

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

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6 **In the Matter of Charges and**) **Case No. 14-32161-1**
7)
8 **Complaint Against**) **FILED**
9 **MAHESH R. KUTHURU, M.D.,**) **JUN - 7 2016**
10 **Respondent.**) **NEVADA STATE BOARD OF**
11) **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), by and
15 through Robert G. Kilroy, Esq., Board General Counsel and counsel for the IC, and
16 Mahesh R. Kuthuru, M.D. (Respondent), by and through John Savage, Esq. of John H. Cotton and
17 Associates, counsel for Respondent, as follows:

18 **WHEREAS**, on March 25, 2014, the IC summarily suspended Respondent's license to
19 practice medicine in the state of Nevada after receiving notice that Respondent surrendered his
20 license to practice medicine in the state of New York while under investigation. This surrender
21 occurred after Respondent was charged by the New York State Board for Professional Medical
22 Conduct with 10 counts of fraud, one count of practicing the profession with negligence on more
23 than one occasion, 10 counts of gross negligence, one count of practicing the profession with
24 incompetence on more than one occasion, 10 counts of gross incompetence, 10 counts of
25 permitting or abetting the unlicensed practice of medicine, 10 counts of willful or gross
26 negligence, one count of moral unfitness, 10 counts of improper delegation, one count of failing to
27 maintain an accurate record, one count of failing to exercise appropriate supervision and one count
28 of excessive tests and treatments;

1 **WHEREAS**, by Stipulation and Order, Respondent agreed to allow the summary
2 suspension of his license to practice medicine in Nevada to indefinitely continue;

3 **WHEREAS**, on July 9, 2014, the IC filed a Complaint in Case No. 14-32161-1
4 (“Complaint”) charging Respondent with engaging in conduct that is grounds for discipline
5 pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the Nevada Revised
6 Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC), to wit: Count I,
7 engaging in any conduct that the Board has determined is a violation of the standards of practice
8 established by regulation of the Board, a violation of NRS 630.306(2)(b) and Count II, engaging
9 in any act that is unsafe or unprofessional conduct in accordance with regulations adopted by the
10 Board, a violation of NRS 630.306(16);

11 **WHEREAS**, on July 23, 2014, Respondent filed a General Denial to the allegations
12 asserted in the IC’s Complaint;

13 **WHEREAS**, on October 15, 2014, a Sealed Indictment (“Indictment”) was filed, in the
14 matter of United States of America v. Mahesh Kuthuru, MD, United States District Court, District
15 of Nevada, Case No. 2:14-cr-00338. The basis of this Indictment was unrelated to the IC’s
16 Complaint. Respondent failed to notify the Board of this Indictment in a timely manner, which
17 resulted in the IC having an independent basis to file a second complaint against Respondent;

18 **WHEREAS**, a *Judgment in a Criminal Case* (“Judgment”) was filed on June 2, 2015, in
19 the matter United States of America v. Mahesh Kuthuru, MD, United States District Court,
20 Northern District of New York, Case Nos. 5:14-cr-00018-002 and 5:15-cr-00015-001. Pursuant to
21 this Judgment, Respondent pleaded guilty to one count of Unlawful Distribution of Controlled
22 Substances, a violation of 21 United States Code (“U.S.C.”) § 842(a)(1), and one count of Health
23 Care Fraud, a violation of 18 U.S.C. § 1347. The Judgment sentenced Respondent to immediate
24 imprisonment of 18 months. Upon release from imprisonment, the Judgment sets forth that
25 Respondent will be subject to supervised release for three years, subject to certain conditions;

26 **WHEREAS**, Respondent’s convictions in United States of America v. Mahesh Kuthuru,
27 MD, United States District Court, Northern District of New York,

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1 Case Nos. 5:14-cr-00018-002 and 5:15-cr-00015-001, provided the IC with another independent
2 basis to file a third complaint against Respondent;

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

9 **WHEREAS**, Respondent has received a copy of the Indictment and a copy of the
10 Judgment, reviewed it, understands it, and has had ample opportunity to consult with his above-
11 identified counsel concerning the nature and significance of the same with regards to possible
12 sanctions that may be imposed if the Board finds and concludes that he violated one or more
13 provisions of the MPA as a result of the Order of Summary Suspension, Indictment and/or
14 Judgment;

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

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

23 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
24 Board's IC in the Complaint, the Order of Summary Suspension and any and all matters relating
25 to and any and all matters that may be charged by the Board or the Board's IC by virtue of or in
26 connection with the above-referenced Indictment and/or Judgment, Respondent and the IC hereby
27 agree to the following terms, covenants and conditions:

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1 **1. Jurisdiction.** Respondent is, and at all times mentioned in the Complaint and at all
2 times relevant with respect to the filing of the Indictment and the filing of the Judgment, and was a
3 physician licensed to practice medicine in the state of Nevada subject to the jurisdiction of the
4 Board to hear and adjudicate charges of violations of the MPA and to impose sanctions as
5 provided by the MPA.

6 **2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.**
7 Respondent is represented by above-identified legal counsel in this matter and has had
8 ample opportunity to review this Agreement, the Complaint, the Order of Summary Suspension,
9 the Indictment, the Judgment, and the related factual basis with regards to the same with said legal
10 counsel. Respondent covenants and agrees that he knowingly, willingly, and intelligently enters
11 into this Agreement.

12 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants,
13 and conditions contained herein, and Respondent knowingly, willingly, and intelligently waives
14 all rights arising under or pursuant to the United States Constitution, the Constitution of the state
15 of Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be
16 available to him or that may apply to him in connection with the proceedings on the Complaint,
17 the Order of Summary Suspension, the Indictment, the Judgment, the defense of said Complaint,
18 the defense of said Order of Summary Suspension and the adjudication of the charges in said
19 Complaint.

20 In connection with this Agreement, and the terms, covenants, and conditions contained
21 herein, and Respondent knowingly, willingly, and intelligently waives all rights arising under or
22 pursuant to the United States Constitution, the Constitution of the state of Nevada, NRS Chapter
23 630, NRS Chapter 233B, and any other statutory rights that may be available to him or that may
24 apply to him in connection with the proceedings herein and/or any and all matters relating to and
25 any and all matters that may be charged by the Board or the Board's IC by virtue of or in
26 connection with the above-referenced Indictment and/or the above-referenced Judgment and the
27 defense of the same in this administrative context.

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1 **4. Consent to Entry of Order.** Respondent concedes only that the IC has sufficient
 2 evidence to proceed with its formal Complaint against him, and that by virtue of the Indictment
 3 and/or the Judgment, the Board also has sufficient evidence to bring additional allegations against
 4 Respondent, but does not concede or admit to such allegations, which he expressly denies, and
 5 which, but for his desire to reach this compromise, he would contest at a formal hearing of these
 6 matters (i.e., the Complaint, as well as any and all matters that could be alleged by the Board with
 7 regards to the Order of Summary Suspension, the Indictment and/or the Judgment). Accordingly,
 8 in order to resolve these matters without incurring further costs and expense of providing a
 9 defense to the Complaint and the Order of Summary Suspension, Respondent hereby agrees¹ that
 10 the Board may issue an order finding that Respondent engaged in conduct that is grounds for
 11 discipline pursuant to the MPA, and agrees:

12 a. The Board may find that Respondent engaged in conduct that is grounds for
 13 discipline pursuant to the MPA, to wit: conviction of a felony relating to the practice of medicine
 14 or the ability to practice medicine, a violation of NRS 630.301(1), as set forth in the Judgment and
 15 as alleged in the Indictment;

16 b. Pursuant to NRS 630.352(4)(e) Respondent’s license to practice medicine
 17 in the state of Nevada shall be revoked, effective June 3, 2016, pursuant to the terms and
 18 conditions set forth below. Respondent waives any right to seek judicial review (state or federal)
 19 to reinstate his revoked license pending his release from imprisonment.

20 c. Pursuant to NRS 630.352(4)(b) Respondent agrees the Board shall
 21 administer a formal written public reprimand which will include language that is synonymous
 22 with the terms of this Agreement.

23 d. Following his release from imprisonment pursuant to the Judgment,
 24 Respondent may petition the Board to reinstate his license to practice medicine in the state of
 25 Nevada pursuant to the following terms and conditions:

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 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.

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(1) Pursuant to NRS 622.400, Respondent shall reimburse to the Board the sum of \$874.86, the amount of the fees and costs incurred by the Board to investigate and prosecute this matter, along with the costs to conclude the matter, if any. Respondent must pay the reimbursement costs prior to petitioning the Board for reinstatement of his license to practice medicine in the state of Nevada;

(2) Respondent must submit proof that he has complied with the required continuing medical education requirements while imprisoned;

(3) Respondent must submit proof that Respondent has attended and completed a 24-hour ethics course entitled "The PBI Professional Boundaries Course." However, Respondent agrees attendance and completion of the 24 hour ethics course entitled "The PBI Professional Boundaries Course" may not be used by Respondent to fulfill the normal continuing medical education requirements regarding ethics.

e. In the event the Board reinstates Respondent's license to practice medicine in the state of Nevada, Respondent shall be placed on probation pursuant to NRS 630.352(4)(a) for a period of three years. Respondent shall also comply with any terms and conditions of parole and probation related to the case of United States of America v. Mahesh Kuthuru, MD, United States District Court, Northern District of New York, Case Nos. 5:14-cr-00018-002 and 5:15-cr-00015-001. Within 30 days of Respondent's release from incarceration, Respondent shall provide a copy of this Agreement to the office of Federal Parole and Probation. Respondent shall also execute any documents necessary to authorize the office of Federal Parole and Probation to release any and all reports generated regarding Respondent's compliance with the terms and conditions of his federal probation to the Board and the IC. Once Respondent is given written notice of his completion of his federal probation, Respondent shall submit the written notice to the IC. Upon receipt of the written notice of Respondent's completion of federal probation and Respondent's completion of the three years of probation with the Board and the IC, the IC shall, without any further action of the Board, authorize an order reinstating Respondent's license to

1 practice medicine in the state of Nevada to the status of active. If, during the term of
2 Respondent's probation with the Board and the IC, the IC receives substantial evidence that
3 Respondent has materially breached the terms and conditions of his probation, Respondent agrees
4 the IC, without any further hearing or action by the Board, shall issue an order summarily
5 suspending Respondent's license to practice medicine in the state of Nevada. Thereafter,
6 Respondent may request a hearing before the Board to reinstate his license, which must be heard
7 within 45 days of the order of summary suspension. During the pendency of the hearing on the
8 Respondent's summary suspension, Respondent waives any right to seek judicial review (state or
9 federal) to reinstate his privilege to practice medicine in the state of Nevada pending a final Board
10 hearing.

11 f. Pursuant to NRS 630.353(4)(a), Respondent agrees he shall submit to the
12 Board any and all documentation regarding any of the terms and conditions of parole and
13 probation related to the case of United States of America v. Mahesh Kuthuru, MD, United States
14 District Court, Northern District of New York, Case Nos. 5:14-cr-00018-002 and 5:15-cr-00015-
15 001 upon his release from prison.

16 g. This Agreement fully and completely resolves all matters contained in the
17 Complaint and all matters contained in the Order for Summary Suspension;

18 h. This Agreement fully and completely resolves all matters that have or may
19 be alleged by the Board or the Board's IC against Respondent with regards to the Indictment
20 and/or the Judgment; and

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

22 **5. 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 **6. Procedure for 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 matters referenced herein and above. In the course of seeking Board
6 approval, adoption and/or acceptance of this Agreement, counsel for the IC may communicate
7 directly with the Board staff and members of the panel of the Board who would adjudicate this
8 case if it were to go to hearing.

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 Complaint, the Order of Summary Suspension, the Indictment, the Judgment, and any and all
14 information of every nature whatsoever related to the same or the proceedings herein against
15 Respondent. The IC and its counsel agree that Respondent and/or his counsel may appear at the
16 Board meeting where this Agreement is discussed, and if requested, respond to any questions that
17 may be addressed to the IC or its counsel.

18 **7. 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 to be entered herein the Board's Order accepting, adopting and approving this
21 Settlement Agreement, ordering full compliance with the terms herein and ordering that this case
22 involving the Complaint, as well as any matter involving the Order of Summary Suspension, the
23 Indictment, and the Judgment, be closed.

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

1 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
2 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
3 adjudicating panel of the Board from considering the charges against Respondent and
4 participating in the disciplinary proceeding in any role, including adjudication of the case.
5 Respondent further agrees that he shall not seek to disqualify any such member absent evidence of
6 bad faith.

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

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

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

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

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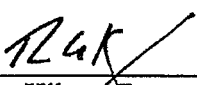
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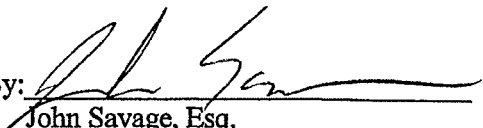
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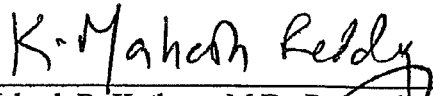
1 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
2 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

3 Dated this 31 day of MARCH, 2016. Dated this 31ST day of March, 2016.

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5 By: 
6 Robert Kilroy, Esq.
7 Attorney for the Investigative Committee

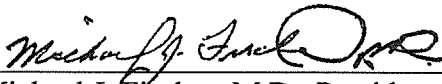
By: 
John Savage, Esq.
Attorney for Respondent

8 UNDERSTOOD AND AGREED:

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11 Mahesh R. Kuthuru, M.D., Respondent

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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 third day of June 2016, with the final total amount of
3 costs due of \$874.86.

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