

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 **Edwin Samuel Kulubya, M.D.,**
8 **Respondent.**

Case No. 18-8298-1

FILED

APR 16 2018

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., General Counsel for the Board and attorney for the
13 IC, and Edwin Samuel Kulubya, M.D. (Respondent), a licensed physician in Nevada, hereby enter
14 into this Settlement Agreement (Agreement) based on the following:¹

15 **A. Background**

16 1. Respondent is a medical doctor licensed by the Board, pursuant to Chapter 630 of the
17 Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC)
18 (collectively, the Medical Practice Act), to practice medicine in Nevada since September 16, 1989
19 (License No. 5942).

20 2. On February 8, 2018, in Case No. 18-8298-1, the IC filed a formal Complaint
21 (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, this
22 Complaint alleges one (1) violation of NRS 630.301(3), disciplinary action by another state, to wit:
23 the Medical Board of California.

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26 _____
27 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter
28 and any subsequent related administrative proceedings or civil litigation involving the Board and
Respondent. Therefore, Respondent's agreements and admissions 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, any state or federal court proceeding, or
any credentialing or privileges matter.

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

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

6 5. Respondent is hereby advised of his rights regarding this administrative matter, and of
7 his opportunity to defend against the allegations in the Complaint. Specifically, Respondent has
8 certain rights in this administrative matter as set out by the United States Constitution, the Nevada
9 Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is contained in
10 NRS Chapter 241, and the Nevada Administrative Procedure Act (APA) applicable to certain
11 regulatory bodies, which is contained in NRS Chapters 233B and 622A. These rights include the right
12 to a formal hearing on the allegations in the Complaint, the right to representation by counsel, at his
13 own expense, in the preparation and presentation of his defense, the right to confront and cross-
14 examine the witnesses and evidence against him, the right to written findings of fact, conclusions of
15 law and order reflecting the final decision of the Board, and the right to judicial review of the Board's
16 order, if the decision is adverse to him.

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

22 7. Respondent understands and agrees that this Agreement, by and between
23 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the
24 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent
25 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
26 Board has the right to decide in its own discretion whether or not to approve this Agreement.
27 Respondent further understands and agrees that if the Board approves this Agreement, then the
28 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

1 **B. Terms & Conditions**

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

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

8 2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement.**
9 Respondent acknowledges he is not represented by counsel, and wishes to resolve the matters
10 addressed herein without counsel. Respondent agrees that if representation by counsel in this
11 matter materially changes prior to entering into this Agreement and for the duration of this
12 Agreement, that counsel for the IC will be timely notified of the material change. Respondent
13 agrees that he knowingly, willingly and intelligently enters into this Agreement without the advice
14 of legal counsel.

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

25 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent acknowledges
26 that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is
27 grounds for discipline pursuant to the Medical Practice Act. The Board acknowledges
28 Respondent is not admitting that the Board's claims/counts as alleged in the Complaint have merit

1 and Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential
2 subsequent litigation. Respondent asserts if this matter were to proceed to hearing, he has
3 evidence, witness(es), expert witness(es) and defenses to the counts/claims alleged in the
4 Complaint, but for the purposes of resolving the matter and for no other purpose, Respondent
5 waives the presentation of evidence, witnesses, expert witnesses, and defenses in order to
6 effectuate this Agreement.

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

12 a. Respondent admits to one (1) violation of NRS 630.301(3) for disciplinary action
13 by another state, to wit: the Medical Board of California.

14 b. Respondent shall pay the costs and expenses incurred in the investigation and
15 prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,
16 adoption and approval of this Agreement, the current amount being \$421.70, not including any
17 costs that may be necessary to finalize this Agreement.

18 c. Respondent shall pay a fine of \$500.00 within sixty (60) days of the Board's
19 acceptance, adoption and approval of this Agreement.

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

22 e. Respondent shall receive a Public Letter of Reprimand.

23 **6. Release from Liability.** In execution of this Agreement, Respondent understands
24 and agrees that the State of Nevada, the Board, and each of its members, staff, counsel,
25 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents
26 are immune from civil liability for any decision or action taken in good faith in response to
27 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the State of
28 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,

1 committees, panels, hearing officers, consultants and agents from any and all manner of actions,
2 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
3 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against
4 any or all of the persons, government agencies or entities named in this paragraph arising out of,
5 or by reason of, this investigation, this Agreement, or the administration of the case referenced
6 herein.

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

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

19 **8. Effect of Acceptance of Agreement by Board.** In the event the Board accepts,
20 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement
21 an order of the Board, and, pending full compliance with the terms herein, the case shall be closed.

22 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not
23 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and
24 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,
25 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement
26 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this
27 Agreement shall disqualify any member of the adjudicating panel of the Board from considering
28 this Complaint and from participating in disciplinary proceedings against Respondent, including

1 adjudication of this case; and (2) Respondent further agrees that he shall not seek to disqualify any
2 such member absent evidence of bad faith.

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

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

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

12 **13. Failure to Comply with Terms.** Should Respondent fail to comply with any term
13 or condition of this Agreement once the Agreement has been accepted, approved and adopted by
14 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice
15 medicine in Nevada pending an Order to Show Cause Hearing, which will be duly noticed.
16 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,
17 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may
18 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).

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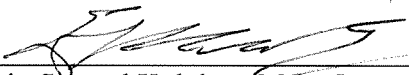
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1 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a
2 condition of this Agreement may subject Respondent to civil collection efforts.

3 Dated this 20th day of February, 2018.

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5 By: 
6 Robert Kilroy, Esq., General Counsel
7 Donald K. White, Esq., Deputy General Counsel
8 Attorneys for the Investigative Committee

9 Dated this 13th day of February, 2018.

10 
11 Edwin Samuel Kulubya, M.D., Respondent

12 STATE OF CALIFORNIA)
13)
14) :ss.
15 COUNTY OF _____)

SEE ATTACHED
CALIFORNIA
JURAT

16 SUBSCRIBED and SWORN to before me
17 this ___ day of _____, 2018.

18 _____
19 NOTARY PUBLIC

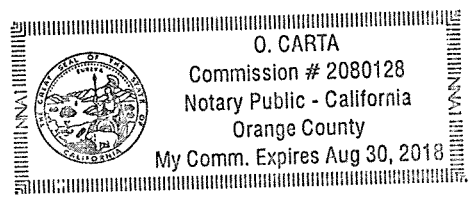
CALIFORNIA JURAT
(CALIFORNIA GOVERNMENT CODE § 8202)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF Orange)

Subscribed and sworn to (or affirmed) before me on this 13th day of February 2018,
by Edwin Samuel Kulubya _____, proved to me on the basis of
(Name of Signer(s))
satisfactory evidence to be the person(s) who appeared before me.

[Signature]
Signature of Notary Public (Notary Seal)

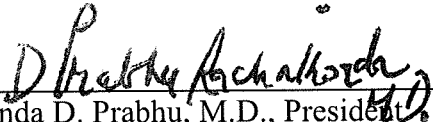


_____**ADDITIONAL OPTIONAL INFORMATION**_____

Description of Attached Document: Before the board of
Title or Type of Document: medical examiners of the state of nevada Document Date: 02/13/18
Number of Pages: 8 Signer(s) Other Than Named Above: none
Additional Information: 1 signature on page 7 of 8 only

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

1 **IT IS HEREBY ORDERED** that the foregoing Settlement Agreement is approved and accepted
2 by the Nevada State Board of Medical Examiners on the 13th day of April, 2018, with the final
3 total amount of costs due of \$421.70.

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6 Rachakonda D. Prabhu, M.D., President
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NEVADA STATE BOARD OF MEDICAL EXAMINERS