14 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
16 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
17 and communications may include, but not be limited to, matters concerning this Agreement, the
18 formal Complaint, and any and all information of every nature whatsoever related to the formal
19 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
20 Respondent and/or his counsel may appear at the Board meeting where this Agreement is
21 discussed, and if requested, respond to any questions that may be addressed to the IC or its
22 counsel.

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

28 ///

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

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

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

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

22 **13. Failure to Comply With Terms.** In the event the Board enters its order approving
23 this Agreement, should Respondent fail to comply with any term or condition recited herein, the
24 Board shall be authorized to immediately suspend Respondent's license to practice medicine in
25 the state of Nevada pending an order to show cause hearing, which will be duly noticed.

26 ///

27 ///

28 ///

OFFICE OF THE GENERAL COUNSEL

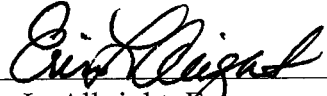
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

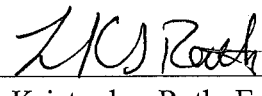
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 settlement may subject Respondent to civil collection efforts.

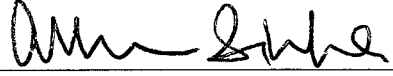
Dated this 28th day of January, 2013.

Dated this 23rd day of January, 2013.

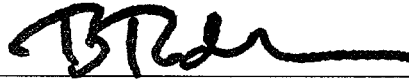
By: 
Erin L. Albright, Esq.
Attorney for the Investigative Committee

By: 
L. Kristopher Rath, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:


Abhinav Sinha, Respondent
Dated this 21 day of JAN, 2013.

1 **IT IS HEREBY ORDERED** that the foregoing Settlement Agreement is approved and accepted by the
2 Nevada State Board of Medical Examiners on the 8th day of March 2013, with the final total amount of
3 costs due of \$3,249.96.

4 

5 _____
6 Benjamin J. Rodriguez, M.D., President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28