

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 **SEAN PHONG-QUOC SU, M.D.,**)
8 Respondent.)

Case No. 09-11344-1

FILED
MAR 05 2010

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

10 **SETTLEMENT AGREEMENT**

11 **THIS AGREEMENT** is entered into by and between the Investigative Committee (IC) of
12 the Nevada State Board of Medical Examiners (Board), composed of Charles N. Held, M.D., Ms.
13 Jean Stoess, M.A., and Benjamin J. Rodriguez, M.D. at the time the Complaint was authorized, by
14 and through Edward Cousineau, counsel for the IC, and Sean Phong-Quoc Su, M.D. (Respondent),
15 by and through his counsel, L. Kristopher Rath, Esq., as follows:

16 **WHEREAS**, on or about September 18, 2009, the Board's IC filed a formal complaint
17 against Respondent for engaging in conduct which is grounds for discipline pursuant to Nevada's
18 Medical Practice Act (NRS Chapter 630) to wit: a three count violation of NRS 630.301(4), a one
19 count violation of NRS 630.3062(1), a one count violation of NRS 630.306(2)(a), a one count
20 violation of NRS 630.307(1); and a one count violation of NRS 630.301(8); and

21 **WHEREAS**, Respondent understands and agrees that he has certain rights under the United
22 States Constitution and the Constitution of the State of Nevada, as well as under the Medical
23 Practice Act (NRS Chapter 630) and the Nevada Administrative Procedures Act (NRS Chapter
24 233B), including but not limited to the right to a formal hearing on the charges against him the right
25 to representation by counsel in the preparation and presentation of his defense, the right to
26 confrontation and cross-examination of witnesses against him, the right to written findings,
27 conclusions and order regarding a final decision by the Board, and the right to judicial review of any
28 final decision by the Board that is adverse to him; and

1 **WHEREAS**, Respondent, based on his understanding of the relevant facts and
2 circumstances, and subject to the conditions set forth in this Agreement, desires to waive all of his
3 rights under the United States Constitution, the Constitution of the State of Nevada, the Medical
4 Practice Act and the Nevada Administrative Procedures Act, including but not limited to the right to
5 a hearing on the charges and written findings of fact, conclusions of law and order, and he desires to
6 settle and resolve the matter of the formal complaint against him by way of and in accordance with
7 this Settlement, Waiver and Consent Agreement; and

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

13 **WHEREAS**, Respondent understands and agrees that if the Board approves the terms,
14 covenants and conditions of this Agreement, then the terms, covenants and conditions enumerated
15 below shall be binding and enforceable upon him; and

16 **WHEREAS**, Respondent understands and agrees that, if the Board does not approve the
17 terms, covenants and conditions of this Agreement, then the terms, covenants and conditions
18 enumerated below shall not be binding and enforceable upon him except the provisions as to
19 disqualification of adjudicating panel members in paragraph number 9, and he will be provided
20 with an opportunity to defend himself against the charges against him at a regularly scheduled
21 hearing in accordance with all applicable laws.

22 **NOW THEREFORE**, in order to resolve the pending complaint and charges brought
23 against him by the Board's IC in the above-captioned matter, Respondent and the IC hereby agree to
24 the following terms, covenants and conditions:

25 1. **Jurisdiction**. Respondent is, and at all times mentioned in the complaint filed in the
26 above-captioned matter was, a physician licensed to practice medicine in the State of Nevada,
27 subject to jurisdiction of the Board to hear and adjudicate charges of violations of the Medical
28 Practice Act (NRS 630), and to impose sanctions as provided by the Act.

1 2. **Representation by Counsel.** Respondent is represented by counsel herein, whom
2 Respondent covenants and agrees is fully capable, competent and fully advised in these
3 circumstances and Respondent further covenants and agrees that he enters into this Agreement
4 knowingly, willingly, and intelligently after full consultation with and upon the advice of counsel.

5 3. **Waiver of Rights.** In connection with this Agreement, and the terms, covenants and
6 conditions contained herein, Respondent knowingly, willingly and intelligently, with the advice of
7 above-identified counsel, waives all rights arising under or pursuant to the United States
8 Constitution, the Constitution of the State of Nevada, NRS Chapter 630 and NRS Chapter 233B that
9 may be available to him or that may apply to him in connection with the proceeding on the
10 complaint filed herein, the defense of said complaint, the adjudication of the charges in said
11 complaint and the imposition of sanctions, and Respondent further agrees that the matter of the
12 disciplinary action commenced by complaint herein may be settled and resolved in accordance with
13 this Agreement without a hearing or any further proceeding and without the right to judicial review.

14 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
15 agrees that the Board's IC had a reasonable basis to believe that Respondent engaged in one or more
16 instances of conduct that is grounds for discipline pursuant to the provisions of the Medical Practice
17 Act. All admissions made by Respondent are solely for final disposition of this matter and any
18 subsequent related administrative proceedings or civil litigation involving the Board and
19 Respondent. Therefore, said admissions by Respondent are not intended or made for any other
20 use, such as in the context of another state or federal government regulatory agency proceeding,
21 state or federal civil or criminal court proceeding, or any other state or federal court. Should the
22 Board not approve this agreement, Respondent reserves the right to fully defend against the
23 allegations in the complaint at a formal hearing. Respondent fully reserves his rights to defend
24 against the allegations in the complaint, should they be raised in any subsequent civil suit to
25 which the Board is not a party.

26 5. **Consent to Entry of Order.** In order to resolve the matter of these disciplinary
27 proceedings pending against him without any further costs and expense of providing a defense to the
28 complaint, Respondent hereby agrees, and does not contest, for the sole purpose of this settlement

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners

1105 Terminal Way #301

Reno, Nevada 89502

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1 agreement, that an order may be entered herein by the Board against him finding that Respondent
2 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act, to wit: that
3 Respondent shall be found guilty of three counts of malpractice, violations of NRS 630.301(4),
4 which are related to Counts I, II, and III in the underlying complaint; that Respondent shall be found
5 guilty of one count of failure to maintain accurate medical records, a violation of NRS 630.3062(1),
6 and which is Count IV in the underlying complaint; that Respondent shall be found guilty of one
7 count of engaging in conduct which is intended to deceive, a violation of NRS 630.306(2)(a), and
8 which is related to Count V of the underlying complaint; and that Respondent shall be found guilty
9 of one count of engaging in conduct which violates the trust of and exploits the relationship between
10 the physician and the patient for financial or other personal gain, a violation of NRS 630.301(7), and
11 which is related to Count VI of the underlying complaint. The Board agrees that Count VII of the
12 complaint is dismissed. For the aforementioned violations, Respondent shall:

13 (1) Receive a public reprimand;

14 (2) Pay a fine in the amount of \$4,500.00;

15 (3) Allow his license to be revoked, with that revocation stayed and that Respondent shall be
16 placed on probation with an obligation to comply with the following terms and conditions:

17 (a) That Respondent agrees that the Board shall have unfettered access to
18 Respondent's medical records, and agrees that they may be inspected randomly and
19 unannounced to him, for a period of twenty-four (24) months after the approval and adoption
20 of this Agreement to ensure that Respondent's subsequent treatment protocols are consistent
21 with Nevada statutes and regulations.

22 (b) That Respondent will be responsible for the costs involved in this on-going
23 administrative oversight and shall reimburse the Board within thirty (30) days of a request
24 for reimbursement of the same.

25 (4) Immediately cease performing any medical or surgical procedures that are of a cosmetic
26 or plastic surgical nature, and that he will not perform any of these types of procedures, nor delegate
27 the performance of these types of procedures to another who would be authorized under his
28 authority as a licensee, nor associate with or otherwise participate in a practice with another

1 practitioner who would perform any of these types of procedures until further order of the Board.
2 Respondent also agrees that he will not petition the Board for a modification of this specific stated
3 condition of settlement until eighteen (18) months after the date the approval and adoption of this
4 Agreement. Furthermore, Respondent agrees that, even with successful completion of the
5 probationary terms during these eighteen (18) months, that he may thereafter only petition the Board
6 to perform limited cosmetic procedures which include the administration of Botox, dermal fillers,
7 laser hair removal, Intense Pulsed Light therapy, and/or other minor non-invasive cosmetic
8 procedures at the Board's discretion, nor will he delegate the performance of procedures to another
9 who would be authorized under his authority as a licensee or associate with or otherwise participate
10 in a practice with another practitioner who would perform any other types of cosmetic procedures,
11 beyond the ones described in this paragraph.

12 (5) Pay the costs and expenses incurred in the investigation and prosecution of this case, the
13 current amount being \$25,120.71. This amount does not include any further costs that may be
14 incurred by the Board to conclude adjudication of the matter. Respondent agrees to pay the
15 aforementioned fine and costs, within twenty-four (24) months of the approval and adoption of
16 this Agreement.

17 6. **Release From Liability.** In execution of this Agreement, the Respondent, for
18 himself, his executors, successors and assigns, hereby releases and forever discharges the state of
19 Nevada, the Board, the Nevada Attorney General, and each of their members, agents and
20 employees in their individual and representative capacities, from any and all manner of actions,
21 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
22 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have,
23 against any or all of the persons or entities named in this paragraph arising out of or by reason of
24 this investigation, this disciplinary action, this settlement or its administration.

25 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
26 recommend approval and adoption of the terms, covenants and conditions contained herein by
27 the Board in resolution of the disciplinary proceedings pending herein against Respondent
28 pursuant to the formal complaint. In the course of seeking Board approval, adoption and/or

1 acceptance of this Agreement, counsel for the IC may communicate directly with the Board staff
2 and members of the panel of the Board that would adjudicate this case if it were to go to hearing.
3 Respondent covenants and agrees that such contacts and communication may be made or
4 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
5 counsel, and that such contacts and communications may include, but not be limited to, matters
6 concerning this Agreement, the complaint, the allegations in the complaint any and all evidence
7 that may exist in support of the complaint, and any and all information of every nature
8 whatsoever related to the complaint or the proceedings herein against Respondent.

9 8. **Effect of Acceptance of Agreement by Board.** In the event the Board approves,
10 accepts and adopts the terms, covenants and conditions set out in this Agreement, the Board will
11 enter herein an order consistent with the terms noted in paragraph 5 above.

12 9. **Effect of Rejection of Agreement by Board.** In the event the Board does not
13 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
14 Agreement shall be null, void and of no further force and effect except as to the following
15 covenant and agreement regarding disqualification of adjudicating Board panel members.
16 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
17 contained herein and nothing that occurs pursuant to efforts of the IC or its counsel to seek
18 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
19 adjudicating panel of the Board from considering the charges against Respondent and
20 participating in the disciplinary proceedings in any role, and Respondent further agrees that he
21 shall not seek to disqualify any such member.

22 10. **Binding Effect.** Respondent covenants and agrees that this Agreement is a
23 binding and enforceable contract upon Respondent and the Board's IC, which contract may be
24 enforced in a court or tribunal having jurisdiction. Additionally, upon receipt of credible
25 information that Respondent has failed to comply with any term or condition of the
26 aforementioned order, the Board shall be authorized to immediately suspend Respondent's
27 license to practice medicine. The Board acknowledges and Respondent recognizes that he would
28 still maintain all statutory and regulatory due process rights available to him after the suspension

1 except that the suspension shall not be considered to be a summary suspension subject to the
2 provisions of either NRS 233B.170 or 630.326. Further, failure to comply with the terms recited
3 herein could result in additional disciplinary action being initiated against Respondent for a
4 violation of an Order of the Board in accordance with NRS 630.3065(2)(a). And, any failure to
5 pay any fine, fee, or cost ordered herein may also result in such legal action as determined to be
6 necessary to collect the unpaid fine, fee, or cost.

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

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

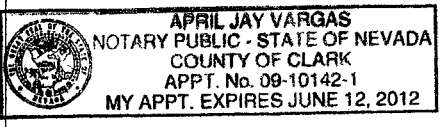
14 Dated this 21st day of December, 2009. Dated this 18th day of December, 2009.

15
16 By: [Signature]
17 Edward O. Cousineau
18 Attorney for the Investigative Committee
19 of the Nevada State Board of Medical Examiners

15
16 By: [Signature]
17 L. Kristopher Rath, Esq.
18 Attorney for Respondent

19 UNDERSTOOD AND AGREED:

20
21 [Signature]
22 Sean Phong-Quoc Su, M.D., Respondent
23 Dated this 18 day of December, 2009.



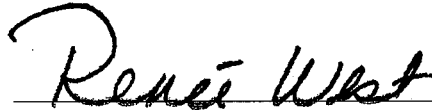
24 Subscribed and sworn to before me
25 this 18 day of December, 2009

26
27 [Signature]
28 Notary Public

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, Waiver and Consent Agreement is
2 approved and accepted by the Nevada State Board of Medical Examiners on the 5th day of
3 March 2010, with the final total amount of costs due of \$25,120.71.

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RENEE WEST, Secretary-Treasurer

6 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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