

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

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6 **In the Matter of Charges and**)
7 **Complaint Against**)
8 **DANIEL K. KIM, M.D.,**)
9)
10 **Respondent.**)

Case No. 13-9995-1

FILED

DEC - 8 2014

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

11 **SETTLEMENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
13 (IC) of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt,
14 M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned
15 matter, by and through Erin L. Albright, Esq., Board General Counsel and attorney for the IC, and
16 Daniel K. Kim, M.D. (Respondent), by and through his counsel, Michael D. Navratil, Esq., as
17 follows:

18 **WHEREAS**, on June 25, 2013, the Board's IC filed a formal Complaint in the above-
19 captioned matter charging Respondent with engaging in conduct that is grounds for discipline
20 pursuant to the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes (NRS) Chapter
21 630 and Nevada Administrative Code (NAC) Chapter 630, to wit: Count I, one count of failure to
22 maintain timely, legible, accurate and complete medical records relating to the diagnosis,
23 treatment and care of a patient, a violation of NRS 630.3062(1); and Count II, one count of
24 malpractice as defined by NAC 630.040, a violation of NRS 630.301(4); and

25 **WHEREAS**, Respondent received a copy of the formal Complaint, reviewed it,
26 understands it, and consulted with above-identified counsel concerning the nature and significance
27 of the formal Complaint. Respondent is fully advised concerning his rights and defenses to the
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1 formal Complaint, as well as the possible sanctions that may be imposed if the Board finds and
2 concludes that he violated one or more provisions of the MPA; and

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

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

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

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

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

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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 proceeding, or any credentialing or privileges matter.

1 Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the
2 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 above-identified counsel herein, whom Respondent
5 covenants and agrees is fully capable, competent and advised in these circumstances, and
6 Respondent further covenants and agrees that he knowingly, willingly, and intelligently enters into
7 this Agreement 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 are 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 MPA, to
27 wit: one count of failure to maintain timely, legible, accurate and complete medical records

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1 relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1), as set
2 forth in Count I of the formal Complaint, and agrees that:

3 a. Count II of the formal Complaint shall be dismissed;
4 b. Respondent shall be issued a public reprimand;
5 c. Respondent shall pay a fine of Two Thousand and 00/100 Dollars
6 (\$2,000.00) to the Board within sixty (60) days of the Board's acceptance, adoption and approval
7 of this Agreement;

8 d. Respondent shall complete fifteen (15) hours of Continuing Medical
9 Education (CME), regarding the subject of Radiofrequency Ablation procedure, defibrillators,
10 medical records and/or ethics, within one year of the acceptance, adoption and approval of this
11 Agreement by the Board. The aforementioned hours of CME shall be in addition to any CME
12 requirements that are regularly imposed upon Respondent as a condition of licensure in the state
13 of Nevada and shall be approved by the Board prior to their completion;

14 e. Pursuant to NRS 622.400, Respondent shall reimburse the sum of Two
15 Thousand Nine Hundred Fifty-Two and 89/100 Dollars (\$2,952.89), the current amount of the
16 fees and costs incurred by the Board to investigate and prosecute this matter, along with the costs
17 to conclude the matter, if any. The costs shall be paid to the Board within sixty (60) days of the
18 Board's acceptance, adoption and approval of this Agreement; and

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

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

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

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

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

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

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


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

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


11 **13. Failure to Comply With Terms.** In the event the Board enters its order approving
12 this Agreement, should Respondent fail to comply with any term or condition recited herein, the
13 Board shall be authorized to immediately suspend Respondent's license to practice medicine in
14 the state of Nevada pending an order to show cause hearing, which will be duly noticed.
15 Further, failure to comply with the terms recited herein may result in additional disciplinary action
16 being initiated against Respondent for a violation of an order of the Board in accordance with
17 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
18 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

19 Dated this 12th day of November, 2014.

Dated this 7th day of November, 2014.

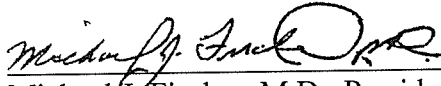
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21 By: 
Erin L. Albright, Esq.
22 Attorney for the Investigative Committee

By: 
Michael D. Navratil, Esq.
Attorney for Respondent

23 **UNDERSTOOD AND AGREED:**
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25 Daniel K. Kim, M.D., Respondent
26 Dated this 31 day of Oct., 2014.

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IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 5th day of December 2014, with the final total amount of costs due of \$2,952.89.



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