

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 **DONALD DEAN YARBRO, JR., M.D.,**)
9 **Respondent.**)
10)
11)

Case No. 12-6960-1

FILED

MAR - 7 2014

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is hereby entered into by and between the
14 Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed
15 of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and
16 Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through
17 Bradley O. Van Ry, Esq., Board General Counsel and counsel for the IC, and
18 Donald Dean Yarbrow, M.D. (Respondent), and David J. Mortensen, Esq., counsel for Respondent,
19 as follows:

20 **WHEREAS**, on January 23, 2014, the Board's IC filed a First Amended Complaint in the
21 above-referenced matter charging Respondent with engaging in conduct that is grounds for
22 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes
23 (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630, to wit: Count I,
24 malpractice, the failure of a physician, in treating a patient, to use the reasonable care, skill, or
25 knowledge ordinarily used under similar circumstances, a violation of NRS 630.301(4) and
26 NAC 630.040 and Count II, the failure to maintain timely, legible, accurate and complete medical
27 records relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1);

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1 **WHEREAS**, Respondent has received a copy of the First Amended Complaint, reviewed
2 it, understands it, and has had ample opportunity to consult with his above-identified counsel
3 concerning the nature and significance of the First Amended Complaint, and Respondent is fully
4 aware concerning his rights and defenses to the First Amended Complaint, as well as the possible
5 sanctions that may be imposed if the Board finds and concludes that he has violated one or more
6 provisions of the MPA;

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

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

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

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

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

23 Respondent is represented by above-identified legal counsel in this matter and has had
24 ample opportunity to review this Agreement, the First Amended Complaint filed in this matter and
25 the related factual basis with said legal counsel, David J. Mortensen, Esq. Respondent covenants
26 and agrees that he knowingly, willingly and intelligently enters into this Agreement.

27 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
28 and conditions contained herein, and the understanding that Respondent knowingly, willingly, and

1 intelligently waives all rights arising under or pursuant to the United States Constitution, the
2 Constitution of the state of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory
3 rights that may be available to him or that may apply to him in connection with the proceedings on
4 the First Amended Complaint filed herein, the defense of said First Amended Complaint and the
5 adjudication of the charges in said First Amended Complaint. Respondent further agrees that the
6 matter of the First Amended Complaint herein may be settled and resolved in accordance with this
7 Agreement without a hearing or any further proceedings, and without the right to judicial review.
8 In the event this Agreement is not approved by the Board, this Agreement shall have no force and
9 effect and shall be *void ab initio*, and Respondent shall have all rights arising under or pursuant to
10 the United States Constitution, the Constitution of the state of Nevada, NRS Chapter 630,
11 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply
12 to him in connection with the proceeding on the First Amended Complaint filed herein.

13 **4. Consent to Entry of Order.** Respondent concedes only that the Board has
14 sufficient evidence to proceed with its First Amended Complaint against him, but does not
15 concede or admit to such allegations, which he expressly denies, and which, but for his desire to
16 reach this compromise, he would contest at the formal hearing of this matter. Accordingly, in
17 order to resolve the matter without incurring further costs and expense of providing a defense to
18 the First Amended Complaint, Respondent hereby agrees¹ that the Board may issue an order
19 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA,
20 and agrees:

21 a. The Board may find that Respondent engaged in conduct that is grounds for
22 discipline pursuant to the MPA, to wit: the failure to maintain timely, legible, accurate and
23 complete medical records relating to the diagnosis, treatment and care of a patient, a violation of
24 NRS 630.3062(1), as set forth in Count II of the First Amended Complaint;

25 b. Respondent shall be issued a public reprimand;

26 _____
27 ¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said 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 court proceeding, or any other state or federal court
proceeding, or any credentialing or privileges matter.

1 c. Respondent shall complete six (6) hours of Continuing Medical Education
2 (CME) in electronic health records, pre-approved by the Board, in addition to the normal amount
3 of CME required for licensure, within one (1) year of the Board's acceptance and approval of this
4 Agreement;

5 d. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum
6 of \$1,395.13, the current amount of the costs incurred by the Board to investigate and prosecute
7 this matter, along with the costs to conclude the matter, if any. The costs shall be paid to the
8 Board within six (6) months of the Board's acceptance and approval of this Agreement;

9 e. The Board shall dismiss Count I; and,

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

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

19 **6. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
20 recommend approval and adoption of the terms, covenants and conditions contained herein by the
21 Board in resolution of the First Amended Complaint pending herein against Respondent. In the
22 course of seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the
23 IC may communicate directly with the Board staff and members of the panel of the Board who
24 would adjudicate this case if it were to go to hearing.

25 Respondent acknowledges that such contacts and communication may be made or
26 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
27 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
28 and communications may include, but not be limited to, matters concerning this Agreement, the

1 First Amended Complaint, and any and all information of every nature whatsoever related to the
2 First Amended Complaint or the proceedings herein against Respondent. The IC and its counsel
3 agree that Respondent and/or his counsel may appear at the Board meeting where this Agreement
4 is discussed, and if requested, respond to any questions that may be addressed to the IC or its
5 counsel.

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

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

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

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

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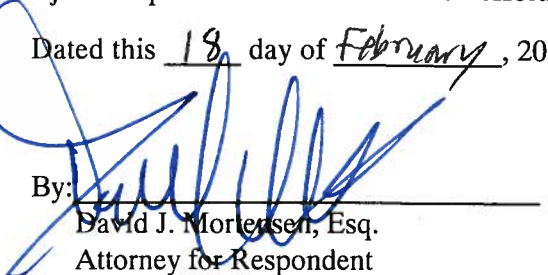
11. Attorneys' Fees and Costs. Respondent covenants and agrees that in the event an action is commenced in the district court to enforce any provision of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

12. 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 Board 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 settlement may subject Respondent to civil collection efforts.

Dated this 18 day of February, 2014.

Dated this 18 day of February, 2014.

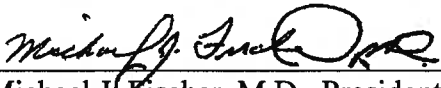
By: 
Bradley O. Van Ry, Esq.
Attorney for the Investigative Committee

By: 
David J. Mortensen, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:


Donald Dean Yarbrow, Jr., M.D., Respondent

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 7th day of March 2014, with the final total amount of
3 costs due of \$1,395.13.

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6 Michael J. Fischer, M.D., President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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