

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

3                                   \* \* \* \* \*

4 **In the Matter of Charges and Complaint**

Case No. 20-32904-1

5 **Against**

**FILED**

6 **KIARASH L. MIRKIA, M.D.,**

**DEC - 4 2020**

7                                   **Respondent.**

**NEVADA STATE BOARD OF  
MEDICAL EXAMINERS**

By: 

8  
9                                   **SETTLEMENT AGREEMENT**

10                               The Investigative Committee (IC) of the Nevada State Board of Medical Examiners  
11 (Board), by and through Aaron Bart Fricke, Esq., Senior Deputy General Counsel for the Board  
12 and attorney for the IC, and Kiarash L. Mirkia, M.D. (Respondent), a licensed physician in  
13 Nevada, assisted by his attorney, Keith Weaver, Esq., of the law firm of Lewis Brisbois  
14 Bisgaard & Smith, LLP, hereby enter into this Settlement Agreement (Agreement) based on the  
15 following:<sup>1</sup>

16 **A.     BACKGROUND**

17                               1.     Respondent is a medical doctor currently licensed in inactive status by the Board  
18 pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada  
19 Administrative Code (NAC) (collectively, the Medical Practice Act). His license was originally  
20 issued on December 1, 2007 (License No. 12548).

21                               2.     On November 30, 2020, in Case No. 20-32904-1, the IC filed a formal Complaint  
22 (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, the  
23 Complaint alleges one (1) violation of NRS 630.301(4), Malpractice.

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

26  
27                               <sup>1</sup> All agreements and admissions made by Respondent are solely for final disposition of these matters and  
28 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           4.       Respondent was properly served with a copy of the Complaint, has reviewed and  
2 understands the Complaint, and has had the opportunity to consult with competent counsel  
3 concerning the nature and significance of the Complaint.

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

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

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

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28       ///

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 represented by counsel, and wishes to resolve the matters  
10 addressed herein with said 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 after deciding to  
14 have a full consultation with and upon the advice 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 these administrative matters. Respondent hereby knowingly, willingly and intelligently  
18 waives all rights arising under the United States Constitution, the Nevada Constitution, the  
19 Medical Practice Act, the OML, the APA, and any other legal rights that may be available to him  
20 or that may apply to him in connection with the administrative proceedings resulting from the  
21 Complaint filed in this matter, including defense of the Complaint, adjudication of the allegations  
22 set forth in the Complaint, and imposition of any disciplinary actions or sanctions ordered by the  
23 Board. 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.** As of the time of entering  
26 into this Settlement Agreement, the allegations of the Complaint remain unproven. Respondent  
27 acknowledges that the IC believes it has a reasonable basis to allege that Respondent engaged in  
28 conduct that is grounds for discipline pursuant to the Medical Practice Act. The IC acknowledges

1 that Respondent is not admitting that the IC's claims/counts as alleged in the Complaint have  
2 merit and Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential  
3 subsequent litigation. Respondent asserts that if these matters were to proceed to hearing, he has  
4 evidence, witnesses, expert witness(es) and defenses to the count/claim alleged in the Complaint,  
5 but for the purposes of resolving these matters and for no other purpose, Respondent waives the  
6 presentation of evidence, witnesses, expert witnesses, and defenses in order to effectuate this  
7 Agreement.

8           **5. Consent to Entry of Order.** In order to resolve the Complaint pending against  
9 Respondent, Respondent hereby agrees that the Board may issue an order finding that Respondent  
10 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act. Accordingly,  
11 the following terms and conditions are hereby agreed upon:

12                   a. Respondent admits to Count I of the Complaint, one (1) violation of  
13 NRS 630.301(4), Malpractice.

14                   b. Respondent shall be prohibited from performing general surgery in the State of  
15 Nevada until further order of the Board.

16                   c. Respondent's license shall be subject to a term of probation for a period of  
17 time not to less than twenty-four (24) months from the date of the Board's acceptance, adoption  
18 and approval of this Agreement (Probationary Period). Respondent must complete the following  
19 terms and conditions and demonstrate completion of or compliance them to the good faith  
20 satisfaction of the Board before the expiration of the Probationary Period, or before Respondent  
21 resumes the practice of medicine in Nevada during this Probationary Period, whichever is first; if  
22 Respondent fails to demonstrate compliance with the terms and conditions of this Agreement  
23 during the Probationary Period, or otherwise violates the terms of this Agreement or the Medical  
24 Practice Act, then the IC shall be authorized to immediately suspend Respondent's license to  
25 practice medicine in Nevada pending an Order To Show Cause Hearing, which hearing will be  
26 duly noticed. Respondent shall complete or comply with the following terms and conditions  
27 during the Probationary Period:

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1 i. Respondent shall pay a fine of three thousand dollars (\$3,000.00)  
2 within sixty (60) days of the Board's acceptance, adoption and approval of this Agreement.

3 ii. Respondent shall pay the costs and expenses incurred in the  
4 investigation and prosecution of the above-referenced matter within sixty (60) days of the Board's  
5 acceptance, adoption and approval of this Agreement, the current amount being seven thousand  
6 three hundred thirty-seven dollars and twenty-eight cents (\$7,337.28), not including any costs that  
7 may be necessary to finalize this Agreement.

8 iii. Respondent shall take twenty (20) hours of continuing medical  
9 education (CME) on Medical Ethics and Boundaries within sixty (60) days of the Board's  
10 acceptance, adoption and approval of this Agreement. The aforementioned hours of CME shall be  
11 in addition to any CME requirements that are regularly imposed upon Respondent as a condition  
12 of licensure in the state of Nevada and shall be approved by the Board to meet this requirement  
13 prior to their completion.

14 iv. Respondent shall complete a Physician Assessment and  
15 Competency Evaluation (PACE) Program examination of his clinical competency, and a Fitness  
16 For Duty (FFD) examination. The examination shall be conducted pursuant to and in accord with  
17 NRS 630.318. The examination shall be conducted by a provider approved by the Board in  
18 advance of the examination. The examiner shall, within sixty (60) days of the completion of the  
19 examination, render an opinion and report to the Board regarding Respondent's competency and  
20 fitness for duty, noting any concerns or deficiencies and areas of necessary improvement or  
21 recommended treatment. The examination and report shall be performed at Respondent's sole  
22 expense.

23 v. During the Probationary Period, Respondent shall not supervise any  
24 Physician Assistant, or collaborate with any Advanced Practice Registered Nurse, in the State of  
25 Nevada.

26 vi. Within twenty-four (24) months, or before Respondent resumes the  
27 practice of medicine in Nevada during this Probationary Period, whichever is first, Respondent  
28 shall appear before the Board at a public meeting and demonstrate completion of or compliance

1 with all the terms of this Agreement, at which time, Respondent may submit a Petition for Status  
2 Change to Active in accord with the requirement set forth in NRS 630.255(4)-(5), and petition the  
3 Board to permit Respondent to resume the active practice of medicine, which petition shall be  
4 considered by the Board in good faith.

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

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

8 f. All other claims and allegations arising from the Complaint shall be  
9 dismissed with prejudice.

10 6. **Release From Liability.** In execution of this Agreement, Respondent understands  
11 and agrees that the State of Nevada, the Board, and each of its members, staff, counsel,  
12 investigators, experts, peer reviewers, committees, panels, hearing officers, consultants and agents  
13 are immune from civil liability for any decision or action taken in good faith in response to  
14 information acquired by the Board. NRS 630.364(2)(a). Respondent agrees to release the State of  
15 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,  
16 committees, panels, hearing officers, consultants and agents from any and all manner of actions,  
17 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and  
18 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against  
19 any or all of the persons, government agencies or entities named in this paragraph arising out of,  
20 or by reason of, this investigation, this Agreement or the administration of the case referenced  
21 herein.

22 7. **Procedure for Adoption of Agreement** The IC and counsel for the IC shall  
23 recommend approval and adoption of the terms and conditions of this Agreement by the Board in  
24 resolution of the Complaint at an upcoming Board meeting at the Board's earliest convenience,  
25 and Respondent hereby waives notice of the same, whether under the United States Constitution,  
26 the Nevada Constitution, the Medical Practice Act, the OML, the APA, or otherwise. In the  
27 course of seeking Board acceptance, approval and adoption of this Agreement, counsel for the IC  
28 may communicate directly with the Board staff and the adjudicating members of the Board.

1 Respondent acknowledges that such contacts and communications may be made or  
2 conducted ex parte, without notice or opportunity to be heard on his part until the public Board  
3 meeting where this Agreement is discussed, and that such contacts and communications may  
4 include, but may not be limited to, matters concerning this Agreement, the Complaint and any and  
5 all information of every nature whatsoever related to these matters. The IC and its counsel agree  
6 that Respondent and/or Counsel for the Respondent may appear at the Board meeting where this  
7 Agreement is discussed and, if requested, respond to any questions that may be addressed to the  
8 IC or the IC's counsel.

9 **8. Effect of Acceptance of Agreement by Board.** In the event the Board accepts,  
10 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement  
11 an order of the Board, and, pending full compliance with the terms herein, the case shall be closed  
12 and any and all remaining claims arising out of the Complaint shall be dismissed with prejudice.

13 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not  
14 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and  
15 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,  
16 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement  
17 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this  
18 Agreement shall disqualify any member of the adjudicating panel of the Board from considering  
19 the Complaint and from participating in disciplinary proceedings against Respondent, including  
20 adjudication of this case; and (2) Respondent further agrees that he shall not seek to disqualify any  
21 such member absent evidence of bad faith.

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

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

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OFFICE OF THE GENERAL COUNSEL  
Nevada State Board of Medical Examiners  
9600 Gateway Drive  
Reno, Nevada 89521  
(775) 688-2559

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

4           13. Failure to Comply With Terms. Should Respondent fail to comply with any term  
5 or condition of this Agreement once the Agreement has been accepted, approved and adopted by  
6 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice  
7 medicine in Nevada pending an Order To Show Cause Hearing on revocation, which will be duly  
8 noticed. Failure to comply with the terms of this Agreement, including failure to pay any fines,  
9 costs, expenses or fees owed to the Board, is a failure to comply with an order of the Board, which  
10 may result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).  
11 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a  
12 condition of this Agreement may subject Respondent to any civil and administrative collection  
13 efforts available.


14 DATED this 30 day of November, 2020.

15 INVESTIGATIVE COMMITTEE OF THE  
16 NEVADA STATE BOARD OF MEDICAL EXAMINERS

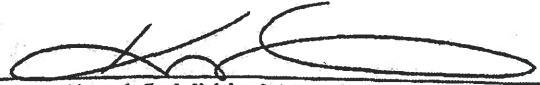
17 By:   
18 Aaron Bart Fricke, Esq., Senior Deputy General Counsel  
19 Attorney for the Investigative Committee

20 DATED this 30<sup>th</sup> day of November, 2020.

21 LEWIS BRISBOIS BISGAARD & SMITH, LLP

22 By:   
23 Keith Weaver, Esq.  
24 Attorney for Respondent

25 DATED this 25 day of November, 2020.

26   
27 Kiarash L. Mirkia, M.D., Respondent  
28



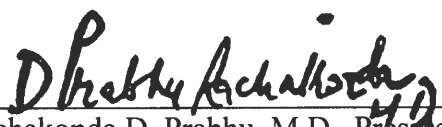
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**ORDER**

**IT IS HEREBY ORDERED**, that the foregoing Settlement Agreement (Case No. 20-32904-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 4th day of December, 2020, with the final total amount of costs due of seven thousand three hundred thirty-seven dollars and twenty-eight cents (\$7,337.28).

DATED this 4th day of December, 2020.

  
\_\_\_\_\_  
Rachakonda D. Prabhu, M.D., President  
Nevada State Board of Medical Examiners