

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

3 * * * * *

4
5
6 **In the Matter of Charges and**) **Case No. 14-35576-1**
7 **Complaint Against**) **FILED**
8) **SEP - 5 2014**
9 **ROBERT JOSEPH AQUINO, M.D.,**) **NEVADA STATE BOARD OF**
10 **Respondent.**) **MEDICAL EXAMINERS**
11) **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., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D.,
16 in the above-captioned matter, by and through Bradley O. Van Ry, Esq., Board General Counsel
17 and counsel for the IC, and Robert Joseph Aquino, M.D. (Respondent), as follows:

18 **WHEREAS**, on January 7, 2014, the Board's IC filed a Complaint in the above-referenced
19 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
20 Nevada Medical Practice Act (MPA), i.e., Nevada Revised Statutes (NRS) Chapter 630 and
21 Nevada Administrative Code (NAC) Chapter 630, to wit: Count I, any disciplinary action,
22 including, without limitation, the revocation, suspension, modification or limitation of a license to
23 practice any type of medicine, taken by another state, a violation of NRS 630.301(3); and,
24 Count II, engaging in conduct that brings the medical profession into disrepute, a violation of
25 NRS 630.301(9);

26 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands
27 it, and Respondent is fully aware concerning his rights and defenses to the Complaint, as well as

28 ///

1 the possible sanctions that may be imposed if the Board finds and concludes that he has violated
2 one or more provisions of the MPA;

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

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

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

14 **1. Jurisdiction.** Respondent is, and at all times mentioned in the
15 Complaint filed in the above-captioned matter was, a physician licensed to practice medicine in
16 the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of
17 violations of the MPA and to impose sanctions as provided by the MPA.

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

19 Respondent acknowledges that he is not represented by counsel and wishes to proceed
20 towards a resolution of this matter, as set forth in this Agreement, without counsel. Respondent
21 understands and acknowledges that he may retain and consult counsel prior to entering into this
22 Agreement. Respondent agrees that if counsel is retained for representation in this matter prior to
23 entering into this Agreement, that counsel for the IC will be informed of such representation prior
24 to Respondent executing this Agreement. Respondent covenants and agrees that he enters into
25 this Agreement knowingly, willingly and intelligently.

26 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
27 and conditions contained herein, and the understanding that Respondent knowingly, willingly, and
28 intelligently waives all rights arising under or pursuant to the United States Constitution, the

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

11 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
12 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or
13 more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

14 **5. Consent to Entry of Order.** In order to resolve the matter of these disciplinary
15 proceedings pending against him without incurring any further costs and expense of providing a
16 defense to the formal Complaint, Respondent hereby agrees:

17 a. The Board may find that Respondent engaged in conduct that is grounds for
18 discipline pursuant to the MPA, to wit: any disciplinary action, including, without limitation, the
19 revocation, suspension, modification or limitation of a license to practice any type of medicine,
20 taken by another state, a violation of NRS 630.301(3), as set forth in Count I of the Complaint;

21 b. Respondent's license to practice medicine in the state of Nevada shall be
22 suspended with the suspension stayed for the term of probation as outlined below;

23 c. Respondent shall be placed on probation for a term to mirror Respondent's
24 New York medical board probation and continue until proof of successful termination of the
25 New York medical board probation is provided to the Board.

26 d. Respondent shall receive a public reprimand;

27 ///

28 ///

1 e. Respondent shall remain in compliance with all state and federal laws
2 pertaining to the practice of medicine and the prescribing, administering or dispensing of any
3 dangerous drugs or controlled substances;

4 f. Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum
5 of \$1,273.25, the current amount of the costs incurred by the Board to investigate and prosecute
6 this matter, along with the costs to conclude the matter, if any, and the costs of compliance during
7 the term of probation, if any. The costs shall be paid to the Board within thirty (30) days of the
8 Board's acceptance and approval of this Agreement, and compliance costs, if any, shall be paid
9 within thirty (30) days of the Board's incurring the compliance costs;

10 g. The Board shall dismiss Count II; and,

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

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

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

26 Respondent acknowledges that such contacts and communication may be made or
27 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
28 counsel until the public Board meeting where this Agreement is discussed, and that such contacts

1 and communications may include, but not be limited to, matters concerning this Agreement, the
2 Complaint, and any and all information of every nature whatsoever related to the Complaint or the
3 proceedings herein against Respondent. The IC and its counsel agree that Respondent and/or his
4 counsel, if any, may appear at the Board meeting where this Agreement is discussed and, if
5 requested, respond to any questions that may be addressed to the IC or its counsel.

6 **8. 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 **9. 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 **10. 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 **11. 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.

28 ///

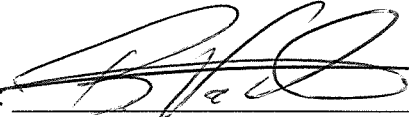
1 **12. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
2 action is commenced in the district court to enforce any provision of this Agreement, the
3 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

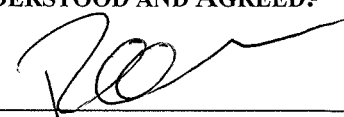
4 **13. Failure to Comply with Terms.** In the event the Board enters its order approving
5 this Agreement, should Respondent fail to comply with any term or condition recited herein, the
6 Board shall be authorized to immediately suspend Respondent's license to practice medicine in the
7 state of Nevada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

12 Dated this 7th day of August, 2014.

Dated this 8 day of Aug, 2014.

UNDERSTOOD AND AGREED:


13
14 By: 
15 Bradley O. Van Ry, Esq.
16 Attorney for the Investigative Committee

By: 
Robert Joseph Aquino, M.D.
Respondent

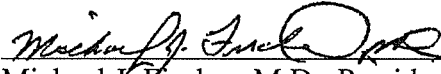
17 STATE OF NEW YORK)
18)
19 COUNTY OF Queens) :SS.

SUBSCRIBED and SWORN to before me

20 This 8 day of Aug, 2014.

21
22 
23 MICHAEL MARTONE
24 NOTARY PUBLIC, State of New York
25 NO. 07MA5062108
26 Qualified in Queens County
27 Commission Expires: 6-23-2015
28

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 5th day of September 2014, with the final total
3 amount of costs due of \$1,273.25.

4
5 
6 Michael J. Fischer, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28