

1 **NOAS**
2 JACOB L. HAFTER, ESQ.
3 Nevada State Bar No. 9303
4 **HAFTERLAW**
5 6851 W. Charleston Boulevard
6 Las Vegas, Nevada 89117
7 Phone: (702) 405-6700
8 Fax: (702) 685-4184
9 jhafter@hafterlaw.com

10 *Counsel for Petitioner*

Electronically Filed
May 25 2017 11:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

10 **KOFI SARFO, M.D.,**

11 Petitioner,

12 vs.

13
14 **STATE OF NEVADA BOARD OF**
15 **MEDICAL EXAMINERS,**

16 Respondents.

Case No.: A-17-752616-W

Dept. No.: XVII

NOTICE OF APPEAL

17
18
19
20
21
22 Notice is hereby given that Petitioner KOFI SARFO, MD, by and through his attorneys
23 of the **HAFTERLAW**, hereby appeals to the Supreme Court of Nevada the Decision issued by the
24 Eighth Judicial District Court of the State of Nevada on May 9, 2017 (with a notice of entry of
25 order date of May 22, 2017), denying a motion for preliminary injunction, in the above referenced
26 matter.

27 Pursuant to Rule 3(8)(1), the Case Appeal Statement is being filed concomitantly with this
28 Notice of Appeal.



1 Dated this 22nd day of May 2017.

2 **HAFTERLAW**

3
4 By: 

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Counsel for Petitioner

8
9 **AFFIRMATION**

10 Pursuant to NRS §239B.030, I hereby certify that the foregoing document does not
11 contain the social security number of any person.

12 Dated this 22nd day of May 2017.

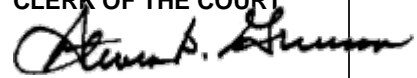
13 **HAFTERLAW**

14
15 By: 

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Counsel for Petitioner

6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
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ASTA
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6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
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Fax: (702) 685-4184
jhafter@hafterlaw.com

Counsel for Petitioner

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

KOFI SARFO, M.D.,

Petitioner,

vs.

**STATE OF NEVADA BOARD OF
MEDICAL EXAMINERS,**

Respondents.

Case No.: A-17-752616-W

Dept. No.: XVII

CASE APPEAL STATEMENT

1. Name of appellant(s) filing this case appeal statement:

KOFI SARFO, M.D.

2. Identify the judge issuing the decision, judgment, or order appealed from:

HONORABLE MICHAEL VILLANI

3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited):

Petitioner is KOFI SARFO, MD.

Respondents is STATE OF NEVADA BOARD OF MEDICAL EXAMINERS

1 **4. Identify all parties involved in this appeal (the use of et al. to denote parties is**
2 **prohibited):**

3 See response to above Number 3.

4
5 **5. Set forth the name, law firm, address, and telephone number of all counsel on**
6 **appeal and identify the party or parties whom they represent:**

7 JACOB L. HAFTER, ESQ.
8 Nevada State Bar No. 9303
9 **HAFTERLAW**
10 6851 W. Charleston Boulevard
11 Las Vegas, Nevada 89117
12 Phone: (702) 405-6700
13 Fax: (702) 685-4184
14 jhafter@hafterlaw.com

15 *Counsel for Petitioner*

16 Michael Sullivan, Esq.
17 Therese Shanks, Esq.
18 **Robison, Belaustegui, Sharp & Low**
19 71 Washington Street
20 Reno, Nevada 89503
21 (775) 329-3151
22 *Counsel for Respondent*

23 **6. Indicate whether appellant was represented by appointed or retained counsel in**
24 **the district court:**

25 This office, HafterLaw, represented Petitioner, KOFI SARFO, MD, in the district
26 court.

27 **7. Indicate whether appellant is represented by appointed or retained counsel on**
28 **appeal:**

 This office, HafterLaw, will represent Petitioner, KOFI SARFO, MD, in the appeal.

///

///



1 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and**
2 **the date of entry of the district court order granting such leave:**

3 None was granted.
4

5 **9. Indicate the date the proceedings commenced in the district court (e.g., date**
6 **complaint, indictment, information, or petition was filed):**

7 (a) The Petition for Writ was filed on March 17, 2017.
8

9 **10. Provide a brief description of the nature of the action and result in district**
10 **court, including the type of judgment or order being appealed and the relief**
11 **granted by the district court:**

12 This case involves a Petition for Writ related to the Respondent's practice of
13 maintaining the confidentiality of the name of any person filing a complaint
14 against a licensed allopathic physician, as well as their practice of withholding
15 the actual contents of the complaint from the licensee (who is then forced to
16 defend him or herself against an unknown complaint).
17

18 **11. Indicate whether the case has previously been the subject of an appeal to or**
19 **original writ proceeding to the Supreme Court and, if so, the caption and**
20 **Supreme Court docket number of the prior proceeding:**

21 This case has not been the subject of an appeal or writ proceeding.
22

23 **12. Indicate whether this appeal involves child custody or visitation:**

24 This case does not involve child custody or visitation.
25

26 ///

27 ///

28 ///

///

1 **13. If this is a civil case, indicate whether this appeal involves possibility of**
2 **settlement:**

3 This is a matter of public policy, and settlement is not likely. If, however,
4 Respondent is willing to change their practices for physician investigation and
5 discipline, Petitioner would be willing to discuss settlement.

6 Dated this 22nd day of May 2017.

7 **HAFTERLAW**

8
9 By: 

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Counsel for Petitioner

10
11
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18 Dated this 22nd day of May 2017.


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21 By: 

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Counsel for Petitioner

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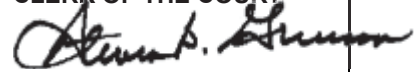
Michael Sullivan, Esq.
Therese Shanks, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503
(775) 329-3151
Counsel for Respondent



Jacob Hafter, Esq.

EXHIBIT “A”

EXHIBIT “A”



NEO
JACOB L. HAFTER, ESQ.
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Counsel for Petitioner

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

KOFI SARFO, M.D.,

Petitioner,

vs.

**STATE OF NEVADA BOARD OF
MEDICAL EXAMINERS,**

Respondents.

Case No.: A-17-752616-W

Dept. No.: XVII

**NOTICE OF ENTRY OF ORDER
DENYING PETITIONER'S MOTION
FOR PRELIMINARY INJUNCTION**

TO: DEFENDANTS and their Counsel:

PLEASE TAKE NOTICE of the attached order which was entered by the District Court
on May 12, 2017, DENYING Petitioner's Motion for Preliminary Injunction.

///

///

///

///

1 Dated this 22nd day of May, 2017.

2
3 **HAFTERLAW**

4
5 By: 

6 Jacob L. Hafter, Esq.
7 Nevada Bar Number 9303
8 6851 West Charleston Blvd.
9 Las Vegas, Nevada 89117
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6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on this 22nd day of May, 2017, I served a copy of the foregoing
NOTICE OF ENTRY OF ORDER ON MOTION FOR PRELIMINARY INJUNCTION as
follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage
prepaid and addressed as listed below; and/or

☒ Electronic Service through the Court's electronic filing system. and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
number(s) shown below and in the confirmation sheet filed herewith. Consent to service
under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile
transmission is made in writing and sent to the sender via facsimile within 24 hours of
receipt of this Certificate of Service; and/or

☒ Electronic Mail —By electronic mail delivery to the addresses listed below.

MICHAEL SULLIVAN, ESQ
ROBINSON, BELAUSTEGUI, SHARP & LOW
Counsel for Respondents

Dated this 22nd day of May, 2017.

HAFTERLAW

By: _____

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 West Charleston Blvd.
Las Vegas, Nevada 89117

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

1 ORDER
2 Michael E. Sullivan, Esq. (SBN 5142)
3 Therese M. Shanks, Esq. (SBN 12890)
4 **ROBISON, BELAUSTEGUI, SHARP & LOW**
5 A Professional Corporation
6 71 Washington Street
7 Reno, Nevada 89503
8 Tel: (775) 329-3151
9 Fax: (775) 329-7941
10 Email: msullivan@rbsllaw.com
11 tshanks@rbsllaw.com
12 Attorneys for Defendant Nevada State
13 Board of Medical Examiners

9 EIGHTH JUDICIAL DISTRICT COURT
10 STATE OF NEVADA

12 KOFI SARFO, M.D., Case No.: A-17-752616-W
13 Petitioner, Dept. No.: XVII

14 vs.

15 NEVADA STATE BOARD OF MEDICAL
16 EXAMINERS,

ORDER DENYING REQUEST FOR
PRELIMINARY INJUNCTION AND
REQUEST FOR STAY

17 Respondents.

19 _____ /

21 Before the Court is Petitioner Kofi Sarfo, M.D.'s ("Dr. Sarfo") MOTION FOR
22 PRELIMINARY INJUNCTION, which seeks to prevent respondent Nevada State Board
23 of Medical Examiners (the "Board") from enforcing an order issued by the Board's
24 Investigative Committee requiring Dr. Sarfo to produce various patient records. Dr.
25 Sarfo contends that due process somehow prohibits the Board from making or enforcing
26 such an order. Dr. Sarfo also contends that due process requires that he know the
27 identity of the complainant who initiated the Board's investigation.

28 ///

1 This matter came before the Court on April 26, 2017, at 8:30 a.m. Dr. Sarfo was
2 represented by Jacob Hafter, Esq. of HafterLaw, LLC, and the Board was represented
3 by Michael Sullivan, Esq. of Robison, Belaustegui, Sharp & Low. Robert Kilroy, Esq.,
4 also appeared telephonically on behalf of the Board.

5 The Court having considered the pleadings and papers on file herein, and the
6 arguments made in open court, and good cause appearing finds as follows:

7 1. Dr. Sarfo cannot prevail on the merits of his writ petition which challenges
8 the Investigative Committee's actions as violating due process. Hernandez v. Bennett-
9 Haron, 287 P.3d 305, 128 Nev. Adv. Op. 54 (Nev., 2012) controls the issues presented
10 in this case. In Hernandez, the Nevada Supreme Court held that due process
11 protections "need not be made available in proceedings that merely involve fact-finding
12 or investigatory exercise by the government agency." Id. at 310-11.

13 2. Pursuant to NRS 630.140(1), the Board is empowered to "hold hearings
14 and conduct investigations pertaining to its duties imposed under this chapter." NRS
15 630.140(1).

16 3. Pursuant to NRS 630.311(1), the Board's Investigative Committee "shall
17 review each complaint and conduct an investigation to determine if there is a
18 reasonable basis for the complaint. . . .The committee may issue orders to aid its
19 investigation including, but not limited to, compelling a physician to appear before the
20 committee." NRS 630.311(1)

21 4. Pursuant to NRS 630.3065(2), "knowingly or willfully failing to comply
22 with" a "regulation, subpoena or order of the Board or a committee designated by the
23 Board to investigate a complaint against a physician" is "grounds for initiating
24 disciplinary action or denying licensure."

25 5. NRS 630.336(4) provides that with respect to ". . . a complaint filed with
26 the Board pursuant to NRS 630.307, all documents and other information filed with the
27 complaint and all documents and other information compiled as a result of an
28

1 investigation conducted to determine whether to initiate disciplinary action are
2 confidential."

3 6. Accordingly, the statutes make plain that the Board is empowered to issue
4 the order of which Dr. Sarfo complains, the investigation itself is confidential, and the
5 Board is prohibited from disclosing to Dr. Sarfo the identity of the person who filed the
6 complaint, *or the actual complaint disclosing such.*

7 7. This Court finds that the Investigative Committee has no authority to
8 adjudicate any legal rights. See NRS 630.311(1). It is tasked with gathering facts and
9 investigating whether there is any merit to a complaint filed with the Board against a
10 physician. *Id.* The Board, through its Investigative Committee, has a duty to do so, and
11 physicians licensed by the Board have a duty to comply with its orders. It is the law of
12 this state, plainly stated in Hernandez, that the actions of the Investigative Committee
13 of which Dr. Sarfo complains are merely fact-finding and investigatory exercises, and do
14 not implicate any due process rights.

15 8. Because Dr. Sarfo's due process rights are not implicated, Dr. Sarfo
16 cannot prevail on the merits of his writ petition which challenges the Investigative
17 Committee's actions as violating due process.

18 9. This Court further finds that the public interest weighs in favor of upholding
19 the Board's statutory duty to protect the public by investigating all complaints filed
20 against a physician by members of the public, and issuing enforceable orders to aid its
21 investigation. NRS 630.003(1)(b); NRS 630.311(1). Accordingly, injunctive relief is not
22 appropriate. See NRS 33.010.

23 10. Dr. Sarfo has informed this Court that he intends to appeal this Court's
24 order, and has requested that this Court enter a stay of the administrative proceedings
25 before the Board pending appeal. This Court does not find that a stay is warranted at
26 this time *and DENIES Dr. Sarfo's Motion for stay Pending Appeal*
27 *Pursuant to NRS 8(a).*

28 ///

1 Accordingly, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that:

2 Dr. Sarfo's Motion for a Preliminary Injunction is **DENIED**.

3 Dr. Sarfo's request for a stay is also **DENIED**.

4 **IT IS SO ORDERED.**

5 Dated this 9 day of May, 2017.

6
7 
8 DISTRICT COURT JUDGE 

9 Respectfully submitted by:

10
11
12 Michael E. Sullivan, Esq. (SBN 5142)
13 Therese M. Shanks, Esq. (SBN 12890)
14 **ROBISON, BELAUSTEGUI, SHARP & LOW**
15 A Professional Corporation
16 71 Washington Street
17 Reno, Nevada 89503
18 Tel: (775) 329-3151
19 Fax: (775) 329-7941
20 Email: msullivan@rbsllaw.com
21 tshanks@rbsllaw.com

22 *Attorneys for Defendant Nevada State*
23 *Board of Medical Examiners*
24
25
26
27
28

J:\WPData\MES\6756.010.Order.docx

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-17-752616-W

Kofi Sarfo, M.D., Plaintiff(s)
vs.
Nevada State Board of Medical Examiners, Defendant
(s)

§
§
§
§
§

Location: **Department 17**
Judicial Officer: **Villani, Michael**
Filed on: **03/17/2017**
Case Number History:
Cross-Reference Case Number: **A752616**

CASE INFORMATION

Case Type: **Writ of Prohibition**

Case Flags: **Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-17-752616-W
Court Department 17
Date Assigned 03/23/2017
Judicial Officer Villani, Michael

PARTY INFORMATION

Plaintiff **Sarfo, Kofi, M.D.**

Lead Attorneys
Haftner, Jacob L., ESQ
Retained
702-405-6700(W)








Defendant **Nevada State Board of Medical Examiners**

Sullivan, Michael E.
Retained
7027862862(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX







03/17/2017	 Petition for Writ of Mandamus Filed by: Plaintiff Sarfo, Kofi, M.D. <i>Emergency Petition for Writ of Prohibition or Mandamus</i>	
03/17/2017	 Certificate of Service Filed by: Plaintiff Sarfo, Kofi, M.D. <i>Certificate of Service of Petition for Writ</i>	
03/20/2017	 Order <i>Order Setting Hearing on Petitioner's Motion for Temporary Restraining Order and Motion for Preliminary Injunction</i>	
03/21/2017	 Notice of Entry of Order Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Notice of Entry of Order Setting Hearing</i>	
03/21/2017	 Motion for Preliminary Injunction Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Emergency Motion for TRO / Preliminary Injunction On Order Shortening Time</i>	
03/22/2017	 Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)	
03/22/2017	 Notice of Department Reassignment	

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-17-752616-W

Notice of Department Reassignment

03/22/2017	 Notice of Appearance Party: Defendant Nevada State Board of Medical Examiners <i>Notice of Appearance</i>
03/22/2017	 Peremptory Challenge Filed by: Defendant Nevada State Board of Medical Examiners <i>Peremptory Challenge</i>
03/23/2017	 Peremptory Challenge Filed by: Plaintiff Sarfo, Kofi, M.D. <i>Peremptory Challenge of Judge</i>
03/23/2017	 Notice of Department Reassignment <i>Notice of Department Reassignment</i>
03/23/2017	 Proof of Service Filed by: Plaintiff Sarfo, Kofi, M.D. <i>Proof of Service - State of Nevada Board of Medical Examiners</i>
03/29/2017	 Stipulation and Order Filed by: Plaintiff Sarfo, Kofi, M.D. <i>Stipulation and Order</i>
03/31/2017	 Affidavit of Service Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Affidavit of Service</i>
04/04/2017	 Affidavit of Service Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Affidavit of Service: State of Nevada Board of Medical Examiners, By Serving Robert Kilroy J.D., General Counsel</i>
04/04/2017	 Opposition to Motion Filed By: Defendant Nevada State Board of Medical Examiners <i>Respondent's Opposition to Motion for Preliminary Injunction</i>
04/04/2017	 Affidavit in Support Filed By: Defendant Nevada State Board of Medical Examiners <i>Affidavit of Robert G. Kilroy in Support of Respondent's Opposition to Motion for Preliminary Injunction</i>
04/12/2017	 Ex Parte Motion Filed By: Defendant Nevada State Board of Medical Examiners <i>Ex Parte Motion to Withdraw as Co-Counsel</i>
04/20/2017	 Reply to Motion Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Reply in Furtherance of Motion for Preliminary Injunction</i>
04/26/2017	 Motion for Preliminary Injunction (8:30 AM) (Judicial Officer: Villani, Michael) <i>Petitioner Kofi Sarfo's Motion for Preliminary Injunction</i>

DEPARTMENT 17
CASE SUMMARY
CASE NO. A-17-752616-W

05/11/2017	 Transcript of Proceedings <i>Transcript of Proceedings Motion for Temporary Restraining Order and Motion for Preliminary Injunction on Shortening Time April 26, 2017</i>
05/12/2017	 Order Filed By: Defendant Nevada State Board of Medical Examiners <i>Order Denying Request for Preliminary Injunction and Request for Stay</i>
05/15/2017	 Memorandum of Costs and Disbursements Filed By: Defendant Nevada State Board of Medical Examiners <i>Respondents' Memorandum of Costs</i>
05/22/2017	 Notice of Entry Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Notice of Entry of Order Denying Preliminary Injunction</i>
05/22/2017	 Notice of Appeal Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Notice of Appeal</i>
05/22/2017	 Case Appeal Statement Filed By: Plaintiff Sarfo, Kofi, M.D. <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
------	-----------------------

Defendant Nevada State Board of Medical Examiners		
Total Charges		0.00
Total Payments and Credits		0.00
Balance Due as of 5/24/2017		0.00
 Plaintiff Sarfo, Kofi, M.D.		
Total Charges		744.00
Total Payments and Credits		744.00
Balance Due as of 5/24/2017		0.00

DISTRICT COURT CIVIL COVER SHEET

CLARK

County, Nevada

A-17-752616-W

Case No. _____

(Assigned by Clerk's Office)

XVII I

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone): <div style="text-align: center;">KOFI SARFO, MD C/O HAFTERLAW</div>	Defendant(s) (name/address/phone): <div style="text-align: center;">NEVADA STATE BOARD OF MEDICAL EXAMINERS 1105 TERMINAL WAY, STE 301 RENO, NEVADA 89502 775-688-2559</div>
Attorney (name/address/phone): <div style="text-align: center;">JACOB HAFTER, ESQ. / HAFTERLAW 6851 W. CHARLESTON BLVD LAS VEGAS, NEVADA 89117 702-405-6700</div>	Attorney (name/address/phone): <div style="text-align: center;">ROBERT KILROY, ESQ SAME AS ABOVE</div>

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input checked="" type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

MARCH 16, 2017

Date

Signature of initiating party or representative

See other side for family-related case filings.


CLERK OF THE COURT

ORDR
Michael E. Sullivan, Esq. (SBN 5142)
Therese M. Shanks, Esq. (SBN 12890)
ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503
Tel: (775) 329-3151
Fax: (775) 329-7941
Email: msullivan@rbsllaw.com
tshanks@rbsllaw.com
*Attorneys for Defendant Nevada State
Board of Medical Examiners*

EIGHTH JUDICIAL DISTRICT COURT

STATE OF NEVADA

KOFI SARFO, M.D.,

Case No.: A-17-752616-W

Petitioner,

Dept. No.: XVII

vs.

NEVADA STATE BOARD OF MEDICAL
EXAMINERS,

**ORDER DENYING REQUEST FOR
PRELIMINARY INJUNCTION AND
REQUEST FOR STAY**

Respondents.

_____ /

Before the Court is Petitioner Kofi Sarfo, M.D.'s ("Dr. Sarfo") MOTION FOR PRELIMINARY INJUNCTION, which seeks to prevent respondent Nevada State Board of Medical Examiners (the "Board") from enforcing an order issued by the Board's Investigative Committee requiring Dr. Sarfo to produce various patient records. Dr. Sarfo contends that due process somehow prohibits the Board from making or enforcing such an order. Dr. Sarfo also contends that due process requires that he know the identity of the complainant who initiated the Board's investigation.

///

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2 represented by Jacob Hafter, Esq. of HafterLaw, LLC, and the Board was represented
3 by Michael Sullivan, Esq. of Robison, Belaustegui, Sharp & Low. Robert Kilroy, Esq.,
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8 the Investigative Committee's actions as violating due process. Hernandez v. Bennett–
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23 Board to investigate a complaint against a physician" is "grounds for initiating
24 disciplinary action or denying licensure."

25 5. NRS 630.336(4) provides that with respect to ". . . a complaint filed with
26 the Board pursuant to NRS 630.307, all documents and other information filed with the
27 complaint and all documents and other information compiled as a result of an
28

1 investigation conducted to determine whether to initiate disciplinary action are
2 confidential."

3 6. Accordingly, the statutes make plain that the Board is empowered to issue
4 the order of which Dr. Sarfo complains, the investigation itself is confidential, and the
5 Board is prohibited from disclosing to Dr. Sarfo the identity of the person who filed the
6 complaint, *or the actual complaint disclosing such.*

7 7. This Court finds that the Investigative Committee has no authority to
8 adjudicate any legal rights. See NRS 630.311(1). It is tasked with gathering facts and
9 investigating whether there is any merit to a complaint filed with the Board against a
10 physician. *Id.* The Board, through its Investigative Committee, has a duty to do so, and
11 physicians licensed by the Board have a duty to comply with its orders. It is the law of
12 this state, plainly stated in Hernandez, that the actions of the Investigative Committee
13 of which Dr. Sarfo complains are merely fact-finding and investigatory exercises, and do
14 not implicate any due process rights.

15 8. Because Dr. Sarfo's due process rights are not implicated, Dr. Sarfo
16 cannot prevail on the merits of his writ petition which challenges the Investigative
17 Committee's actions as violating due process.

18 9. This Court further finds that the public interest weighs in favor of upholding
19 the Board's statutory duty to protect the public by investigating all complaints filed
20 against a physician by members of the public, and issuing enforceable orders to aid its
21 investigation. NRS 630.003(1)(b); NRS 630.311(1). Accordingly, injunctive relief is not
22 appropriate. See NRS 33.010.

23 10. Dr. Sarfo has informed this Court that he intends to appeal this Court's
24 order, and has requested that this Court enter a stay of the administrative proceedings
25 before the Board pending appeal. This Court does not find that a stay is warranted at
26 this time *and DENIES Dr. Sarfo's motion for stay pending Appeal*
27 *Pursuant to NRS 8(a).*

28 ///

1 Accordingly, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that:
2 Dr. Sarfo's Motion for a Preliminary Injunction is **DENIED**.

3 Dr. Sarfo's request for a stay is also **DENIED**.

4 **IT IS SO ORDERED.**

5 Dated this 9 day of May, 2017.

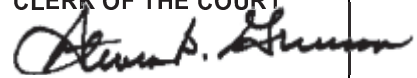
6
7 
8 DISTRICT COURT JUDGE 

9 Respectfully submitted by:

10
11
12 Michael E. Sullivan, Esq. (SBN 5142)
13 Therese M. Shanks, Esq. (SBN 12890)
14 **ROBISON, BELAUSTEGUI, SHARP & LOW**
15 A Professional Corporation
16 71 Washington Street
17 Reno, Nevada 89503
18 Tel: (775) 329-3151
19 Fax: (775) 329-7941
20 Email: msullivan@rbsllaw.com
21 tshanks@rbsllaw.com

22 *Attorneys for Defendant Nevada State*
23 *Board of Medical Examiners*
24
25
26
27
28

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NEO
JACOB L. HAFTER, ESQ.
Nevada State Bar No. 9303
HAFTERLAW
6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
Phone: (702) 405-6700
Fax: (702) 685-4184
jhafter@hafterlaw.com

Counsel for Petitioner

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

KOFI SARFO, M.D.,

Petitioner,

vs.

Case No.: A-17-752616-W

Dept. No.: XVII

**STATE OF NEVADA BOARD OF
MEDICAL EXAMINERS,**

Respondents.

**NOTICE OF ENTRY OF ORDER
DENYING PETITIONER'S MOTION
FOR PRELIMINARY INJUNCTION**

TO: DEFENDANTS and their Counsel:

PLEASE TAKE NOTICE of the attached order which was entered by the District Court
on May 12, 2017, DENYING Petitioner's Motion for Preliminary Injunction.

///

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///

///

1 Dated this 22nd day of May, 2017.

2
3 **HAFTERLAW**

4
5 By: 

6 Jacob L. Hafter, Esq.
7 Nevada Bar Number 9303
8 6851 West Charleston Blvd.
9 Las Vegas, Nevada 89117
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6851 W. Charleston Boulevard
Las Vegas, Nevada 89117
(702) 405-6700 Telephone
(702) 685-4184 Facsimile



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on this 22nd day of May, 2017, I served a copy of the foregoing
NOTICE OF ENTRY OF ORDER ON MOTION FOR PRELIMINARY INJUNCTION as
follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage
prepaid and addressed as listed below; and/or

☒ Electronic Service through the Court's electronic filing system. and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile
number(s) shown below and in the confirmation sheet filed herewith. Consent to service
under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile
transmission is made in writing and sent to the sender via facsimile within 24 hours of
receipt of this Certificate of Service; and/or

☒ Electronic Mail —By electronic mail delivery to the addresses listed below.

MICHAEL SULLIVAN, ESQ
ROBINSON, BELAUSTEGUI, SHARP & LOW
Counsel for Respondents

Dated this 22nd day of May, 2017.

HAFTERLAW

By: _____

Jacob L. Hafter, Esq.
Nevada Bar Number 9303
6851 West Charleston Blvd.
Las Vegas, Nevada 89117

EXHIBIT “A”

EXHIBIT “A”


CLERK OF THE COURT

1 ORDR
2 Michael E. Sullivan, Esq. (SBN 5142)
3 Therese M. Shanks, Esq. (SBN 12890)
4 **ROBISON, BELAUSTEGUI, SHARP & LOW**
5 A Professional Corporation
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10 Email: msullivan@rbsllaw.com
11 tshanks@rbsllaw.com
12 Attorneys for Defendant Nevada State
13 Board of Medical Examiners

8
9 EIGHTH JUDICIAL DISTRICT COURT

10 STATE OF NEVADA

11
12 KOFI SARFO, M.D.,

Case No.: A-17-752616-W

13 Petitioner,

Dept. No.: XVII

14 vs.

15 NEVADA STATE BOARD OF MEDICAL
16 EXAMINERS,

ORDER DENYING REQUEST FOR
PRELIMINARY INJUNCTION AND
REQUEST FOR STAY

17 Respondents.
18
19 _____/

20
21 Before the Court is Petitioner Kofi Sarfo, M.D.'s ("Dr. Sarfo") MOTION FOR
22 PRELIMINARY INJUNCTION, which seeks to prevent respondent Nevada State Board
23 of Medical Examiners (the "Board") from enforcing an order issued by the Board's
24 Investigative Committee requiring Dr. Sarfo to produce various patient records. Dr.
25 Sarfo contends that due process somehow prohibits the Board from making or enforcing
26 such an order. Dr. Sarfo also contends that due process requires that he know the
27 identity of the complainant who initiated the Board's investigation.

28 ///

1 This matter came before the Court on April 26, 2017, at 8:30 a.m. Dr. Sarfo was
2 represented by Jacob Hafter, Esq. of HafterLaw, LLC, and the Board was represented
3 by Michael Sullivan, Esq. of Robison, Belaustegui, Sharp & Low. Robert Kilroy, Esq.,
4 also appeared telephonically on behalf of the Board.

5 The Court having considered the pleadings and papers on file herein, and the
6 arguments made in open court, and good cause appearing finds as follows:

7 1. Dr. Sarfo cannot prevail on the merits of his writ petition which challenges
8 the Investigative Committee's actions as violating due process. Hernandez v. Bennett-
9 Haron, 287 P.3d 305, 128 Nev. Adv. Op. 54 (Nev., 2012) controls the issues presented
10 in this case. In Hernandez, the Nevada Supreme Court held that due process
11 protections "need not be made available in proceedings that merely involve fact-finding
12 or investigatory exercise by the government agency." Id. at 310-11.

13 2. Pursuant to NRS 630.140(1), the Board is empowered to "hold hearings
14 and conduct investigations pertaining to its duties imposed under this chapter." NRS
15 630.140(1).

16 3. Pursuant to NRS 630.311(1), the Board's Investigative Committee "shall
17 review each complaint and conduct an investigation to determine if there is a
18 reasonable basis for the complaint. . . .The committee may issue orders to aid its
19 investigation including, but not limited to, compelling a physician to appear before the
20 committee." NRS 630.311(1)

21 4. Pursuant to NRS 630.3065(2), "knowingly or willfully failing to comply
22 with" a "regulation, subpoena or order of the Board or a committee designated by the
23 Board to investigate a complaint against a physician" is "grounds for initiating
24 disciplinary action or denying licensure."

25 5. NRS 630.336(4) provides that with respect to ". . . a complaint filed with
26 the Board pursuant to NRS 630.307, all documents and other information filed with the
27 complaint and all documents and other information compiled as a result of an
28

1 investigation conducted to determine whether to initiate disciplinary action are
2 confidential."

3 6. Accordingly, the statutes make plain that the Board is empowered to issue
4 the order of which Dr. Sarfo complains, the investigation itself is confidential, and the
5 Board is prohibited from disclosing to Dr. Sarfo the identity of the person who filed the
6 complaint, *or the actual complaint disclosing such.*

7 7. This Court finds that the Investigative Committee has no authority to
8 adjudicate any legal rights. See NRS 630.311(1). It is tasked with gathering facts and
9 investigating whether there is any merit to a complaint filed with the Board against a
10 physician. *Id.* The Board, through its Investigative Committee, has a duty to do so, and
11 physicians licensed by the Board have a duty to comply with its orders. It is the law of
12 this state, plainly stated in Hernandez, that the actions of the Investigative Committee
13 of which Dr. Sarfo complains are merely fact-finding and investigatory exercises, and do
14 not implicate any due process rights.

15 8. Because Dr. Sarfo's due process rights are not implicated, Dr. Sarfo
16 cannot prevail on the merits of his writ petition which challenges the Investigative
17 Committee's actions as violating due process.

18 9. This Court further finds that the public interest weighs in favor of upholding
19 the Board's statutory duty to protect the public by investigating all complaints filed
20 against a physician by members of the public, and issuing enforceable orders to aid its
21 investigation. NRS 630.003(1)(b); NRS 630.311(1). Accordingly, injunctive relief is not
22 appropriate. See NRS 33.010.

23 10. Dr. Sarfo has informed this Court that he intends to appeal this Court's
24 order, and has requested that this Court enter a stay of the administrative proceedings
25 before the Board pending appeal. This Court does not find that a stay is warranted at
26 this time *and DENIES Dr. Sarfo's motion for stay pending appeal*
27 *Pursuant to NRS 81a.*



28 ///

1 Accordingly, IT IS HEREBY ORDERED, ADJUDICATED AND DECREED that:
2 Dr. Sarfo's Motion for a Preliminary Injunction is **DENIED**.

3 Dr. Sarfo's request for a stay is also **DENIED**.

4 **IT IS SO ORDERED.**

5 Dated this 9 day of May, 2017.

6
7 
8 DISTRICT COURT JUDGE 

9 Respectfully submitted by:

10
11
12 Michael E. Sullivan, Esq. (SBN 5142)
13 Therese M. Shanks, Esq. (SBN 12890)
14 **ROBISON, BELAUSTEGUI, SHARP & LOW**
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18 Tel: (775) 329-3151
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22 *Attorneys for Defendant Nevada State*
23 *Board of Medical Examiners*
24
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Prohibition**COURT MINUTES****March 22, 2017**

A-17-752616-W

Kofi Sarfo, M.D., Plaintiff(s)

vs.

Nevada State Board of Medical Examiners, Defendant(s)

March 22, 2017**3:00 AM****Minute Order****Motion for
Temporary
Restraining Order****HEARD BY:** Bare, Rob**COURTROOM:** Chambers**COURT CLERK:** Cynthia Moleres**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- This matter came before this Court for Petitioner Kofi Sarfo M.D. s Motion for Temporary Restraining Order and Motion for Preliminary Injunction. After carefully considering the evidence submitted, Court issued its Decision this 22nd day of March, 2017. COURT ORDERED, Petitioner s Motion for Temporary Restraining Order is DENIED and Petitioner s Motion for Preliminary Injunction is SET TO BE HEARD on April 13, 2017 at 10:30 a.m. As such, the current hearing date of March 29, 2017 is hereby VACATED.

Petitioner is seeking to stay the enforcement of the March 14, 2017 Order from the Investigative Committee of the Board of Medical Examiners, which is requiring Dr. Sarfo to turn over the patient files for five (5) patients due to a Complaint that has been filed against Dr. Sarfo. That March 14, 2017 sets a deadline by which Dr. Sarfo must turn over the patient files, and that deadline expires on April 6, 2017. The Investigative Committee is acting in accordance with NRS 630.311 and NRS 630.336. NRS 630.311(1) provides that the committee shall review each complaint and conduct an investigation to determine if there is a reasonable basis for the complaint. NRS 630.336(4) provides that a complaint filed with the Board pursuant to NRS 630.307, all documents and other information filed with the complaint and all documents and other information compiled as a result of an

investigation conducted to determine whether to initiate disciplinary action are confidential.

Petitioner's contention is that the Investigative Committee's practice of maintaining the confidentiality of the complaint and requiring Dr. Sarfo to turn over the patient files violates the principles of due process. While this Court recognizes the need for procedural safeguards to be in place in all administrative proceedings, the Court finds that the Investigative Committee's conduct, as alleged by Petitioner, falls squarely within their duties under NRS Chapter 630. As such, injunctive relief which would preclude the Investigative Committee from pursuing its investigation and fulfilling its statutory obligation would be improper at this time.

Pursuant to NRCP 65(b), a temporary restraining order may be granted if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Given that Petitioner himself has conceded that the Investigative Committee is acting within the scope of their statutory duties, the Court cannot, at this time, issue any injunctive relief to enjoin their investigation into the Complaint filed against Dr. Sarfo.

As such, the Motion for Temporary Restraining Order is denied and the Motion for Preliminary Injunction is set to be heard on Tuesday, April 13, 2017 at 10:30 a.m. If, at that time, Petitioner still wishes to pursue a form of injunctive relief in regards to this, the Court will hear oral argument at that time. Petitioner may file supplemental briefing, if they wish to address the points raised in this Minute Order. Petitioner is also directed to ensure that proper service of the Motion, and any supplemental briefing, is made upon the appropriate parties in this case. Any opposition must be filed in ordinary course, pursuant to the filing date of the Motion.

The Court will draft the final Order regarding the Court's decision on the Motion for Temporary Restraining Order.

CLERK'S NOTE: A copy of the Minute Order was placed in the Clerk's Office Attorney Folders of: Michael Sullivan, Esq. (Robison, Belastegui, Sharp & Low) and Jacob L. Hafter, Esq. (HafterLaw). (clm 3-22-17)

AMENDED CLERK'S NOTE: A copy of this Minute Order was placed in the Clerk's Office Attorney Folder of: Jacob L. Hafter, Esq. (HafterLaw) and faxed to: Michael Sullivan, Esq. (Robison, Belastegui, Sharp & Low) at 775-329-7941. (clm 3-22-17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Prohibition

COURT MINUTES

April 26, 2017

A-17-752616-W	Kofi Sarfo, M.D., Plaintiff(s) vs. Nevada State Board of Medical Examiners, Defendant(s)
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April 26, 2017	8:30 AM	Motion for Preliminary Injunction
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HEARD BY: Villani, Michael	COURTROOM: RJC Courtroom 11A
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COURT CLERK: Olivia Black

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Hafter, Jacob L., ESQ	Attorney
	Sullivan, Michael E.	Attorney

JOURNAL ENTRIES

- Robert Kilroy, Esq. appearing telephonically on behalf of Nevada State Board of Medical Examiners

Mr. Hafter argued the Nevada State Board of Medical Examiners letters were insufficient to provide adequate notice to the doctor which violated his basic due process rights. Mr. Hafter further argued the board hides behind a statute that states all matters related to an investigation are confidential and the board has an improper policy that needed to be change. Mr. Hafter requested physician s be allowed to review the complaint and that was necessary for adequate due process. The Court inquired if Mr. Hafter was attacking the constitutionality of NRS 630.311 and Mr. Hafter note he was not attacking the statute itself.

Mr. Sullivan argued the Nevada State Board of Medical Examiners primary statutory duty in protecting the public outweighs the physician s right to due process and that no Due Process right exists until a formal complaint has been filed. Until a formal complaint is filed, Dr. Sarfo is required to comply with the requests to adequately allow the Board to confidentially investigate the allegations. Mr. Sullivan cited NRS 630.311 and argued the reason why there was confidentiality was to protect everyone including the doctor, the process, and the person complaining. Mr. Sullivan

further expanded on *Hernandez v. Bennett-Haron*, 128 Nev. Adv. Op. 54, 287 P.3d 305, 308 (2012) and its finding that "When a government agency is conducting proceedings, due process mandates that the protections afforded depend on whether the proceedings result in a binding adjudication or a determination of legal rights, in which case due process protections are greater." Mr. Sullivan concluded with the argument that Due Process protections need not be made available in proceedings that merely involve fact-finding or investigatory exercise by the government agency, as clearly stated in *Hernandez*. Mr. Sullivan requested the Court to deny the relief requested by Plaintiff and instruct Dr. Sarfo to proceed with the production of documents. Further argument by Mr. Hafter.

The Court stated NRS 630.311 states the board shall review complaints and conduct an investigation and that's what they are doing at this point. The Court further noted that no adjudication of the physician's right to practice medicine will or has been made at this juncture, but rather the inquiry is solely for investigative purposes as prescribed under NRS 630.311(1). The Court stated its findings and ORDERED, Motion DENIED, for failing to meet the requirements necessary to issue a Preliminary Injunction.

Mr. Hafter noted because a denial of a preliminary injunction was not an appealable order Plaintiff would like to get an appeal filed as soon as possible and requested a Stay. Arguments by counsel regarding the Stay. COURT ORDERED, Request for Stay DENIED. Mr. Sullivan to prepare the Order and submit it to Mr. Hafter as to form and content.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

JACOB L. HAFTER, ESQ.
6851 W. CHARLESTON BLVD.
LAS VEGAS, NV 89117

DATE: May 24, 2017
CASE: A-17-752616-W

RE CASE: KOFI SARFO, M.D. vs. NEVADA STATE BOARD OF MEDICAL EXAMINERS

NOTICE OF APPEAL FILED: May 22, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

**Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING REQUEST FOR PRELIMINARY INJUNCTION AND REQUEST FOR STAY; NOTICE OF ENTRY OF ORDER DENYING PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

KOFI SARFO, M.D.,

Plaintiff(s),

vs.

NEVADA STATE BOARD OF MEDICAL EXAMINERS,

Defendant(s),

Case No: A-17-752616-W

Dept No: XVII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 24 day of May 2017.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk