

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

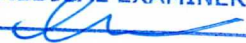
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In the Matter of Charges and
Complaint Against
STEVEN DON FOLKERTH, M.D.,
Respondent.

Case No. 17-11283-1

FILED

JUN - 4 2018

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

SETTLEMENT AGREEMENT

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), by and through Robert Kilroy, Esq., General Counsel for the Board and attorney for the IC, and Steven Don Folkerth, M.D. (Respondent), a licensed Physician in Nevada, hereby enter into this Settlement Agreement (Agreement) based on the following:¹

A. Background

1. Respondent is a medical doctor, and was licensed by the Board pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada Administrative Code (NAC) (collectively, the Medical Practice Act) to practice medicine in Nevada since June 6, 1996 (License No. 7792), until his license expired without application for renewal on June 30, 2015. NRS 630.298 provides that the expiration of a license by operation of law or by voluntary surrender of a license does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

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, 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.

2. On May 10, 2018 in Case No. 17-11283-1, the IC filed a formal First Amended Complaint (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, this Complaint alleges one (1) violation of NRS 630.3062(4), failing to make medical records available to a patient (Count I); one (1) violation of NRS 630.306(1)(b)(3), failing to make medical records available to a Board Investigator (Count II); one (1) violation of NRS 630.304(7), terminating medical care without adequate notice to a patient (Count III); one (1) violation of NRS 630.3065(2)(a), failing to comply with a lawful Order of the Investigative Committee (Count IV); one (1) violation of NRS 630.3065(2)(a), failing to comply with a lawful Order of the Investigative Committee (Count V); one (1) violation of NRS 630.3065(2)(a), failing to comply with a lawful Order of the Investigative Committee (Count VI); one (1) violation of NRS 630.3062(1), failure to keep timely, legible, accurate, and complete medical records (Count VII).

3. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

4. Respondent was properly served with a copy of this Complaint, has reviewed and understands this Complaint, and has had the opportunity to consult with competent counsel concerning the nature and significance of this Complaint.

5. Respondent is hereby advised of his rights regarding this administrative matter, and of his opportunity to defend against the allegations in the Complaint. Specifically, Respondent has certain rights in this administrative matter as set out by the United States Constitution, the Nevada Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is contained in NRS Chapter 241, and the Nevada Administrative Procedure Act (APA), which is contained in NRS Chapter 233B. These rights include the right to a formal hearing on the allegations in the Complaint, the right to representation by counsel, at his own expense, in the preparation and presentation of his defense, the right to confront and cross-examine the witnesses and evidence against him, the right to written findings of fact, conclusions of law and order reflecting the final decision of the Board, and the right to judicial review of the Board's order, if the decision is adverse to him.

6. Respondent understands that, under the Board's charge to protect the public by regulating the practice of medicine, the Board may take disciplinary action against Respondent's

1 license, including license probation, license suspension, license revocation and imposition of
2 administrative fines, as well as any other reasonable requirement or limitation, if the Board
3 concludes that Respondent violated one or more provisions of the Medical Practice Act.

4 7. Respondent understands and agrees that this Agreement, by and between
5 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the
6 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent
7 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
8 Board has the right to decide in its own discretion whether or not to approve this Agreement.
9 Respondent further understands and agrees that if the Board approves this Agreement, then the
10 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

11 **B. Terms & Conditions**

12 **NOW, THEREFORE**, in order to resolve the matters addressed herein, i.e., the matters
13 with regard to the Complaint, Respondent and the IC hereby agree to the following terms and
14 conditions:

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

18 2. **Representation by Counsel/Knowing, Willing and Intelligent Agreement.**
19 Respondent acknowledges he is represented by counsel, and wishes to resolve the matters
20 addressed herein with said counsel. Respondent agrees that if representation by counsel in this
21 matter materially changes prior to entering into this Agreement and for the duration of this
22 Agreement, that counsel for the IC will be timely notified of the material change. Respondent
23 agrees that he knowingly, willingly and intelligently enters into this Agreement after deciding to
24 have a full consultation with and upon the advice of legal counsel.

25 3. **Waiver of Rights.** In connection with this Agreement, and the associated terms
26 and conditions, Respondent knowingly, willingly and intelligently waives all rights in connection
27 with this administrative matter. Respondent hereby knowingly, willingly and intelligently waives
28 all rights arising under the United States Constitution, the Nevada Constitution, the Medical

1 Practice Act, the OML, the APA, and any other legal rights that may be available to him or that
2 may apply to him in connection with the administrative proceedings resulting from the Complaint
3 filed in this matter, including defense of the Complaint, adjudication of the allegations set forth in
4 the Complaint, and imposition of any disciplinary actions or sanctions ordered by the Board.
5 Respondent agrees to settle and resolve the allegations of the Complaint as set out by this
6 Agreement, without a hearing or any further proceedings and without the right to judicial review.

7 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent acknowledges
8 that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is
9 grounds for discipline pursuant to the Medical Practice Act. The Board acknowledges Respondent
10 is not admitting that the Board's claims/counts as alleged in the Complaint have merit.
11 Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential subsequent
12 litigation. Respondent asserts if this matter were to proceed to hearing, he has evidence, witnesses,
13 expert witness(es) and defenses to the counts/claims alleged in the Complaint, but for the purposes
14 of resolving the matter and for no other purpose, Respondent waives the presentation of evidence,
15 witnesses, expert witnesses, and defenses in order to effectuate this Agreement.

16 5. **Consent to Entry of Order.** In order to resolve this Complaint pending against
17 Respondent, Respondent hereby agrees that the Board may issue an order finding that Respondent
18 engaged in conduct that is grounds for discipline pursuant to the Medical Practice Act. Accordingly,
19 the following terms and conditions are hereby agreed upon:

20 a. Respondent admits to the following counts: Count I: NRS 630.3062(4), failing to
21 make medical records available to a patient; Count II: NRS 630.306(1)(b)(3), failing to make
22 medical records available to a Board Investigator; Count IV: NRS 630.3065(2)(a), failing to
23 comply with a lawful Order of the Investigative Committee Complaint.

24 b. Respondent will pay the costs and expenses incurred in the investigation and
25 prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,
26 adoption and approval of this Agreement, the current amount being \$1,852.83, not including any
27 costs that may be necessary to finalize this Agreement.
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1 c. For Counts I, II and IV, Respondent shall pay a fine of \$400.00 for each count, for a
2 total of \$1,200.00, within sixty (60) days of the Board's acceptance, adoption and approval of this
3 Agreement.

4 d. The Respondent shall comply with pending patient requests to provide patient
5 medical records to his former patients, and provide proof to the satisfaction of the Board that these
6 records have been provided, within thirty (30) days of the Board's acceptance, adoption and
7 approval of this Agreement.

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

10 f. Respondent shall receive a Public Letter of Reprimand.

11 g. The remainder of the counts in the Complaint shall be dismissed with prejudice,
12 and this Agreement shall encompass the resolution of all issues before the Board.

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

24 7. **Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
25 recommend approval and adoption of the terms and conditions of this Agreement by the Board in
26 resolution of this Complaint. In the course of seeking Board acceptance, approval and adoption of
27 this Agreement, counsel for the IC may communicate directly with the Board staff and the
28 adjudicating members of the Board.

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

8. **Effect of Acceptance of Agreement by Board.** In the event the Board accepts, approves and adopts this Agreement, the Board shall issue a final order, making this Agreement an order of the Board, and, pending full compliance with the terms herein, the case shall be closed and the remaining counts of the Complaint shall be dismissed with prejudice.

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

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

11. **Forum Selection Clause.** The parties agree that in the event either party is required to seek enforcement of this Agreement in district court, the parties consent to such jurisdiction and agree that exclusive jurisdiction shall be in the Second Judicial District Court, State of Nevada, Washoe County.

12. **Attorneys' Fees and Costs.** The parties agree that in the event an action is commenced in district court to enforce any provision of this Agreement, the prevailing party shall

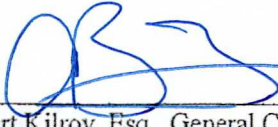
OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521
(775) 688-2559

1 be entitled to recover reasonable attorneys' fees and costs.

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

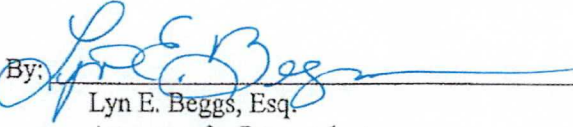
11 Dated this 30 day of May, 2018.

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14 By: 

Robert Kilroy, Esq., General Counsel
Aaron Bart Fricke, Esq., Deputy General Counsel
Attorneys for the Investigative Committee

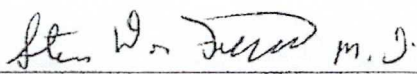
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16
17
18 Dated this 30th day of May, 2018.

19 LAW OFFICES OF LYN E. BEGGS, PLLC

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21 By: 

Lyn E. Beggs, Esq.
Attorneys for Respondent

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24 Dated this 24 day of May, 2018.

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28 Steven Don Folkerth, M.D., Respondent

OFFICE OF THE GENERAL COUNSEL

Nevada State Board of Medical Examiners

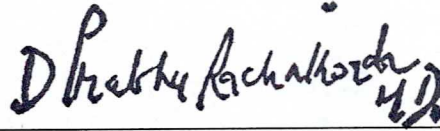
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IT IS HEREBY ORDERED that the foregoing Settlement Agreement is approved and accepted by the Nevada State Board of Medical Examiners on the 1st day of June, 2018, with the final total amount of costs due of \$1,852.83.



Rachakonda D. Prabhu, M.D., President
NEVADA STATE BOARD OF MEDICAL EXAMINERS