

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

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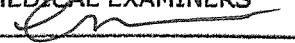
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6 **In the Matter of Charges and**
7 **Complaint Against**
8 **LO FU TAN, M.D.,**
9 **Respondent.**

Case No. 16-28591-1

FILED

DEC - 5 2016

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

10
11 **SETTLEMENT AGREEMENT**

12 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners
13 (Board) and Lo Fu Tan, M.D. (Respondent), a licensed physician in Nevada, represented by John
14 H. Cotton, Esq. and Katherine A. Manthei, Esq. of the law firm John H. Cotton & Associates,
15 hereby enter into this Settlement Agreement (Agreement) based on the following:¹

16 **A. Background**

17 1. Respondent is a physician licensed (#10849) by the Board to practice medicine in
18 Nevada.

19 2. On January 26, 2016, the IC filed a formal Complaint (Complaint) in this matter
20 charging Respondent with one violation of Nevada Revised Statutes (NRS) Chapter 630 and Nevada
21 Administrative Code (NAC) Chapter 630 (collectively, the Medical Practice Act). Specifically, the
22 Complaint alleges one violation of NRS 630.301(4), malpractice, as defined by NAC 630.040.

23 3. Respondent was properly served with a copy of the Complaint, and has reviewed
24 the Complaint, understands the Complaint, and has had the opportunity to consult with above-

25 _____
26 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter
27 and any subsequent related administrative proceedings or civil litigation involving the Board and
28 Respondent. Therefore, Respondent's agreements and admissions 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 state or federal court proceeding, or
any credentialing or privileges matter.

1 identified counsel concerning the nature and significance of the Complaint.

2 4. Respondent is hereby advised of his rights regarding this administrative matter, and of
3 his opportunity to defend against the allegations in the Complaint. Specifically, Respondent has
4 certain rights in this administrative matter as set out by the United States Constitution, the Nevada
5 Constitution, the Medical Practice Act, and the Nevada Administrative Procedure Act (APA)
6 (NRS Chapter 233B). These rights include the right to a formal hearing on the allegations in the
7 Complaint, the right to representation by counsel, at his own expense, in the preparation and
8 presentation of his defense, the right to confront and cross-examine the witnesses and evidence against
9 him, the right to written findings of fact, conclusions of law, and order reflecting the final decision of
10 the Board, and the right to judicial review of the Board's order, if the decision is adverse to him.

11 5. Respondent understands that, under the Board's charge to protect the public by
12 regulating the practice of medicine, the Board may take disciplinary action against Respondent's
13 license, including license probation, license suspension, license revocation, and imposition of
14 administrative fines, as well as any other reasonable requirement or limitation, if the Board
15 concludes that Respondent violated one or more provisions of the Medical Practice Act.

16 6. Respondent understands and agrees that this Agreement is entered into by and
17 between Respondent and the IC, not the Board, and that the IC will present this Agreement to the
18 Board for consideration in open session at a meeting duly noticed and scheduled. Respondent
19 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
20 Board has the right to decide in its own discretion whether or not to approve this Agreement.
21 Respondent further understands and agrees that if the Board approves this Agreement, then the
22 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

23 **B. Terms & Conditions**

24 **NOW, THEREFORE**, in order to resolve this matter, Respondent and the IC hereby
25 agree to the following terms and conditions:

26 1. **Jurisdiction**. Respondent is, and at all times relevant to the Complaint has been, a
27 physician licensed to practice medicine in Nevada subject to the jurisdiction of the Board as set
28 forth in the Medical Practice Act.

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

2 Respondent understands that he may retain and consult counsel prior to entering into this
3 Agreement at his own expense. Respondent acknowledges that he is represented by counsel, John
4 H. Cotton, Esq. and Katherine A. Manthei, Esq., and wishes to resolve this matter with counsel.
5 Respondent agrees that if representation by counsel in this matter materially changes prior to
6 entering into this Agreement and for the duration of this Agreement, that counsel for the IC will
7 be timely notified of the material change. Respondent agrees that he knowingly, willingly and
8 intelligently enters into this Agreement after full consultation with and upon the advice of his
9 counsel.

10 **3. Waiver of Rights.** In connection with this Agreement, and the associated terms
11 and conditions, Respondent knowingly, willingly and intelligently waives all rights in connection
12 with this administrative matter. Respondent hereby knowingly, willingly and intelligently waives
13 all rights arising under the United States Constitution, the Nevada Constitution, the Medical
14 Practice Act, the APA, and any other legal rights that may be available to him or that may apply to
15 him in connection with the administrative proceedings resulting from the Complaint filed in this
16 matter, including defense of the Complaint, adjudication of the allegations set forth in the
17 Complaint, and imposition of any disciplinary actions or sanctions ordered by the Board.
18 Respondent agrees to settle and resolve the allegations of the Complaint as set out by this
19 Agreement without a hearing or any further proceedings, and without the right to judicial review.

20 **4. Acknowledgement of Reasonable Basis to Proceed.** Respondent agrees that the
21 IC has a reasonable basis to believe that Respondent engaged in conduct that is grounds for
22 discipline pursuant to the Medical Practice Act.

23 **5. Consent to Entry of Order.** In order to resolve the Complaint pending against
24 Respondent without incurring any further costs or the expense associated with a hearing, Respondent
25 hereby agrees that the Board may issue an order finding that Respondent engaged in conduct that
26 is grounds for discipline pursuant to the Medical Practice Act, to wit: one count of malpractice, a
27 violation of NRS 630.301(4)(malpractice).

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1 Accordingly, Respondent hereby agrees that:

2 a. Respondent pleads “nolo contendere” (i.e., no contest) to violating NRS
3 630.301(4)(malpractice) regarding his treatment of Patient A on November 12, 2012.

4 b. Respondent shall pay the Board \$1887.77, the fees and costs incurred as
5 part of the Board’s investigative, administrative, and disciplinary proceedings against Respondent,
6 as authorized by NRS 622.400, within 30 days of the Board’s acceptance, adoption and approval
7 of this Agreement.

8 c. Respondent shall take three (3) hours of continuing medical education (CME)
9 relative to proper procedures for treating anaphylaxis conditions within six (6) months of the date of
10 the Board’s acceptance, adoption, and approval of this Agreement. The aforementioned hours of
11 CME shall be in addition to any CME requirements that are regularly imposed upon Respondent as a
12 condition of licensure in the state of Nevada and shall be approved by the Board prior to their
13 completion.

14 d. This Agreement shall be reported to the appropriate entities and parties as
15 required by law, including but not limited to, the National Practitioner Data Bank.

16 **6. Release From Liability.** In execution of this Agreement, Respondent understands
17 and agrees that the state of Nevada, the Board, and each of its members, staff, counsel,
18 investigators, experts, peer reviewers, committees, and panels, hearing officers, consultants and
19 agents are immune from civil liability for any decision or action taken in good faith in response to
20 information acquired by the Board. NRS 630.364(2). Respondent agrees to release the state of
21 Nevada, the Board, and each of its members, staff, counsel, investigators, experts, peer reviewers,
22 committees, panels, hearing officers, consultants and agents from any and all manner of actions,
23 causes of action, suits, debts, judgments, executions, claims and demands whatsoever, known and
24 unknown, in law or equity, that Respondent ever had, now has, may have or claim to have, against
25 any or all of the persons, government agencies or entities named in this paragraph arising out of,
26 or by reason of, this investigation, this Agreement, or the administration of this case.

27 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
28 recommend approval and adoption of the terms and conditions of this Agreement by the Board in

1 resolution of the Complaint pending against Respondent. In the course of seeking Board
2 acceptance, approval and adoption of this Agreement, counsel for the IC may communicate
3 directly with Board staff and the adjudicating members of the Board.

4 Respondent acknowledges that such contacts and communications may be made or
5 conducted ex parte, without notice or opportunity to be heard on his part until the public Board
6 meeting where this Agreement is discussed, and that such contacts and communications may
7 include, but not be limited to, matters concerning this Agreement, the Complaint, and any and all
8 information of every nature whatsoever related to this matter. The IC and its counsel agree that
9 Respondent may appear at the Board meeting where this Agreement is discussed and, if requested,
10 respond to any questions that may be addressed to the IC or the IC's counsel.

11 **8. Effect of Acceptance of Agreement by Board.** In the event the Board accepts,
12 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement
13 an order of the Board.

14 **9. Effect of Rejection of Agreement by Board.** In the event the Board does not
15 accept, approve and adopt this Agreement, this Agreement shall be null, void and of no force and
16 effect except as to the following agreement regarding adjudications: (1) Respondent agrees that,
17 notwithstanding rejection of this Agreement by the Board, nothing contained in this Agreement
18 and nothing that occurs pursuant to efforts of the IC to seek the Board's acceptance of this
19 Agreement shall disqualify any member of the adjudicating panel of the Board from considering
20 the allegations in the Complaint and from participating in disciplinary proceedings against
21 Respondent, including adjudication of the case; and (2) Respondent further agrees that he shall not
22 seek to disqualify any such member absent evidence of bad faith.

23 **10. Binding Effect.** If approved by the Board, Respondent understands that this
24 Agreement is a binding and enforceable contract upon Respondent and the Board.

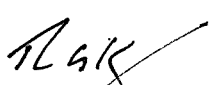
25 **11. Forum Selection Clause.** Respondent agrees that in the event either party is
26 required to seek enforcement of this Agreement in district court, Respondent consents to such
27 jurisdiction, and agrees that exclusive jurisdiction shall be in the Second Judicial District Court,
28 State of Nevada, Washoe County.

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

4 **13. Failure to Comply with Terms.** Should Respondent fail to comply with any term
5 or condition of this Agreement once the Agreement has been accepted, approved and adopted by
6 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice
7 medicine in Nevada pending an Order to Show Cause Hearing, which will be duly noticed.
8 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,
9 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may
10 result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).
11 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a
12 condition of this Agreement may subject Respondent to civil collection efforts.

13 **14. Terms.** The terms listed in this Agreement constitute the complete understanding
14 between the Respondent and the IC. No other terms and/or conditions may be included or implied.

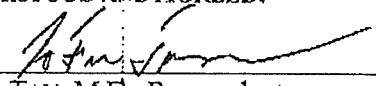
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16 Dated this 30 day of Nov, 2016.

17 By: 
18 Robert Kilroy, Esq.
19 Attorney for the Investigative Committee

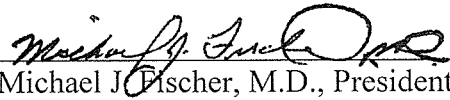
Dated this 30th day of November, 2016.

By: 
John H. Cotton, Esq.
Katherine A. Manthei, Esq.
Attorneys for Respondent

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21 UNDERSTOOD AND AGREED:

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23 LO FU TAN, M.D., Respondent
24 Dated this 29th day of November, 2016.

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 2nd day of December 2016, with the final total amount
3 of costs due of \$1,887.77.

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