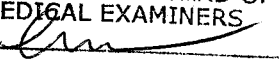


1 **BEFORE THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

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6 **In the Matter of Charges and**) **Case No. 13-39730-1**
7)
8 **Complaint Against**) **FILED**
9 **JOHN BERNARD ABBAGO, C.R.T.,**) **JUN - 7 2013**
10 **Respondent.**) **NEVADA STATE BOARD OF**
11) **MEDICAL EXAMINERS**
12) **By: **

13 **SETTLEMENT AGREEMENT**

14 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
15 (IC) of the Nevada State Board of Medical Examiners (Board), composed of
16 Benjamin J. Rodriguez, M.D., Chairman, Beverly A. Neyland, M.D., Member, and
17 Donna A. Ruthe, Member, in the above-captioned matter, by and through,
18 Bradley O. Van Ry, Esq., Board General Counsel and attorney for the IC, and
19 John Bernard Abbago, CRT (Respondent), as follows:

20 **WHEREAS**, on April 1, 2013, the Board's IC filed a formal Complaint in the
21 above-captioned matter charging Respondent with engaging in conduct that is grounds for
22 discipline pursuant to the Nevada Medical Practice Act (MPA), Nevada Revised Statutes (NRS)
23 Chapter 630 and Nevada Administrative Code (NAC) Chapter 630, to wit: Count I, one count of a
24 practitioner of respiratory care willfully and intentionally making a false or fraudulent statement or
25 submitting a false document in applying for a license, a violation of NAC 630.540(1); Count II,
26 one count of engaging in conduct that brings the respiratory care profession into disrepute, a
27 violation of NAC 630.540(16); Count III, one count of obtaining, maintaining or renewing or
28 attempting to obtain, maintain or renew a license to practice medicine by bribery, fraud or

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1 misrepresentation, a violation of NRS 630.304(1); and, Count IV, one count of engaging in any
2 conduct that is intended to deceive, a violation of NRS 630.306(2)(a);

3 **WHEREAS**, Respondent has received a copy of the formal Complaint, reviewed it,
4 understands it and is fully aware concerning his rights and defenses to the formal Complaint, as
5 well as the possible sanctions that may be imposed if the Board finds and concludes that he has
6 engaged in conduct that is grounds for discipline pursuant to the MPA;

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

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

19 **1. Jurisdiction.** Respondent is, and at all times mentioned in the formal Complaint
20 filed in the above-captioned matter was, licensed to practice respiratory care in the state of Nevada
21 subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the MPA
22 and to impose sanctions as provided by the MPA.

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

24 Respondent acknowledges that he is not represented by counsel and wishes to proceed
25 towards a resolution of this matter, as set forth in this Agreement, without counsel. Respondent
26 understands and acknowledges that he may retain and consult counsel prior to entering into this
27 Agreement. Respondent agrees that if counsel is retained for representation in this matter prior to
28 entering into this Agreement, that counsel for the IC will be informed of such representation prior

1 to Respondent executing this Agreement. Respondent covenants and agrees that he enters into this
2 Agreement knowingly, willingly and intelligently.

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

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

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

22 a. The Board may find a violation of the MPA against Respondent, to wit:
23 engaging in conduct which brings the respiratory care profession into disrepute, a violation of
24 NAC 630.540(16), as set forth in Count II of the formal Complaint;

25 b. The Board shall order that Respondent's license to practice respiratory care be
26 suspended for a period of twenty-four (24) months, said suspension being stayed, and Respondent
27 placed on probation for a period of twenty-four (24) months, beginning on June 7, 2013, subject to

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1 all of the terms and conditions of this Settlement Agreement. Thus, the end date of Respondent's
2 probation is June 7, 2015;

3 c. Respondent shall receive a public reprimand;

4 d. Pursuant to NRS 622.400, Respondent shall reimburse the Board the sum of
5 \$717.03, 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 Board within thirty (30) days of the Board's acceptance and approval of this Agreement;

8 e. Respondent shall perform fifty (50) hours of community service in a
9 medically related field within one (1) year of the Board's acceptance and approval of this Agreement;

10 f. Counts I, III and IV shall be dismissed; and,

11 g. The terms of this Agreement shall be reported as required by law.

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

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

26 Respondent acknowledges that such contacts and communication may be made or
27 conducted ex parte, without notice or opportunity to be heard on his part, or on the part of his
28 counsel, if any, until the public Board meeting where this Agreement is discussed, and that such

1 contacts and communications may include, but not be limited to, matters concerning this
2 Agreement, the formal Complaint, and any and all information of every nature whatsoever related
3 to the formal Complaint or the proceedings herein against Respondent. The IC and its counsel
4 agree that Respondent may appear at the Board meeting where this Agreement is discussed, and if
5 requested, respond to any questions that may be addressed to the IC or its 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 Agreement, ordering full compliance with the terms herein and ordering that this case
10 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 the 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.** If 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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11. Attorneys' Fees and Costs. Respondent covenants and agrees that in the event an action is commenced in the district court to enforce any provision of this Agreement the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

12. Failure to Comply With Terms. In the event the Board enters its order approving this Agreement, should Respondent fail to comply with any term or condition recited herein, the Board shall be authorized to immediately suspend Respondent's license to practice respiratory care in the state of Nevada pending an order to show cause hearing, which will be duly noticed. Further, failure to comply with the terms recited herein may result in additional disciplinary action being initiated against Respondent for a violation of an Order of the Board in accordance with NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

Dated this 24th day of May, 2013.

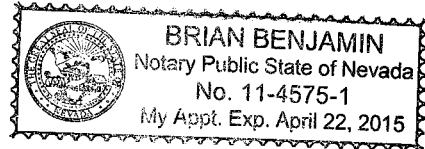
Dated this 22 day of May, 2013.

By: [Signature]
Bradley O. Van Ry, Esq.
Attorney for the Investigative Committee

By: [Signature]
John Bernard Abbago, CRT
Respondent

Subscribed and sworn to before me
this 22nd day of May, 2013.

[Signature]
Notary Public



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 7th day of June 2013, with the final total amount of
3 costs due of \$717.03.

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