

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

3 * * * * *

4 **In The Matter of Charges and**)

Case No. 11-11516-1

5)
6 **Complaint Against**)

FILED

7 **FRANCIS XAVIER DEL VECCHIO, M.D.,**)

SEP 11 2012

8)
9 **Respondent.**)

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

10 _____)
11 **SETTLEMENT, WAIVER AND CONSENT AGREEMENT**

12 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
13 (IC) of the Nevada State Board of Medical Examiners (Board), composed of
14 Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and
15 Michael J. Fischer, M.D., Member, in the above-captioned matter, by and through its counsel,
16 Bradley O. Van Ry, Esq., Board Deputy General Counsel, and Francis Xavier Del Vecchio, M.D.
17 (Respondent), by and through his counsel, David J. Mortensen, Esq., as follows:

18 **WHEREAS**, on May 4, 2011, the Board's IC filed a formal Complaint in the
19 above-referenced matter charging Respondent with engaging in conduct that is grounds for
20 discipline pursuant to the Nevada Medical Practice Act, i.e., Chapter 630 of the
21 Nevada Revised Statutes (NRS), to wit: Count I, one count of malpractice, the failure of a
22 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used
23 under similar circumstances as defined by Nevada Administrative Code (NAC) 630.040, a
24 violation of NRS 630.301(4); and, Count II, one count of the failure to maintain timely, legible,
25 accurate and complete medical records relating to the diagnosis, treatment and care of a patient, a
26 violation of NRS 630.3062(1).

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1 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,
2 understands it, and has had ample opportunity to consult with his counsel concerning the nature
3 and significance of the formal Complaint. Respondent is fully aware concerning his rights and
4 defenses to the formal Complaint, as well as the possible sanctions that may be imposed if the
5 Board finds and concludes that he has violated one or more provisions of the
6 Medical Practice Act, and after due consideration, concedes that he engaged in conduct which is in
7 violation of the Medical Practice Act as set forth in Count II;

8 **WHEREAS**, Respondent understands and agrees that this Agreement is entered into by
9 and 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 meeting duly noticed and scheduled.
11 Respondent understands that the IC shall advocate approval of this Agreement by the Board, but
12 that the Board has the right to decide in its own discretion whether or not to approve this
13 Agreement; and,

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

17 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
18 Board's IC in the above-captioned matter, Respondent and the IC hereby agree to the following
19 terms, covenants and conditions:

20 **1. Jurisdiction.** Respondent is, and at all times mentioned in the formal Complaint
21 filed in the above-captioned matter was, a physician licensed to practice medicine in the
22 state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations
23 of the Medical Practice Act (NRS 630), and to impose sanctions as provided by the Act.

24 **2. Representation by Counsel/Knowing, Willing and Intelligent Agreement.**

25 Respondent is represented by legal counsel in this matter and has had ample opportunity to
26 review this Agreement, the formal Complaint filed in this matter and the related factual basis with
27 said legal counsel, David J. Mortensen, Esq. Respondent covenants and agrees that he enters into
28 this Agreement knowingly, willingly and intelligently.

1 **3. Waiver of Rights.** Respondent waives all rights in connection with this
2 Agreement, and the terms, covenants and conditions contained herein, and with the understanding
3 that Respondent knowingly, willingly and intelligently waives all rights arising under or pursuant
4 to the United States Constitution, the constitution of the state of Nevada, NRS Chapter 630,
5 NRS Chapter 233B, and any other statutory rights that may be available to him or that may apply
6 to him in connection with the proceedings on the formal Complaint filed herein, the defense of
7 said formal Complaint and the adjudication of the charges in said formal Complaint.

8 Respondent agrees that the matter of the formal Complaint herein may be settled and
9 resolved in accordance with this Agreement without a hearing or any further proceedings, and
10 without the right to judicial review. In the event this Agreement is not approved by the Board, this
11 Agreement shall have no force and effect and shall be *void ab initio*, and Respondent shall have all
12 rights arising under or pursuant to the United States Constitution, the constitution of the state of
13 Nevada, NRS Chapter 630, NRS Chapter 233B, and any other statutory rights that may be
14 available to him or that may apply to him in connection with the proceeding on the formal
15 Complaint filed herein.

16 **4. Consent to Entry of Order.** In order to resolve the matter of these disciplinary
17 proceedings pending against him without any further costs and expense of providing a defense to the
18 formal Complaint, Respondent hereby agrees that the Board may issue an Order finding that
19 Respondent has engaged in conduct that is grounds for discipline pursuant to the
20 Nevada Medical Practice Act, and agrees that:

21 a. The Board may issue an Order finding that Respondent has engaged in
22 conduct that is grounds for discipline pursuant to the Nevada Medical Practice Act, to wit: the
23 failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis,
24 treatment and care of a patient, a violation of NRS 630.3062(1), as set forth in Count II of the
25 formal Complaint;

26 b. Respondent shall be issued a public reprimand;

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1 c. Respondent shall attend five (5) hours of CME in
2 Electronic Medical Records, in-person, in addition to the normal requirements for licensure, and
3 within one (1) year of the Board's acceptance and approval of this Agreement;

4 d. Pursuant to NRS 622.400, Respondent shall reimburse the sum of
5 \$2,625.27, the current amount of the costs incurred by the Board to investigate and prosecute this
6 matter, along with the costs to conclude the matter, if any. The costs shall be paid to the
7 Nevada State Board of Medical Examiners within ninety (90) days of the Board's acceptance and
8 approval of this Agreement;

9 e. Count I of the Complaint shall be dismissed; and,

10 f. The terms of this Agreement shall be reported as required by law.

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

19 **6. Procedure of Adoption of Agreement.** The IC and counsel for the IC shall
20 recommend approval and adoption of the terms, covenants and conditions contained herein by the
21 Board in resolution of the formal Complaint pending herein against Respondent. In the course of
22 seeking Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
23 communicate directly with the Board staff and members of the panel of the Board who would
24 adjudicate this case if it were to go to hearing.

25 Respondent acknowledges that such contacts and communication may be made or
26 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his
27 counsel until the public Board meeting where this Agreement is discussed, and that such contacts
28 and communications may include, but not be limited to, matters concerning this Agreement, the

1 formal Complaint, and any and all information of every nature whatsoever related to the formal
2 Complaint or the proceedings herein against Respondent. The IC and its counsel agree that
3 Respondent and/or his counsel may appear at the Board meeting where this Agreement is
4 discussed, and if requested, respond to any questions that may be addressed to the IC or its
5 counsel.

6 **7. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
7 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
8 IC will cause to be entered herein the Board's order accepting, adopting and approving this
9 Settlement, Waiver and Consent Agreement, ordering full compliance with the terms herein and
10 ordering that this case be closed, subject to the provisions in Paragraph 4.

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

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

24 **10. Forum Selection Clause.** Respondent covenants and agrees that in the event either
25 party is required to seek enforcement of this Agreement in the district court, he consents to such
26 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
27 Second Judicial District Court of the state of Nevada in and for the county of Washoe.


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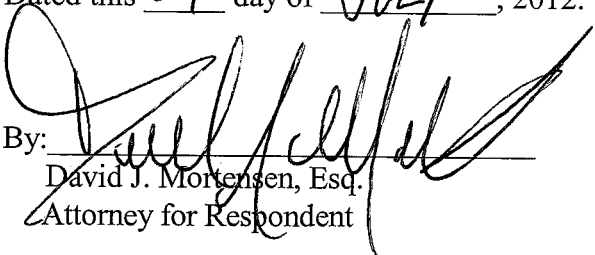
1 **11. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
2 action is commenced in the district court to enforce any provision of this Agreement, the
3 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

4 **12. Failure to Comply With Terms.** In the event the Board enters its order approving
5 this Agreement, should Respondent fail to comply with the terms recited herein, the Board would
6 then have grounds, after notice and a hearing, to take disciplinary action against Respondent in
7 addition to that included herein for the subject's violation of an order of the Board in accordance
8 with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
9 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

10 Dated this 30th day of July, 2012.

Dated this 24 day of JULY, 2012.

11
12 By: 
13 _____
14 Bradley O. Van Ry, Esq.
15 Attorney for the Investigative Committee

By: 

David J. Mortensen, Esq.
Attorney for Respondent

16 UNDERSTOOD AND AGREED:

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19 Francis Xavier Del Vecchio, M.D., Respondent
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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 7th day of
3 September 2012, with the final total amount of costs due of \$2,625.27.

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6 Benjamin J. Rodriguez, M.D., President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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