

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

3 * * * * *

4
5 **In the Matter of Charges and Complaint**
6 **Against**
7 **CARLOS ENRIQUE FONTE, M.D.,**
8 **Respondent.**

Case No. 18-9800-01

FILED

MAY 20 2020

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 Donald K. White, Esq., Deputy General Counsel for the Board and
13 attorney for the IC, and Carlos E. Fonte, M.D. (Respondent), a licensed physician in Nevada,
14 assisted by his attorney, David J. Mortensen, Esq., of the law firm of
15 Messner Reeves LLP, hereby enter into this Settlement Agreement (Agreement) based on the
16 following:¹

17 **A. Background**

18 1. Respondent is a medical doctor currently licensed in active status by the Board
19 pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada
20 Administrative Code (NAC) (collectively, the Medical Practice Act). His license was originally
21 issued on August 25, 1990 (License No. 6114).

22 2. On January 2, 2020, in Case No. 18-9800-01, the IC filed a formal First Amended
23 Complaint (First Amended Complaint) charging Respondent with violating the Medical Practice Act.
24 Specifically, the First Amended Complaint alleges the sole count of violating
25 NRS 630.3062(1)(a) (Failure to Maintain Timely, Legible, Accurate and Complete Medical
26 _____

27 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter and any
28 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.

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Nevada State Board of Medical Examiners

9600 Gateway Drive

Reno, Nevada 89521

(775) 688-2559

1 Records) (Count I).

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 the First Amended Complaint, has
5 reviewed and understands the First Amended Complaint, and has had the opportunity to consult
6 with competent counsel concerning the nature and significance of the First Amended 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 First Amended Complaint. Specifically,
9 Respondent has certain rights in this administrative matter as set out by the United States Constitution,
10 the Nevada Constitution, the Medical Practice Act, the Nevada Open Meeting Law (OML), which is
11 contained in NRS Chapter 241, and the Nevada Administrative Procedure Act (APA), which is
12 contained in NRS Chapters 233B and 622A. These rights include the right to a formal hearing on the
13 allegations in the First Amended Complaint, the right to representation by counsel, at his own
14 expense, in the preparation and presentation of his defense, the right to confront and cross-examine the
15 witnesses and evidence against him, the right to written findings of fact, conclusions of law and order
16 reflecting the final decision of the Board, and the right to judicial review of the Board's order, if the
17 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 First Amended Complaint, Respondent and the IC hereby agree to the following
5 terms and conditions:

6 1. **Jurisdiction.** Respondent is, and at all times relevant to the First Amended
7 Complaint has been, a physician licensed to practice medicine in Nevada subject to the
8 jurisdiction of the Board as set 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 First
22 Amended Complaint filed in this matter, including defense of the First Amended Complaint,
23 adjudication of the allegations set forth in the First Amended Complaint, and imposition of any
24 disciplinary actions or sanctions ordered by the Board. Respondent agrees to settle and resolve the
25 allegations of the First Amended Complaint as set out by this Agreement, without a hearing or any
26 further proceedings and without the right to judicial review.

27 4. **Acknowledgement of Reasonable Basis to Proceed.** As of the time of entering
28 into this Settlement Agreement, the allegations of the First Amended Complaint remain unproven.

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

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

14 a. Respondent admits to the sole count of the First Amended Complaint, violation of
15 NRS 630.3062(1)(a), Failure to Maintain Timely, Legible, Accurate and Complete Medical
16 Records.

17 b. Respondent shall pay a fine of Two Thousand Dollars (\$2,000.00) within sixty (60)
18 days of the Board's acceptance, adoption and approval of this Agreement.

19 c. Respondent shall pay the costs and expenses incurred in the investigation and
20 prosecution of this matter within sixty (60) days of the Board's acceptance, adoption and approval
21 of this Agreement, the current amount being \$4829.42, not including any costs that may be
22 necessary to finalize this Agreement.

23 d. Respondent shall complete ^{four (4)} ~~ten (10)~~ hours of continuing medical education (CME)
24 related to the subject matter of geriatric medicine, ^{and six (6) hours of CME related to proper medical record}
25 ^{keeping, for a total of ten (10) hours of CME} within six (6) months from the date of the
26 Board's acceptance, adoption and approval of this Agreement. The aforementioned ten (10) hours
27 of CME shall be in addition to any CME requirements that are regularly imposed upon
28 Respondent as a condition of licensure in the State of Nevada and shall be approved by the Board
prior to their completion.

3-14-20

- 1 e. Respondent shall receive a Public Letter of Reprimand.
2 f. This Agreement shall be reported to the appropriate entities and parties as required
3 by law, including, but not limited to, the National Practitioner Data Bank.

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

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

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

1 **8. Effect of Acceptance of Agreement by Board.** In the event the Board accepts,
2 approves and adopts this Agreement, the Board shall issue a final order, making this Agreement
3 an order of the Board, and, pending full compliance with the terms herein, the case shall be closed
4 and all remaining claims arising out of the First Amended Complaint shall be dismissed with
5 prejudice.

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

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

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


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

24 **13. Failure to Comply With Terms.** Should Respondent fail to comply with any term
25 or condition of this Agreement once the Agreement has been accepted, approved and adopted by
26 the Board, the IC shall be authorized to immediately suspend Respondent's license to practice
27 medicine in Nevada, if any, pending an Order To Show Cause Hearing, which will be duly
28 noticed. Failure to comply with the terms of this Agreement, including failure to pay any fines,

1 costs, expenses or fees owed to the Board, is a failure to comply with an order of the Board, which
2 may result in additional disciplinary action being taken against Respondent. NRS 630.3065(2)(a).
3 Further, Respondent's failure to remit payment to the Board for monies agreed to be paid as a
4 condition of this Agreement may subject Respondent to any civil and administrative collection
5 efforts available.

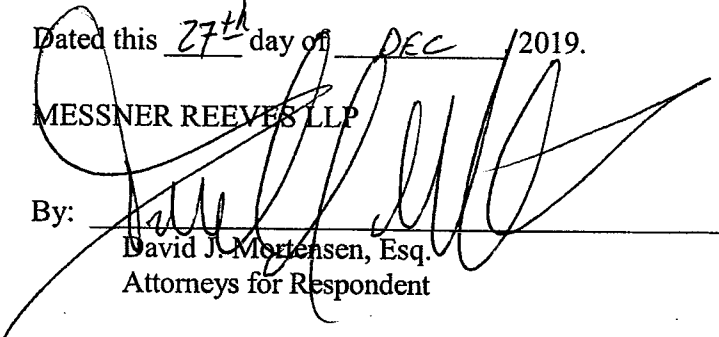
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7 Dated this 31 day of December, 2019.

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9 INVESTIGATIVE COMMITTEE OF THE
10 NEVADA STATE BOARD OF MEDICAL EXAMINERS


11 By: 
12 Donald K. White, Esq., Deputy General Counsel
13 Attorney for the Investigative Committee

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15 Dated this 27th day of DEC, 2019.

16 MESSNER REEVES LLP

17
18 By: 
19 David J. Mortensen, Esq.
20 Attorneys for Respondent

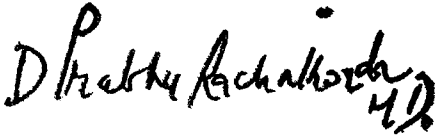
21 Dated this 27th day of Dec, 2019.

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24 Carlos Enrique Fonte, M.D., Respondent
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IT IS HEREBY ORDERED that the foregoing Amended Settlement Agreement (18-9800-01) is approved and accepted by the Nevada State Board of Medical Examiners on the 6th day of March, 2020, with the final total amount of costs due of \$4,829.42.



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