

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


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6 **In the Matter of Charges and**)
7 **Complaint Against**)
8 **BOUNGKHONG VANSOMPHONE, M.D.,**)
9 **Respondent.**)
10 _____)

Case No. 14-11853-1

FILED

DEC - 8 2014

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

11 **SETTLEMENT AGREEMENT**

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13 **THIS AGREEMENT** is hereby entered into by and between the Investigative Committee
14 (IC) of the Nevada State Board of Medical Examiners (Board), composed of Theodore B. Berndt,
15 M.D., Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., in the above-captioned
16 matter, by and through Erin L. Albright, Esq., Board General Counsel and counsel for the IC, and
17 Bounghong Vansomphone, M.D. (Respondent), by and through James Cox, Esq., counsel for
18 Respondent, as follows:

19 **WHEREAS**, on February 26, 2014, the Board's IC filed a Complaint in the above-
20 captioned matter charging Respondent with engaging in conduct that is grounds for discipline
21 pursuant to the Nevada Medical Practice Act (MPA), i.e., Chapter 630 of the Nevada Revised
22 Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC), to wit: Count I, one
23 count of disciplinary action, including, without limitation, the revocation, suspension,
24 modification or limitation of a license to practice any type of medicine, taken by another state, a
25 violation of NRS 630.301(3); Count II, one count of failure to report in writing, within thirty (30)
26 days, any disciplinary action taken against the licensee or applicant by another state, a violation of
27 NRS 630.306(11); and Count III, one count of obtaining, maintaining or renewing or attempting to

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1 obtain, maintain or renew a license to practice medicine by bribery, fraud or misrepresentation or
2 by any false, misleading, inaccurate or incomplete statement, a violation of NRS 630.304(1); and

3 **WHEREAS**, Respondent has received a copy of the Complaint, reviewed it, understands
4 it, and consulted with his above-identified counsel, James Cox, Esq., concerning the nature and
5 significance of the Complaint. Respondent is fully advised concerning his rights and defenses to
6 the Complaint, as well as the possible sanctions that may be imposed if the Board finds and
7 concludes that he violated one or more provisions of the MPA; and

8 **WHEREAS**, Respondent understands and agrees that he has certain rights under the
9 United States Constitution and the Constitution of the state of Nevada, as well as under the MPA
10 and the Nevada Administrative Procedures Act (NRS Chapter 233B), including, but not limited to,
11 the right to a formal hearing on the charges against him, the right to representation by counsel in
12 the preparation and presentation of his defense, the right to confront and cross-examine the
13 witnesses against him, the right to written findings, conclusions and an order regarding a final
14 decision by the Board, and the right to judicial review of any final decision by the Board that is
15 adverse to him; and

16 **WHEREAS**, Respondent understands and agrees that this Settlement Agreement
17 (Agreement) is entered into by and between him and the Board's IC, and not with the Board, but
18 that the IC will present this Agreement to the Board for consideration in open session at a meeting
19 duly noticed and scheduled. Respondent understands that the IC shall advocate approval of this
20 Agreement by the Board, but that the Board has the right to decide in its own discretion whether or
21 not to approve this Agreement; and

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

25 **NOW THEREFORE**, in order to resolve this matter and all charges alleged by the
26 Board's IC in the above-captioned matter, Respondent and the IC hereby agree¹ to the following
27 terms, covenants and conditions:

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¹ All agreements and admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said agreements

1 **1. Jurisdiction.** Respondent is, and at all times mentioned in the Complaint filed in
2 the above-captioned matter was, a physician licensed to practice medicine in the state of Nevada
3 subject to the jurisdiction of the Board to hear and adjudicate charges of violations of the MPA,
4 and to impose sanctions as provided by the MPA.

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

6 Respondent is represented by above-identified counsel herein, whom Respondent
7 covenants and agrees is fully capable, competent and fully advised in these circumstances, and
8 Respondent further covenants and agrees that he enters into this Agreement knowingly, willingly,
9 and intelligently, after full consultation with and upon advice of above-identified counsel.

10 **3. Waiver of Rights.** In connection with this Agreement, and the terms, covenants
11 and conditions contained herein, Respondent knowingly, willingly and intelligently waives all
12 rights in connection with this Agreement, and the terms, covenants and conditions contained
13 herein, and with the understanding that Respondent knowingly, willingly and intelligently waives
14 all rights arising under or pursuant to the United States Constitution, the Constitution of the
15 state of Nevada, the MPA, NRS Chapter 233B, and any other statutory rights that may be available
16 to him or that may apply to him in connection with the proceedings on the Complaint filed herein,
17 the defense of said Complaint, the adjudication of the charges in said Complaint, and the
18 imposition of sanctions.

19 Respondent agrees that the matter of the Complaint herein may be settled and resolved in
20 accordance with this Agreement without a hearing or any further proceedings, and without the
21 right to judicial review.

22 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent covenants and
23 agrees that the Board's IC has a reasonable basis to believe that Respondent engaged in one or
24 more instances of conduct that is grounds for discipline pursuant to the provisions of the MPA.

25 **5. Consent to Entry of Order.** In order to resolve the matter of these disciplinary
26 proceedings pending against him without incurring any further costs and expense of providing a
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28 and 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 proceeding, any other state or federal court proceeding, or any credentialing or privileges matter.

1 defense to the Complaint, Respondent hereby agrees that the Board may issue an Order
2 finding that Respondent engaged in conduct that is grounds for discipline pursuant to the MPA, to
3 wit: one count of failure to report in writing, within thirty (30) days, any disciplinary action taken
4 against the licensee by another state, a violation of NRS 630.306(11), as set forth in Count II the
5 Complaint, and agrees that:

6 a. Pursuant to NRS 622.400, Respondent shall reimburse the sum of Six
7 Hundred Twelve and 11/100 (\$612.11), the current amount of the fees and costs incurred by the
8 Board to investigate and prosecute this matter, along with the costs to conclude the matter, if any.
9 The fees and costs shall be paid to the Board within sixty (60) days of the Board's acceptance,
10 adoption and approval of this Agreement;

11 b. Respondent shall receive a public reprimand;

12 c. The remaining counts of the Complaint shall be dismissed; and

13 d. The terms of this Agreement shall be reported as required by law.

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

22 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
23 recommend approval and adoption of the terms, covenants and conditions contained herein by the
24 Board in resolution of the Complaint pending herein against Respondent. In the course of seeking
25 Board approval, adoption and/or acceptance of this Agreement, counsel for the IC may
26 communicate directly with the Board staff and the adjudicating members of the Board.

27 Respondent acknowledges that such contacts and communication may be made or
28 conducted ex parte, without notice or opportunity to be heard on his part or on the part of his

1 counsel, until the public Board meeting where this Agreement is discussed, and that such contacts
2 and communications may include, but not be limited to, matters concerning this Agreement, the
3 Complaint, and any and all information of every nature whatsoever related to the Complaint or the
4 proceedings herein against Respondent. The IC and its counsel agree that Respondent and/or his
5 counsel may appear at the Board meeting where this Agreement is discussed, and if requested,
6 respond to any questions that may be addressed to the IC or its counsel.

7 **8. Effect of Acceptance of Agreement by Board.** In the event the Board approves,
8 accepts and adopts the terms, covenants and conditions set out in this Agreement, counsel for the
9 IC will cause the Board's order accepting, adopting and approving this Agreement to be entered
10 herein, ordering full compliance with the terms herein and ordering that this case be closed,
11 subject to the provisions in Paragraph 5.

12 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not
13 accept, approve 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 participating
20 in the disciplinary proceedings in any role, including adjudication of the case. Respondent further
21 agrees that he shall not seek to disqualify any such member absent evidence of bad faith.

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

25 **11. Forum Selection Clause.** Respondent covenants and agrees that in the event either
26 party is required to seek enforcement of this Agreement in the district court, he consents to such

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1 jurisdiction, and covenants and agrees that exclusive jurisdiction shall be in the
2 Second Judicial District Court of the state of Nevada in and for the county of Washoe.

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

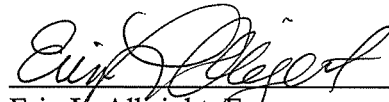
6 **13. Failure to Comply With Terms.** In the event the Board enters its order approving
7 this Agreement, should Respondent fail to comply with any term or condition recited herein, the
8 Board shall be authorized to immediately suspend Respondent's license to practice medicine in the
9 state of Nevada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

14 Dated this 17th day of November, 2014.

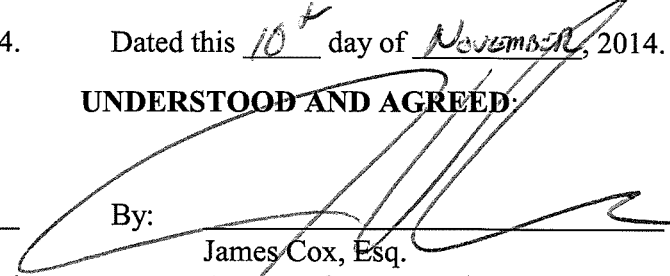
Dated this 10th day of November, 2014.

15 **UNDERSTOOD AND AGREED:**

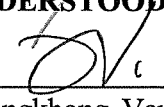
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17 By:


Erin L. Albright, Esq.
Attorney for the Investigative Committee

By:

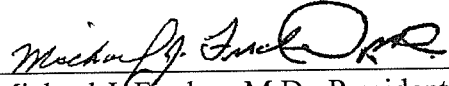

James Cox, Esq.
Attorney for Respondent

19 **UNDERSTOOD AND AGREED:**

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Boungkhong Vansomphone, M.D., Respondent
21 Dated this 8th day of November, 2014.
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IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 5th day of December 2014, with the final total amount of costs due of \$612.11.



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