

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 **RAFAEL OKAMOTO, M.D.,**
8 **Respondent.**

Case No. 21-32089-1

FILED

JUN - 7 2021

**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 Rafael Okamoto, M.D. (Respondent), a licensed physician in Nevada,
14 assisted by his attorney, Kathleen T. Janssen, Esq., of the law firm of Cook & Kelesis hereby enter
15 into this Settlement Agreement (Agreement) based on the following:¹

16 **A. BACKGROUND**

17 1. Respondent is a medical doctor currently licensed in active status by the Board
18 pursuant to Chapter 630 of the Nevada Revised Statutes (NRS) and Chapter 630 of the Nevada
19 Administrative Code (NAC) (collectively, the Medical Practice Act). His license was originally
20 issued on January 30, 2007 (License No. 12174).

21 2. On March 11, 2021, in Case No. 21-32089-1, the IC filed a formal Complaint
22 (Complaint) charging Respondent with one count of violating the Medical Practice Act. Specifically,
23 the Complaint alleges one (1) violation of NRS 630.304(1), Misrepresentation in Obtaining or
24 Renewing License (Count I).

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26 ¹ All agreements and admissions made by Respondent are solely for final disposition of this matter and any
27 subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore,
28 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 3. By reason of the foregoing, Respondent is subject to discipline by the Board as
2 provided in NRS 630.352.

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

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

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

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

26 8. Respondent further understands and agrees that if the Board approves this
27 Agreement, then the terms and conditions enumerated below shall be binding and enforceable
28 upon him and the Board.

1 **B. TERMS & CONDITIONS**

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

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

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

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

25 4. **Acknowledgement of Reasonable Basis to Proceed.** As of the time of entering
26 into this Settlement Agreement, the allegations of the Complaint remain unproven. Respondent
27 acknowledges that the IC believes it has a reasonable basis to allege that Respondent engaged in
28 conduct that is grounds for discipline pursuant to the Medical Practice Act. The IC acknowledges

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

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

12 a. Respondent admits to one (1) violation of NRS 630.304(1) Misrepresentation
13 in Obtaining or Renewing License (Count I).

14 b. Respondent shall pay the costs and expenses incurred in the investigation
15 and prosecution of this matter within six (6) months of the Board's acceptance, adoption and
16 approval of this Agreement, the current amount being two thousand nine hundred eighteen dollars
17 and twenty-four cents (\$2,918.24), not including any costs that may be necessary to finalize this
18 Agreement. An initial payment of four hundred eighty-six dollars and thirty-seven cents
19 (\$486.37) will be due within thirty (30) calendar days of the Board's approval of this Agreement.
20 Payments in the amount of four hundred eighty-six dollars and thirty-seven cents (\$486.37) shall
21 be due on the first day of each month beginning July 1, 2021, through December 1, 2021, and the
22 first day of each month thereafter until satisfied in full.

23 c. Respondent shall pay a fine of five hundred dollars (\$500.00) within sixty
24 (60) days of the Board's acceptance, adoption and approval of this Agreement.

25 d. Respondent shall receive a Public Letter of Reprimand.

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

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1 f. This agreement shall encompass the resolution of the formal disciplinary
2 case before the Board and any other claims arising from the investigation of this case.

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

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

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

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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 Complaint and investigation 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 Complaint and from participating in disciplinary proceedings against Respondent, including
13 adjudication of this case; and (2) Respondent further agrees that he shall not seek to disqualify any
14 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 noticed.
28 Failure to comply with the terms of this Agreement, including failure to pay any fines, costs,

1 expenses or fees owed to the Board, is a failure to comply with an order of the Board, which may
2 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
4 as a condition of this Agreement may subject Respondent to any civil and administrative
5 collection efforts available.

6 DATED this 14th day of May, 2021. DATED this 2nd day of May, 2021.

7 INVESTIGATIVE COMMITTEE OF THE
8 NEVADA STATE BOARD OF MEDICAL
9 EXAMINERS

COOK & KELESIS

10 By:  _____

By:  _____

11 DONALD K. WHITE, J.D.
12 Deputy General Counsel
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17 *Attorney for the Investigative Committee*

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517 S. 9th Street
Las Vegas, NV 89101
Tel: (702) 737-7702
Email: kjanssen@bckltd.com
Attorney for Respondent

18 DATED this 11 day of May, 2021.

19 By:  _____

20 RAFAEL OKAMOTO, M.D.
21 *Respondent*

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ORDER

IT IS HEREBY ORDERED, that the foregoing Settlement Agreement (Case No. 21-32089-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 4th day of June, 2021, with the final total amount of costs due of two thousand nine hundred eighteen dollars and twenty-four cents (\$2,918.24).

DATED this 4th day of June, 2021.

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:



RACHAKONDA D. PRABHU, M.D.
President