

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 **THOMAS NELSON ABDELLA, M.D.,**)
9 **Respondent.**)

Case No. 12-11024-1

FILED

MAR - 7 2014

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

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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 at the time of filing the
14 formal First Amended Complaint of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN,
15 RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, in the above-captioned matter,
16 by and through Erin L. Albright, Esq., Board General Counsel and attorney for the IC, and
17 Thomas Nelson Abdella, M.D. (Respondent), by and through his counsel, Brent Vogel, Esq., as
18 follows:

19 **WHEREAS**, on March 28, 2013, the Board's IC filed a formal First Amended Complaint
20 in the above-captioned matter charging Respondent with engaging in conduct that is grounds for
21 discipline pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the
22 Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC), to
23 wit: Count I, one count of failure to maintain timely, legible, accurate and complete medical
24 records relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1);
25 and

26 **WHEREAS**, Respondent received a copy of the formal First Amended Complaint,
27 reviewed it, understands it, and consulted with competent counsel, Brent Vogel, Esq., concerning
28 the nature and significance of the formal First Amended Complaint. Respondent is fully advised

1 concerning his rights and defenses to the formal First Amended Complaint, as well as the possible
2 sanctions that may be imposed if the Board finds and concludes that he violated one or more
3 provisions of the MPA; and

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

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

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

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

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

1 medicine in the state of Nevada subject to the jurisdiction of the Board to hear and adjudicate
2 charges of violations of the 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 fully advised in these circumstances, and
6 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly,
7 and intelligently 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 First Amended Complaint filed herein, the defense of said
16 formal First Amended Complaint, the adjudication of the charges in said formal First Amended
17 Complaint, and the imposition of sanctions.

18 Respondent agrees that the matter of the formal First Amended Complaint herein may be
19 settled and resolved in accordance with this Agreement without a hearing or any further
20 proceedings, and without the right to judicial review.

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

24 **5. Consent to Entry of Order.** In order to resolve the matter of these disciplinary
25 proceedings pending against him without incurring any further costs and expense of providing a
26 defense to the formal First Amended Complaint, Respondent hereby agrees that the Board may issue
27 an Order finding that Respondent engaged in conduct that is grounds for discipline pursuant to the
28 MPA, and agrees that:

1 a. The Board may find Respondent engaged in conduct that is grounds for
2 discipline pursuant to the MPA, to wit: one count of failing to maintain timely legible, accurate
3 and complete medical records related to his care and treatment of the medical resident patient at
4 issue in the associated underlying formal First Amended Complaint, a violation of NRS
5 630.3062(1), as set forth in Count I of the formal First Amended Complaint;

6 b. Respondent shall be issued a public reprimand;

7 c. Respondent shall pay a fine of One Thousand Dollars and 00/100
8 (\$1,000.00) to the Board within sixty (60) days of the Board's acceptance, adoption and approval
9 of this Agreement;

10 d. Pursuant to NRS 622.400, Respondent shall reimburse the sum of
11 \$6,255.07, the current amount of the costs incurred by the Board to investigate and prosecute this
12 matter, along with the costs to conclude the matter, if any. A final accounting of the total costs
13 shall be provided to Respondent in the entry of the Board's Order relating to this matter. The
14 costs shall be paid to the Board within sixty (60) days of the Board's acceptance, adoption and
15 approval of this Agreement; and

16 e. Respondent shall complete ten (10) hours of Continuing Medical Education
17 (CME), in person, regarding the subject of record keeping and/or preeclampsia. The
18 aforementioned hours of CME shall be in addition to any CME requirements that are regularly
19 imposed upon Respondent as a condition of licensure in the state of Nevada and shall be approved
20 by Board prior to their completion

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

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

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1 or claim to have, against any or all of the persons or entities named in this paragraph arising out of
2 or by reason of this investigation, this Agreement or its administration.

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

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

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

23 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not
24 accept, approve and adopt the terms, covenants and conditions set out in this Agreement, this
25 Agreement shall be null, void, and of no further force and effect except as to the following
26 covenant and agreement regarding disqualification of adjudicating Board panel members.
27 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
28 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek

1 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
2 adjudicating panel of the Board from considering the charges against Respondent and
3 participating in the disciplinary proceedings in any role, including adjudication of the case.
4 Respondent further agrees that he shall not seek to disqualify any such member absent evidence of
5 bad faith.

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

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

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

16 **13. Failure to Comply With Terms.** In the event the Board enters its order approving
17 this Agreement, should Respondent fail to comply with any term or condition recited herein, the
18 Board shall be authorized to immediately suspend Respondent's license to practice medicine in
19 the state of Nevada pending an order to show cause hearing, which will be duly noticed.
20 Further, failure to comply with the terms recited herein may result in additional disciplinary action
21 being initiated against Respondent for a violation of an Order of the Board in accordance with

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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 19 day of February, 2013.

Dated this 16 day of Feb, 2013
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By: 
Erin L. Albright, Esq.
Attorney for the Investigative Committee

By: 
Brent Vogel, Esq.
Attorney for Respondent

UNDERSTOOD AND AGREED:


Thomas Nelson Abdella, M.D., Respondent
Dated this 11 day of Feb, 2013
2/11/14 

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 \$6,255.07.

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Michael J. Fischer, M.D., President

6 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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