

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 **SEAN PHONG-QUOC SU M.D.,**)
9 **Respondent.**)

Case No. 13-11344-1

FILED

MAR - 7 2014

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: _____

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12 **SETTLEMENT AGREEMENT**

13 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of the
14 Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt, M.D.,
15 Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., by and through
16 Edward O. Cousineau, Esq., Deputy Executive Director for the Board and counsel for the IC, and
17 Sean Phong-Quoc Su, M.D. (Respondent), as follows:

18 **WHEREAS**, on August 21, 2013, the Board's IC filed a formal Complaint in the above-referenced
19 matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the
20 Medical Practice Act, Nevada Revised Statutes (NRS) Chapter 630, to wit: an eleven-count violation of
21 NRS 630.3062(1); more specifically, failure to maintain timely, accurate and complete medical records
22 relating to the diagnosis, treatment and care of patients; and an eight-count violation of NRS 630.301(4);
23 more specifically, the failure to treat a patient with the reasonable care, skill or knowledge ordinarily used
24 under similar circumstances; and

25 **WHEREAS**, Respondent has received and reviewed a copy of the formal Complaint, understands
26 it, and has been afforded the opportunity to consult with counsel concerning the nature and significance of
27 the formal Complaint, and Respondent fully understands his rights and defenses regarding the formal

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1 Complaint, as well as the possible sanctions that may be imposed if the Board finds and concludes that he
2 has engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act; and

3 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United States
4 Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act
5 (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not
6 limited to 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 confrontation and cross-examination of
8 witnesses against him, the right to written findings, conclusions of law, and order regarding a final decision
9 by the Board, and the right to judicial review of any final decision by the Board that is adverse to him; and

10 **WHEREAS**, Respondent, based upon his understanding of the relevant facts and circumstances,
11 and subject to the conditions set forth in this Agreement, desires to waive all of his rights under the United
12 States Constitution, the constitution of the state of Nevada, the Medical Practice Act and the Nevada
13 Administrative Procedures Act, including but not limited to the right to a hearing on the charges and a
14 written findings of fact, conclusions of law and order, and he desires to settle and resolve this matter of the
15 formal Complaint against him by way of and in accordance with this Agreement; and

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

21 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms, covenants
22 and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall be
23 binding and enforceable upon him; and

24 **WHEREAS**, Respondent understands and agrees that if the Board does not approve the terms,
25 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below
26 shall not be binding and enforceable upon him except the provisions as to disqualification of adjudicating
27 panel members in paragraph number 8, and he will be provided with an opportunity to defend himself
28 against the charges against him at a regularly scheduled hearing in accordance with all applicable laws.

1 **NOW, THEREFORE**, in order to resolve the pending formal Complaint and charges brought
2 against him by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the
3 following terms, covenants and conditions:

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

8 2. **Representation by Counsel**. Respondent is not represented by counsel, but Respondent
9 covenants and agrees that he enters into this Agreement knowingly, willingly and intelligently, without the
10 advice of counsel.

11 3. **Waiver of Rights**. In connection with this Agreement, and the terms, covenants and
12 conditions contained herein, Respondent knowingly, voluntarily and intelligently waives all rights arising
13 under or pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter
14 630 and NRS Chapter 233B that may be available to him or that may apply to him in connection with the
15 proceedings on the formal Complaint filed herein, the defense of said formal Complaint, the adjudication
16 of the charges in said formal Complaint, and the imposition of sanctions, and Respondent further agrees
17 that the matter of the disciplinary action commenced by the formal Complaint herein may be settled and
18 resolved in accordance with this Agreement without a hearing or any further proceeding, and without the
19 right to judicial review.

20 4. **Acknowledgement of Reasonable Basis to Proceed**. Respondent covenants and agrees
21 that the Board's IC had a reasonable basis to believe that Respondent engaged in one or more instances of
22 conduct that is grounds for discipline pursuant to the provisions of the Medical Practice Act. All
23 admissions made by Respondent are solely for final disposition of this matter and any subsequent
24 related administrative proceedings or civil litigation involving the Board and Respondent. Therefore,
25 said admissions by Respondent are not intended or made for any other use, such as in the context of
26 another state or federal government regulatory agency proceeding, state or federal civil or criminal
27 court proceeding, or any other state or federal court. Should the Board not approve this agreement,
28 Respondent reserves the right to fully defend against the allegations in the complaint at a formal

1 hearing. Respondent fully reserves his rights to defend against the allegations in the complaint, should
2 they be raised in any subsequent civil suit to which the Board is not a party.

3 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
4 proceedings pending against him without any further costs and expense of providing a defense to the
5 formal Complaint, Respondent hereby agrees, and does not contest, that an order may be entered herein by
6 the Board finding that there is evidence Respondent has engaged in conduct that is grounds for discipline
7 pursuant to the Medical Practice Act, to wit: that in treating the patients referenced in the original formal
8 Complaint filed by the IC, Respondent failed to maintain timely, legible, accurate and complete medical
9 records, and as a result, Respondent committed ten violations of NRS 630.3062(1). Additionally,
10 Respondent failed to treat his patients with the reasonable care, skill or knowledge ordinarily used under
11 similar circumstances, and as a result, Respondent committed four violations of NRS 630.301(4). For
12 these violations, Respondent shall be publicly reprimanded, fined in the amount of \$2,500.00, and shall
13 reimburse the Board the reasonable fees and costs incurred in the investigation and prosecution of this case
14 in the current amount of \$4,611.72, plus any additional costs that may be accrued subsequent in the
15 disposition of this matter. The aforementioned fine and costs are to be paid to the Board within one
16 year of the acceptance, adoption and approval of this Agreement by the Board. A final accounting of
17 any additional costs will be provided to Respondent in the entry of the Board's order relating to the
18 matter.

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

27 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
28 recommend approval and adoption of the terms, covenants and conditions contained herein by the

1 Board in resolution of the disciplinary proceedings pending herein against Respondent pursuant to the
2 formal Complaint. In the course of seeking Board approval, adoption and/or acceptance of this
3 Agreement, counsel for the IC may communicate directly with the Board staff and members of the
4 panel of the Board that would adjudicate this case if it were to go to hearing. Respondent covenants
5 and agrees that such contacts and communication may be made or conducted ex parte, without notice or
6 opportunity to be heard on his part, and that such contacts and communications may include, but not be
7 limited to, matters concerning this Agreement, the formal Complaint, the allegations in the formal
8 Complaint, any and all evidence that may exist in support of the formal Complaint, and any and all
9 information of every nature whatsoever related to the formal Complaint or the proceedings herein
10 against Respondent.

11 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
12 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will enter
13 an order consistent with the terms noted previously in paragraph number 4, and dismissing the
14 underlying formal Complaint.

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

25 10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and
26 enforceable contract upon Respondent and the Board's IC, which contract may be enforced in a court or
27 tribunal having jurisdiction. Further, failure to comply with the terms recited herein may result in
28 additional disciplinary action being initiated against Respondent for violation of an order of the Board

1 in accordance with NRS 630.3065(2)(a). Additionally, failure to pay any fine or cost ordered herein
2 may also result in such legal action as determined to be necessary to collect the unpaid fine, fee or cost.

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

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

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11 Dated this 13th day of February, 2014.

Dated this 10 day of February, 2014.

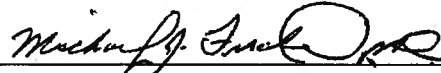
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14 Edward O. Cousineau, Esq.
15 Attorney for the Investigative Committee
16 of the Nevada State Board of Medical Examiners

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19 Sean Phong-Quoc Su, M.D.
20 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 \$4,611.72.

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Michael J. Fischer, M.D., President

6 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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