

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

3 * * * * *

4
5 **In the Matter of Charges and**
6 **Complaint Against**
7 **Michael S. Mall, M.D.,**
8 **Respondent.**

Case No. 15-8666-1

FILED

SEP 09 2016

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

10 **SETTLEMENT AGREEMENT**

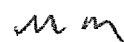
11 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through Robert Kilroy, Esq., Board General Counsel and attorney for the IC, and
13 Michael S. Mall, M.D. (Respondent), a licensed physician in Nevada, represented by legal
14 counsel, John H. Cotton, Esq., of John H. Cotton & Associates, Ltd., hereby enter into this
15 Settlement Agreement (Agreement) based on the following:¹

16 **A. Background**

17 1. Respondent is a physician licensed by the Board, pursuant to Chapter 630 of the
18 Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC)
19 (collectively, the Medical Practice Act), to practice medicine in Nevada since July 1, 1990 (License
20 No. 6074).

21 2. On September 23, 2015, in Case No. 15-8666-1, the IC filed a formal Complaint
22 (Complaint), alleging that the Respondent violated the Medical Practice Act. Specifically, this
23 Complaint alleges: one (1) count of violating NRS 630.301(4) (malpractice); one (1) count of violating
24

25 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter
26 and any subsequent related administrative proceedings or civil litigation involving the Board and
27 Respondent. Therefore, Respondent's agreements and admissions are not intended or made for
28 any other use, such as in the context of another state or federal government regulatory agency
proceeding, state or federal civil or criminal proceeding, any state or federal court proceeding, or
any credentialing or privileges matter.



1 NRS 630.3062(1)(medical records); one (1) count of violating NRS 630.306(3)(unlawful
2 administration, dispensing or prescribing of controlled substances); one (1) count of violating NRS
3 630.306(5)(practicing beyond the scope of training); one (1) count of violating NRS
4 630.306(7)(continual failure to exercise the skill or diligence or use the methods exercised by
5 physicians in the same specialty or field); one (1) count of violating NRS 630.306(2)(b)(conduct that
6 violates the standards of practice).

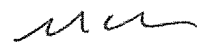
7 3. By reason of the foregoing, Respondent is subject to discipline by the Board as
8 provided in NRS 630.352.

9 4. Respondent was properly served with a copy of this Complaint, has reviewed and
10 understands this Complaint, and has had the opportunity to consult with competent counsel
11 concerning the nature and significance of this Complaint.

12 5. Respondent is hereby advised of his rights regarding this administrative matter, and his
13 opportunity to defend against the allegations in the Complaint. Specifically, Respondent has certain
14 rights in this administrative matter as set out by the United States Constitution, the Nevada
15 Constitution, the Medical Practice Act and the Nevada Administrative Procedure Act (APA), which is
16 contained in NRS Chapter 233B. These rights include the right to a formal hearing on the allegations
17 in the Complaint, the right to representation by counsel, at his own expense, in the preparation and
18 presentation of his defense, the right to confront and cross-examine the witnesses and evidence against
19 him, the right to written findings of fact, conclusions of law and order reflecting the final decision of
20 the Board, and the right to judicial review of the Board's order, if the decision is adverse to him.

21 6. Respondent understands that, under the Board's charge to protect the public by
22 regulating the practice of medicine, the Board may take disciplinary action against Respondent's
23 license, including license probation, license suspension, license revocation and imposition of
24 administrative fines, as well as any other reasonable requirement or limitation, if the Board
25 concludes that Respondent violated one or more provisions of the Medical Practice Act.

26 7. Respondent understands and agrees that this Agreement, by and between
27 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the
28 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent



1 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
2 Board has the right to decide in its own discretion whether or not to approve this Agreement.
3 Respondent further understands and agrees that if the Board approves this Agreement, then the
4 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

5 **B. Terms & Conditions**

6 **NOW, THEREFORE**, in order to resolve the matters addressed herein, i.e., the matters
7 with regard to the Complaint, Respondent and the IC hereby agree to the following terms and
8 conditions:

9 1. Jurisdiction. Respondent is, and at all times relevant to the Complaint has been, a
10 physician licensed to practice medicine in Nevada subject to the jurisdiction of the Board as set
11 forth in the Medical Practice Act.

12 2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.
13 Respondent understands that he may retain and consult counsel prior to entering into this
14 Agreement at his own expense. Respondent acknowledges he is represented by counsel,
15 and wishes to resolve the matters addressed herein with counsel. Respondent agrees that if
16 representation by counsel in this matter materially changes prior to entering into this Agreement
17 and for the duration of this Agreement, that counsel for the IC will be timely notified of the
18 material change. Respondent agrees that he knowingly, willingly and intelligently enters into this
19 Agreement after deciding to have a full consultation with and upon the advice of legal counsel.

20 3. Waiver of Rights. In connection with this Agreement, and the associated terms and
21 conditions, Respondent knowingly, willingly and intelligently waives all rights in connection with
22 this administrative matter. Respondent hereby knowingly, willingly and intelligently waives all
23 rights arising under the United States Constitution, the Nevada Constitution, the Medical Practice
24 Act, the APA and any other legal rights that may be available to him or that may apply to him in
25 connection with the administrative proceedings resulting from the Complaint filed in this matter,
26 including defense of the Complaint, adjudication of the allegations set forth in the Complaint and
27 imposition of any disciplinary actions or sanctions ordered by the Board. Respondent agrees to
28 settle and resolve the allegations of the Complaint as set out by this Agreement, without a hearing

1 or any further proceedings and without the right to judicial review.

2 4. Acknowledgement of Reasonable Basis to Proceed. Respondent acknowledges
3 that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is
4 grounds for discipline pursuant to the Medical Practice Act.

5 5. Consent to Entry of Order. In order to resolve this Complaint pending against
6 Respondent without incurring any further costs or the expense associated with a hearing, Respondent
7 hereby agrees that the Board may issue an order finding that Respondent engaged in conduct that
8 is grounds for discipline pursuant to the Medical Practice Act. Accordingly, the following terms
9 and conditions are hereby agreed upon:

10 A. Respondent admits to the allegation of one (1) violation of NRS
11 630.3062(1)(medical records); Board dismisses all remaining alleged violations.

12 B. Respondent will pay the costs and expenses incurred in the investigation and
13 prosecution of the above-referenced matter within ninety (90) days of the Board's
14 acceptance, adoption and approval of this Agreement, the current amount being Five
15 Thousand Four Hundred Twenty Five Dollars and Nineteen Cents (\$5425.19), not
16 including any costs that may be necessary to finalize this Agreement.

17 C. Respondent shall take three (3) hours of continuing medical education (CME) related
18 to electronic medical records within twelve (12) months from the date of the Board's
19 acceptance, adoption and approval of this Agreement. The aforementioned hours of CME
20 shall be in addition to any CME requirements that are regularly imposed upon Respondent
21 as a condition of licensure in the state of Nevada and shall be approved by the Board prior
22 to their completion.

23 D. This Agreement shall be reported to the appropriate entities and parties as required
24 by law, including, but not limited to, the National Practitioner Data Bank.

25 E. Respondent shall receive a Public Letter of Reprimand.

26 6. Release From Liability. In execution of this Agreement, Respondent understands
27 and agrees that the state of Nevada, the Board, and each of its members, staff, counsel,
28 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents

1 are immune from civil liability for any decision or action taken in good faith in response to
2 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the state of
3 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,
4 committees, panels, hearing officers, consultants and agents from any and all manner of actions,
5 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
6 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against
7 any or all of the persons, government agencies or entities named in this paragraph arising out of,
8 or by reason of, this investigation, this Agreement or the administration of the case referenced
9 herein.

10 7. Procedure for Adoption of Agreement. The IC and counsel for the IC shall
11 recommend approval and adoption of the terms and conditions of this Agreement by the Board in
12 resolution of the Complaint. In the course of seeking Board acceptance, approval and adoption of
13 this Agreement, counsel for the IC may communicate directly with the Board staff and the
14 adjudicating members of the Board.

15 Respondent acknowledges that such contacts and communications may be made or
16 conducted ex parte, without notice or opportunity to be heard on his part until the public Board
17 meeting where the Agreement is discussed, and that such contacts and communications may
18 include, but not be limited to, matters concerning this Agreement, the Complaint and any and all
19 information of every nature whatsoever related to this matter. The IC and its counsel agree that
20 Respondent may appear at the Board meeting where this Agreement is discussed and, if requested,
21 respond to any questions that may be addressed to the IC or the IC's counsel.

22 8. Effect of Acceptance of Agreement by Board. In the event the Board accepts,
23 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement
24 an order of the Board.

25 9. Effect of Rejection of Agreement by Board. In the event the Board does not
26 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and
27 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,
28 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement

1 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this
2 Agreement shall disqualify any member of the adjudicating panel of the Board from considering
3 this Complaint and from participating in disciplinary proceedings against Respondent, including
4 adjudication of this case; and (2) Respondent further agrees that he shall not seek to disqualify any
5 such member absent evidence of bad faith.

6 10. Binding Effect. If approved by the Board, Respondent understands that this
7 Agreement is a binding and enforceable contract upon Respondent and the Board.

8 11. Forum Selection Clause. The parties agree that in the event either party is required
9 to seek enforcement of this Agreement in district court, the parties consent to such jurisdiction and
10 agree that exclusive jurisdiction shall be in the Second Judicial District Court, state of Nevada,
11 Washoe County.

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

15 13. Failure to Comply with Terms. Should Respondent fail to comply with any term or
16 condition of this Agreement once the Agreement has been accepted, approved and adopted by the
17 Board, the IC shall be authorized to immediately suspend Respondent's license to practice
18 medicine in Nevada pending an Order To Show Cause Hearing, which will be duly noticed.
19 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,
20 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may
21 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).
22 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a
23 condition of this Agreement may subject Respondent to civil collection efforts.

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27 [SIGNATURE PAGE TO FOLLOW]

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Dated this 15 day of August, 2016.

By: [Signature]
Robert Kilroy, Esq.
Attorney for the Investigative Committee

Dated this 1st day of August, 2016.

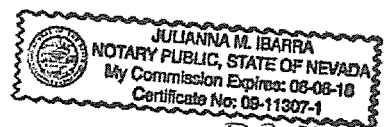
By: [Signature]
John. H. Cotton, Esq.
Attorney for the Respondent

UNDERSTOOD AND AGREED:

[Signature]

MICHAEL S. MALL, M.D., RESPONDENT
Dated this 1st day of Aug, 2016.

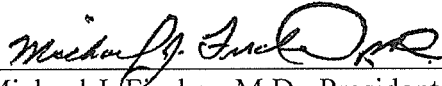
STATE OF : NEVADA
County OF : CLARK



EXP: 08/08/18

[Signature]
Notary: JULIANNA M. IBARRA

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 9th day of September 2016, with the final total
3 amount of costs due of \$5,425.19.

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

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