

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. 15-10986-1

6 **Against:**

FILED

7 **JAMES B. GABROY, M.D.,**

MAR 03 2023

8 **Respondent.**

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: Ur

9
10 **SETTLEMENT AGREEMENT**

11 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through its counsel, Sarah A. Bradley, Deputy Executive Director, and Brandee
13 Mooneyhan, Deputy General Counsel; and James B. Gabroy, M.D. (Respondent), a licensed
14 physician in Nevada, assisted by his attorney, Colleen Platt, Esq., of the Platt Law Group, hereby
15 enter 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) to practice medicine in
20 Nevada. His license was originally issued on October 30, 1995 (License No. 7601).

21 2. On October 23, 2015, in Case No. 15-10986-1, the IC filed a formal Complaint
22 (Complaint) charging Respondent with violating the Medical Practice Act. Specifically, the
23 Complaint alleged that with respect to three (3) patients, Respondent failed to maintain timely,
24 legible, accurate and complete medical records relating to the patients' diagnosis, treatment and
25 care, which violates NRS 630.3062(1)(a).

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.

1 3. On May 11, 2018, the Board entered a disposition entitled “Findings of Fact,
2 Conclusions of Law, and Order,” in which the Board found by a preponderance of the evidence
3 that Respondent violated NRS 630.3062(1), as alleged in the Complaint, and set forth discipline to
4 be imposed upon Respondent.

5 4. On June 7, 2018, Respondent filed a Petition for Judicial Review in the Second
6 Judicial District Court, Case No. CV18-01159, appealing the Board’s May 11, 2018, Findings of
7 Fact, Conclusions of Law, and Order. Ultimately, on July 8, 2022, the Second Judicial District
8 Court entered an Order Denying Petition for Judicial Review.²

9 5. Respondent appealed the Order Denying Petition for Judicial Review to the Nevada
10 Supreme Court, and the appeal was docketed in the Supreme Court on August 22, 2022, in
11 Supreme Court Docket No. 85197. The case was referred to the Nevada Supreme Court’s
12 Settlement Program, *see* NRAP 16, and the parties participated in mediation pursuant thereto,
13 which resulted in this Agreement.

14 6. Respondent has had the opportunity to consult with competent counsel concerning
15 the nature and significance of all proceedings in this matter, including his rights as set out by the
16 United States Constitution, the Nevada Constitution, the Medical Practice Act, the Nevada Open
17 Meeting Law (OML), which is contained in NRS Chapter 241, and the Nevada Administrative
18 Procedure Act (APA), which is contained in NRS Chapter 233B.

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

24 8. Respondent understands and agrees that this Agreement, by and between
25 Respondent and the IC, is not with the Board, and that the IC will present this Agreement to the

26 _____
27 ² The Second Judicial District Court had previously dismissed Respondent’s Petition for Judicial Review of
28 the Findings of Fact, Conclusions of Law, and Order, and Respondent appealed that decision to the Nevada Supreme
Court in Supreme Court Docket No. 80038. That appeal was dismissed, and the matter was remanded to the District
Court for further proceedings, which eventually resulted in the July 8, 2022, Order Denying Petition for Judicial
Review.

1 Board for consideration in open session at a duly noticed and scheduled meeting. Respondent
2 understands that the IC shall advocate for the Board's approval of this Agreement, but that the
3 Board has the right to decide in its own discretion whether to approve this Agreement.
4 Respondent further understands and agrees that if the Board approves this Agreement, the terms
5 and conditions enumerated below shall be binding and enforceable upon him and the Board.

6 **B. TERMS & CONDITIONS**

7 **NOW, THEREFORE**, in order to resolve the matters addressed herein, i.e., all matters
8 arising from the Complaint, Respondent and the IC hereby agree to the following terms and
9 conditions:

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

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

20 3. **Waiver of Rights.** In connection with this Agreement, and the associated terms
21 and conditions, Respondent knowingly, willingly and intelligently waives all further rights in
22 connection with this administrative matter. Respondent hereby knowingly, willingly and
23 intelligently waives all further rights arising under the United States Constitution, the Nevada
24 Constitution, the Medical Practice Act, the OML, the APA, and any other legal rights that may be
25 available to him, including proceeding with the appeal in Docket No. 85197. Respondent agrees
26 to settle and resolve the allegations of the Complaint as set out by this Agreement, without any
27 further proceedings and without the right to further judicial review.

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1 4. **Acknowledgement of Reasonable Basis to Proceed.** The parties are agreeing to
2 resolve this matter to avoid the costs and other burdens of additional proceedings. For the
3 purposes of resolving the matter and for no other purpose, Respondent waives the pursuit of
4 additional proceedings in order to effectuate this Agreement.

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

9 a. For purposes of this Settlement Agreement, Respondent admits to one (1)
10 violation of NRS 630.3062(1) – Failure to Maintain Timely, Legible, Accurate and Complete
11 Medical Records.

12 b. Respondent shall pay a fine of five thousand dollars (\$5,000). Respondent
13 shall pay the aforementioned fine by way of an initial payment of four hundred thirteen dollars
14 (\$413) due on or before April 1, 2023, and then eleven (11) equal payments of four hundred
15 seventeen dollars (\$417) due on or before the first day of each month thereafter, with the final
16 payment due on or before March 1, 2024.

17 c. Respondent shall pay a portion of the costs and expenses incurred in the
18 investigation and prosecution of the above-referenced matter in the amount of ten thousand dollars
19 (\$10,000). Respondent shall pay the aforementioned costs and expenses by way of an initial
20 payment of eight hundred thirty-one dollars and fifty cents (\$831.50) due on or before
21 April 1, 2023, and then eleven (11) equal payments of eight hundred thirty-three dollars and fifty
22 cents (\$833.50) due on or before the first day of each month thereafter, with the final payment due
23 on or before March 1, 2024.

24 d. Within twelve (12) months of the Board’s acceptance, adoption and
25 approval of this Agreement, Respondent shall perform eighty (80) hours of community service,
26 without compensation, pursuant to the details set forth in the Community Service Details.
27 **See Attachment 1.**

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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 charges in 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 all
27 subsequent proceedings arising therefrom, any and all information of every nature whatsoever
28 related to this matter. The IC and its counsel agree that Respondent and/or Counsel for the

1 Respondent may appear at the Board meeting where this Agreement is discussed and, if requested,
2 respond to any questions that may be addressed to the 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 10th day of February 2023. DATED this ____ day of _____, 2023.

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

11 By: Brandee Mooneyhan By: _____
12 SARAH A. BRADLEY COLLEEN PLATT, ESQ.
13 Deputy Executive Director 11025 Bondshire Drive
14 BRANDEE MOONEYHAN Reno, NV 89511
15 Deputy General Counsel Tel: (775) 848-2810
16 9600 Gateway Drive Email: cplatt@plattlawgroupreno.com
17 Reno, NV 89521 *Attorney for Respondent*
18 Tel: (775) 688-2559
19 Email: mooneyhanb@mcdboard.nv.gov
20 *Attorneys for the Investigative Committee*

21 DATED this ____ day of _____, 2023.

22 By: _____
23 JAMES B. GABORY, M.D.,
24 Nevada License No. 7601
25 *Respondent*

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8 INVESTIGATIVE COMMITTEE OF THE PLATT LAW GROUP
9 NEVADA STATE BOARD OF MEDICAL
EXAMINERS

10

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By: _____

By: _____



SARAH A. BRADLEY

COLLEEN PLATT, ESQ.

12

Deputy Executive Director 11025 Bondshire Drive

BRANDEE MOONEYHAN

Reno, NV 89511

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9600 Gateway Drive Email: cplatt@plattlawgroupreno.com Reno, NV 89521

Attorney for Respondent

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Tel: (775) 688-2559

Email: mooneyhanb@medboard.nv.gov

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Attorneys for the Investigative Committee

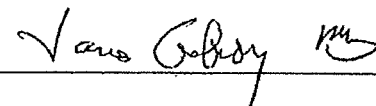
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DATED this 9 day of February 2023.

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By:  _____

JAMES B. GABORY, M.D.,

Nevada License No. 7601 *Respondent*

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ATTACHMENT 1

ATTACHMENT 1

NEVADA STATE BOARD OF MEDICAL EXAMINERS COMMUNITY SERVICE DETAILS

James B. Gabroy, M.D.
NSBME Case No. 15-10986-1
Nevada Supreme Court Case No. 85197

Required Hours: 80

I. ACCEPTABLE FORMS OF COMMUNITY SERVICE

Below is a nonexhaustive but representative list of the types of community service that may be performed by Dr. Gabroy to satisfy the eighty (80) hours of community service required by the parties' Settlement Agreement in Case No. 15-10986-1, scheduled to be considered for acceptance, adoption, and approval by the Board on March 3, 2023:

1. Providing clinical patient care to indigent patients in the State of Nevada, at no cost to the patients;
2. Providing second opinions and assistance, without compensation, to other health care providers providing free services or services at reduced fees;
3. Assisting hospitals in rural areas of the State of Nevada (i.e., counties other than Clark, Washoe, or Carson City) to develop programs regarding internal medicine or other area of expertise related to health care;
4. Providing free lectures to physician or other health care providers regarding internal medicine or other area of expertise related to health care;
5. Providing free lectures to nonprofit citizen groups, such as senior centers, charitable groups, or religious organizations, regarding internal medicine or other area of expertise related to health care;
6. Attending local health fairs, public television or radio shows, telethons, or other similar gatherings, events, or shows and providing free lectures, discussions, question and answer sessions, or facilitating discussions on issues related to internal medicine or other areas of expertise related to health care; or
7. Volunteering for a nonprofit of his choice.

II. COORDINATION WITH BOARD COMPLIANCE OFFICER

Dr. Gabroy understands that he may contact Johnna LaRue, Compliance Officer for the Nevada Board of Medical Examiners, with any questions about compliance with this agreement. Ms. LaRue may be contacted by email at: jarue@medboard.nv.gov or by telephone at: (775) 324-9377.

Dr. Gabroy agrees to submit written notification, at least five (5) days prior to any contemplated service, via email, to Ms. LaRue describing the service he contemplates completing in satisfaction of this agreement.

Within three (3) days, Ms. LaRue will respond, via email, to such notifications with approval, questions, or concerns pertaining to the proposed community service, to which Dr. Gabroy will promptly reply. If Dr. Gabroy does not receive any such written comments from Ms. LaRue, he may consider the proposed community service approved.

Dr. Gabroy and Ms. LaRue will act in good faith in cooperating to fulfill the requirements set forth in this agreement.

III. PROOF OF COMPLETION

Proof of completion of community service performed per this agreement shall be submitted in writing (can be scanned and emailed) directly to Ms. LaRue. Such written proof shall include a description of the service performed; the date the service was performed; the hours of service performed; the name of the organization, group, or individual that received the community service; and the signature and contact information of a representative of the recipient.

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ORDER

IT IS HEREBY ORDERED that, the foregoing Settlement Agreement (Case No. 15-10986-1) was approved and accepted by the Nevada State Board of Medical Examiners on the 3rd day of March, 2023.

DATED this 3rd day of March, 2023.

NEVADA STATE BOARD OF MEDICAL
EXAMINERS

By:



AURY NAGY, M.D.
Board President