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

* * * * *

In the Matter of Charges and)
)
Complaint Against)
)
KOFI EBENEZER SARFO, M.D.,)
)
Respondent.)

Case No. 12-29257-1

FILED

DEC 11 2013

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

SETTLEMENT AGREEMENT

THIS AGREEMENT is entered into by and between the Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) composed of Theodore B. Berndt, M.D., Chairman, Ms. Valerie Clark, BSN, RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, by and through, Bradley O. Van Ry, Esq., Board General Counsel and attorney for the IC, and Kofi Ebenezer Sarfo, M.D. (Respondent), by and through his counsel, Jacob L. Hafter, Esq., of Hafter Law, as follows:

WHEREAS, on August 22, 2012, the Board's IC filed a Complaint in the above-captioned matter charging Respondent with engaging in conduct that is grounds for discipline pursuant to the Medical Practice Act (MPA), Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630, to wit: Count I, six counts of malpractice, defined by NAC 630.040 as the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances, a violation of NRS 630.301(4), and Count II, one count of failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1);

///

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 engaged in conduct that is grounds for discipline pursuant to
6 the MPA;

7 **WHEREAS**, Respondent understands and agrees that this Settlement Agreement
8 (Agreement) is entered into by and between himself and the Board's IC, and not with the Board,
9 but that the IC will present this Agreement to the Board for consideration in open session at a
10 meeting duly noticed and scheduled. Respondent understands that the IC shall advocate approval
11 of this Agreement by the Board, but that the Board has the right to decide in its own discretion
12 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 contained in this Agreement, then the terms, covenants and conditions
15 enumerated 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, a physician licensed to practice medicine in the
21 state of Nevada subject to the jurisdiction of the Board to hear and adjudicate charges of violations
22 of the MPA, and to impose sanctions as provided by the MPA.

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

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

28 ///

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, the MPA,
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
13 state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be available
14 to him or that may apply to him in connection with the proceeding on the formal Complaint filed
15 herein.

16 4. Consent to Entry of Order. Respondent concedes only that the Board has
17 sufficient evidence to proceed with its formal Complaint against him, but does not concede or
18 admit to such allegations, which he expressly denies, and which, but for his desire to reach this
19 compromise, he would contest at the formal hearing of this matter. Accordingly, in order to
20 resolve the matter without incurring further costs and expense of providing a defense to the formal
21 Complaint or to any other further amended Complaint, and in exchange for the waiver of the
22 Respondent's foregoing rights, Respondent has entered into this Agreement¹, and agrees that:

23 a. Based upon Respondent's plea of no contest to the allegations, the Board
24 may find that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA,
25 to wit: the failure to maintain timely, legible, accurate and complete medical records relating to the
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27 ¹ All admissions made by Respondent are solely for final disposition of this matter and any subsequent related
28 administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by
Respondent 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 court proceeding, or any other state or federal court
proceeding, or any credentialing or privileges matter.

1 diagnosis, treatment and care of a patient, a violation of NRS 630.3062(1), as set forth in Count II
2 of the formal Complaint;

3 b. Respondent shall receive a public reprimand which will be limited to
4 Respondent's no contest plea to the failure to maintain timely, legible, accurate and complete
5 medical records relating to the diagnosis, treatment and care of a patient, a violation of
6 NRS 630.3062(1), as set forth in Count II of the formal Complaint;

7 c. Respondent shall complete ten (10) hours of Continuing Medical Education
8 (CME) in Electronic Health Records. At least five (5) of these hours shall be in person. The
9 remainder can be in any combination of online and in person attendance. The ten (10) hours of
10 CME shall be in addition to the CME requirements that are regularly imposed upon Respondent as
11 a condition of licensure in the state of Nevada and shall be completed within one (1) year of the
12 Board's acceptance and approval of this Agreement;

13 d. Pursuant to NRS 622.400, Respondent shall reimburse the Board the sum of
14 \$4,900.00, the negotiated amount of fees and costs incurred by the Board to investigate and
15 prosecute this matter and all underlying matters. The fees and costs shall be paid to the Board
16 within one hundred eighty (180) days of the Board's acceptance and approval of this Agreement;

17 e. Count I of the formal Complaint shall be dismissed with prejudice;

18 f. All Board open investigative complaints and/or open formal Complaints as
19 of the date of the Board's approval of this Agreement shall be fully and finally resolved by the
20 terms and conditions contained herein and be deemed closed with prejudice without any further
21 action as of the date of this Agreement; and,

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

23 5. **Release From Liability.** In execution of this Agreement, the Respondent, for
24 himself, his executors, successors and assigns, hereby releases and forever discharges
25 the state of Nevada, the Board, the Nevada Attorney General, and each of their members, agents
26 and employees in their representative capacities, and in their individual capacities, from any and
27 all manner of actions, causes of action, suits, debts, judgments, executions, claims and demands
28 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have

1 or claim to have, against any or all of the persons or entities named in this paragraph arising out of
2 or by reason of this investigation, this Agreement or its administration.

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

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

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

23 **8. Effect of Rejection of Agreement by Board.** In the event the Board does not
24 approve, accept and adopt the terms, covenants and conditions set out in this Agreement, this
25 Agreement shall be null, void, and of no further force and effect except as to the following
26 covenant and agreement regarding disqualification of adjudicating Board panel members.
27 Respondent agrees that, notwithstanding rejection of this Agreement by the Board, nothing
28 contained herein and nothing that occurs pursuant to the efforts of the IC or its counsel to seek

1 acceptance and adoption of this Agreement by the Board shall disqualify any member of the
2 adjudicating panel of the Board from considering the charges against Respondent and participating
3 in the disciplinary proceeding in any role, including adjudication of the case. Respondent further
4 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

5 **9. Binding Effect.** If this Agreement is approved by the Board, Respondent
6 covenants and agrees that this Agreement is a binding and enforceable contract upon Respondent
7 and the Board's IC which contract may be enforced in a court or tribunal having jurisdiction.
8 Further, this Settlement Agreement and Order shall inure to the benefit of and be binding upon
9 each of the parties hereto and their respective heirs, personal representatives, assigns and
10 successors in interest, and shall resolve any and all Board open investigations or Board open
11 formal complaints as of the date of the Board's approval of this Agreement.

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

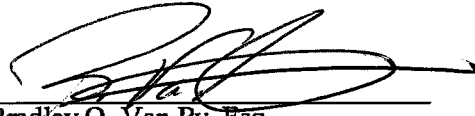
16 **11. Attorneys' Fees and Costs.** Respondent covenants and agrees that in the event an
17 action is commenced in the district court to enforce any provision of this Agreement, the
18 prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

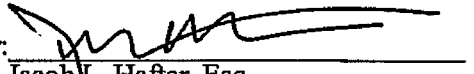
19 **12. Failure to Comply With Terms.** In the event the Board enters its order
20 approving, accepting and adopting this Agreement, should Respondent fail to comply with any
21 term or condition recited herein, the Board shall be authorized to immediately suspend
22 Respondent's license to practice medicine in the state of Nevada pending an order to show cause
23 hearing, which will be duly noticed and scheduled. Further, the Board may then have grounds,
24 after notice and a hearing, to take disciplinary action against Respondent, including but not limited
25 to, potential revocation of Respondent's license to practice medicine in the state of Nevada and/or
26 any other discipline authorized by the MPA. In addition, Respondent shall be subject to the
27 discipline outlined herein for a violation of an order of the Board in accordance with
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1 NRS 630.3065(2)(a). Moreover, the failure of Respondent to reimburse the Board for monies
2 agreed to be paid as a condition of settlement may subject Respondent to civil collection efforts.

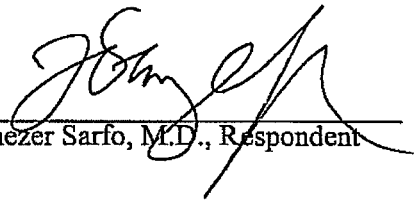
3 Dated this 22nd day of November, 2013.

Dated this 22nd day of Nov, 2013.

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5 By: 
6 Bradley O. Van Ry, Esq.
7 Attorney for the Investigative Committee

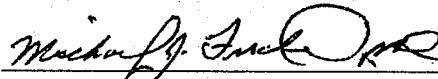
By: 
8 Jacob L. Hafter, Esq.
9 Attorney for Respondent

10 UNDERSTOOD AND AGREED:


11 Kofi Ebenezer Sarfo, M.D., Respondent

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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 6th day of December 2013, with the final total amount
3 of costs due of \$4,900.00.

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6 Michael J. Fischer, M.D., President
7 NEVADA STATE BOARD OF MEDICAL EXAMINERS
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