

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

3                                   \* \* \* \* \*

4  
5 **In the Matter of Charges and Complaint**

Case No. 23-40843-1

6 **Against:**

**FILED**

7 **CHARLES BRIAN KIM, M.D.,**

SEP 15 2023

8 **Respondent.**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: W. Shae

9  
10                                   **SETTLEMENT AGREEMENT**

11                   The Investigative Committee (IC) of the Nevada State Board of Medical Examiners  
12 (Board), by and through William P. Shogren, Deputy General Counsel for the Board and attorney  
13 for the IC, and Charles Brian Kim, M.D. (Respondent), a licensed physician in Nevada, assisted by  
14 his attorney, Sean M. Kelly, Esq., of McBride Hall, hereby enter into this Settlement Agreement  
15 (Agreement) based on the following:<sup>1</sup>

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) to practice medicine in Nevada.  
20 His license was originally issued on May 15, 2013 (License No. 14791).

21                   2.     On April 19, 2023, in Case No. 23-40843-1, the IC filed a formal Complaint  
22 (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, Count I  
23 alleges a violation of NRS 630.301(4), Malpractice and Count II alleges a violation of  
24 NRS 630.3062(1)(a) Failure to Maintain Appropriate Medical Records. By reason of the foregoing,  
25 Respondent is subject to discipline by the Board as provided in NRS 630.352.

26 \_\_\_\_\_  
27                   <sup>1</sup> 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.

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

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

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

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

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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 his 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 this 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 acknowledges that sufficient evidence may be presented at a  
13 hearing such that the Board could conclude that he violated NRS 630.301(4), and he accordingly  
14 agrees to the Board entering a finding that he violated Count I.

15                   b.       Respondent will pay the costs and expenses incurred in the investigation  
16 and prosecution of the above-referenced matter within sixty (60) days of the Board's acceptance,  
17 adoption and approval of this Agreement, in the amount of two thousand three hundred ninety  
18 dollars and thirty-eight cents (\$2,390.38).

19                   c.       Respondent shall pay a fine in the amount of four thousand dollars  
20 (\$4,000), within sixty (60) days of the Board's acceptance, adoption and approval of this  
21 Agreement.

22                   d.       Respondent shall perform ten (10) hours of Continued Medical Education  
23 (CME) related to the subject of laparoscopic surgery within six (6) months of the Board's  
24 acceptance, adoption and approval of this Agreement. The aforementioned hours of CME shall be  
25 in addition to any CME requirements that are regularly imposed upon Respondent as a condition  
26 of licensure in the State of Nevada pursuant to NAC 630.153(1) and shall be approved by the  
27 Board prior to their completion.

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

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

4 g. The remaining counts of the Complaint, and any other claims arising from  
5 the Board's corresponding investigative case file(s), shall be dismissed with prejudice.

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

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

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

1 Agreement is discussed and, if requested, respond to any questions that may be addressed to the  
2 IC or the IC's counsel.

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

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

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

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

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


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

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

6  
7 DATED this 30<sup>th</sup> day of June, 2023. DATED this 30<sup>th</sup> day of June, 2023.

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

MCBRIDE HALL

11 By:   
12 WILLIAM P. SHOGREN  
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18 *Attorney for the Investigative Committee*

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*Attorney for Respondent*

19 DATED this 28<sup>th</sup> day of June, 2023.

20 By:   
21 CHARLES BRIAN KIM, M.D.  
22 Nevada License No. 14791  
23 *Respondent*

OFFICE OF THE GENERAL COUNSEL  
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(775) 688-2559

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**ORDER**

**IT IS HEREBY ORDERED** that, the foregoing Settlement Agreement (Case No. 23-40843-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 15th day of September, 2023.

DATED this 15th day of September, 2023.

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

  
\_\_\_\_\_  
AURY NAGY, M.D.  
*Board President*