BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In the Matter of Charges and
Complaint Against
SEAN PHONG-QUOC SU M.D.,
Respondent.

Case No. 13-11344-1

FILED
MAR - 7 2014
NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By:

SETTLEMENT AGREEMENT

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

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

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

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

WHEREAS, Respondent understands and agrees that he has certain rights under the United States Constitution and the Constitution of the state of Nevada, as well as under the Medical Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter 233B), including but not limited to the right to a formal hearing on the charges against him, the right to representation by counsel in the preparation and presentation of his defense, the right to confrontation and cross-examination of witnesses against him, the right to written findings, conclusions of law, and order regarding a final decision by the Board, and the right to judicial review of any final decision by the Board that is adverse to him; and

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

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

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

WHEREAS, Respondent understands and agrees that if the Board does not approve the terms, covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated below shall not be binding and enforceable upon him except the provisions as to disqualification of adjudicating panel members in paragraph number 8, and he will be provided with an opportunity to defend himself against the charges against him at a regularly scheduled hearing in accordance with all applicable laws.
NOW, THEREFORE, in order to resolve the pending formal Complaint and charges brought against him by the Board’s IC in the above-captioned matter, Respondent and the IC hereby agree to the following terms, covenants and conditions:

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

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

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

4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and agrees that the Board’s IC had a reasonable basis to believe that Respondent engaged in one or more instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice Act. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related 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. Should the Board not approve this agreement, Respondent reserves the right to fully defend against the allegations in the complaint at a formal
hearing. Respondent fully reserves his rights to defend against the allegations in the complaint, should they be raised in any subsequent civil suit to which the Board is not a party.

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

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

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

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

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

10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent and the Board’s IC, which contract may be enforced in a court or tribunal having jurisdiction. Further, failure to comply with the terms recited herein may result in additional disciplinary action being initiated against Respondent for violation of an order of the Board.
in accordance with NRS 630.3065(2)(a). Additionally, failure to pay any fine or cost ordered herein may also result in such legal action as determined to be necessary to collect the unpaid fine, fee or cost.

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

12. **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 reasonable costs and attorneys' fees.

Dated this 13th day of February, 2014. Dated this 10th day of February, 2014.

Edward O. Cousineau, Esq. Sean Phong-Quoc Su, M.D.
Attorney for the Investigative Committee of the Nevada State Board of Medical Examiners

Respondent
IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 7th day of March 2014, with the final total amount of costs due of $4,611.72.

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