

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

3 * * * * *

4
5 **In the Matter of Charges and**
6 **Complaint Against**
7 **THOMAS DANIEL O'GARA, M.D.,**
8 **Respondent.**

Case No. 18-9747-1

FILED

JUN - 4 2018

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

9
10 **SETTLEMENT AGREEMENT**

11 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through Robert Kilroy, Esq., General Counsel for the Board and attorney for the
13 IC, and Thomas Daniel O'Gara, M.D. (Respondent), a licensed Physician in Nevada, hereby enter
14 into this Settlement Agreement (Agreement) based on the following:¹

15 **A. Background**

16 1. Respondent is a medical doctor currently licensed in active status by the Board
17 pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada
18 Administrative Code (NAC) (collectively, the Medical Practice Act), to practice medicine in Nevada
19 since July 1, 1987 (License No. 5533).

20 2. On March 8th, 2018, in Case No. 18-9747 -1, the IC filed a formal Complaint
21 (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, this
22 Complaint alleges twelve (12) violations of NRS 630.306(1)(b)(2), Violations of Standards of
23 Practice (Counts I, III, V, VII, IX, XI, XIII, XV, XVII, XIX, XXI, XXIII, respectively), and
24 twelve (12) violations of NRS 630 3062(1), Failure to Maintain Complete Medical Records
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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 (Counts II, IV, VI, VIII, X, XII, XIV, XVI, XVIII, XX, XXII, XXIV, respectively).

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

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

7 5. Respondent is hereby advised of his rights regarding this administrative matter, and of
8 his opportunity to defend against the allegations in the Complaint. Specifically, Respondent has
9 certain rights in this administrative matter as set out by the United States Constitution, the Nevada
10 Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is contained in
11 NRS Chapter 241, and the Nevada Administrative Procedure Act (APA) applicable to proceedings
12 before certain regulatory bodies, which is contained in NRS Chapter 233B and 622A. These rights
13 include the right to a formal hearing on the allegations in the Complaint, the right to representation by
14 counsel, at his own expense, in the preparation and presentation of his defense, the right to confront
15 and cross-examine the witnesses and evidence against him, the right to written findings of fact,
16 conclusions of law and order reflecting the final decision of the Board, and the right to judicial review
17 of the Board's order, if the decision is adverse to him.

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

23 7. Respondent understands and agrees that this Agreement, by and between
24 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the
25 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent
26 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
27 Board has the right to decide in its own discretion whether or not to approve this Agreement.
28 Respondent further understands and agrees that if the Board approves this Agreement, then the

1 terms and conditions enumerated below shall be binding and enforceable upon him and the Board.

2 **B. Terms & Conditions**

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

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

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

10 Respondent acknowledges he is represented by counsel, and wishes to resolve the matters
11 addressed herein with said counsel. Respondent agrees that if representation by counsel in this
12 matter materially changes prior to entering into this Agreement and for the duration of this
13 Agreement, that counsel for the IC will be timely notified of the material change. Respondent
14 agrees that he knowingly, willingly and intelligently enters into this Agreement after deciding to
15 have a full consultation with and upon the advice of legal counsel.

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

26 4. **Acknowledgement of Reasonable Basis to Proceed.** Respondent acknowledges
27 that the IC believes it has a reasonable basis to allege that Respondent engaged in conduct that is
28 grounds for discipline pursuant to the Medical Practice Act. The Board acknowledges Respondent

1 is not admitting that the Board's claims/counts as alleged in the Complaint have merit.
2 Respondent is agreeing to resolve this matter to avoid the costs of hearing and potential subsequent
3 litigation. Respondent asserts if this matter were to proceed to hearing, he has evidence, witnesses,
4 expert witness(es) and defenses to the counts/claims alleged in the Complaint, but for the purposes
5 of resolving the matter and for no other purpose, Respondent waives the presentation of evidence,
6 witnesses, expert witnesses, and defenses in order to effectuate this Agreement.

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

11 a. Respondent admits to Counts II, IV, VI, VIII, X, XII, XIV, XVI, XVIII, XX, XXII,
12 XXIV, twelve (12) violations of NRS 630.3062(1), Failure to Maintain Complete Medical
13 Records.

14 b. Respondent will pay the costs and expenses incurred in the investigation and
15 prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,
16 adoption and approval of this Agreement, the current amount being \$7,442.81, not including any
17 costs that may be necessary to finalize this Agreement.

18 c. Respondent will pay a fine of \$1,000.00 within sixty (60) days of the Board's
19 acceptance, adoption and approval of this Agreement.

20 d. Respondent shall take six (6) hours of continuing medical education (CME) related
21 to best practices in medical recordkeeping, within six (6) months from the date of the Board's
22 acceptance, adoption and approval of this Agreement. The aforementioned hours of CME shall be in
23 addition to any CME requirements that are regularly imposed upon Respondent as a condition of
24 licensure in the State of Nevada and shall be approved by the Board prior to their completion.

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

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

28 h. The remaining counts of the Complaint shall be dismissed with prejudice.

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

13 **7. Procedure for Adoption of Agreement.** The IC and counsel for the IC shall
14 recommend approval and adoption of the terms and conditions of this Agreement by the Board in
15 resolution of this Complaint. In the course of seeking Board acceptance, approval and adoption of
16 this Agreement, counsel for the IC may communicate directly with the Board staff and the
17 adjudicating members of the Board.

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

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

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

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


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

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

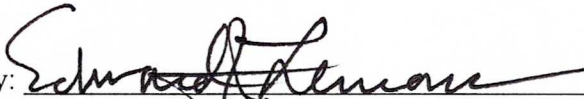
19 **13. Failure to Comply with Terms.** Should Respondent fail to comply with any term
20 or condition of this Agreement once the Agreement has been accepted, approved and adopted by
21 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice
22 medicine in Nevada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

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1 Dated this 4 day of April, 2018.

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4 By: _____
5 Robert Kilroy, Esq., General Counsel
6 Aaron Bart Fricke, Esq., Deputy General Counsel
7 Attorneys for the Investigative Committee

8 Dated this 28th day of March, 2018.

9 LEMONS GRUNDY & EISENBERG
10
11 
12 By: _____
13 Edward J. Demons, Esq.
14 Attorneys for Respondent

15 Dated this _____ day of _____, 2018.

16
17 
18 _____
19 Thomas Daniel O'Gara, M.D., Respondent

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

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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 \$7,442.81.



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