COPY

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and Complaint Against KEVIN R. BUCKWALTER, M.D., Respondent.	Case No. 08-12069-1 FILED November 17, 2008 Angela L Donahue CLERK OF THE BOARD

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

COMPLAINT AND REQUEST FOR SUMMARY SUSPENSION OF RESPONDENT'S ABILITY TO PRESCRIBE, ADMINISTER, OR DISPENSE CONTROLLED SUBSTANCES

The Investigative Committee of the Board of Medical Examiners of the State of Nevada, composed of Charles N. Held, M.D., Chairman, Benjamin J. Rodriquez, M.D., Member, and Jean Stoess, Member, by and through Edward O. Cousineau, General Counsel for the Nevada State Board of Medical Examiners, having a reasonable basis to believe that KEVIN R. BUCKWALTER, M.D., hereinafter referred to as "Respondent", has engaged in conduct that is grounds for discipline pursuant to the provisions of NRS Chapter 630, hereby alleges, charges and complains against said Respondent as follows:

1. Respondent was licensed in active status to practice medicine in the state of Nevada on December 8, 1997 by the Nevada State Board of Medical Examiners, pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes, and at all times addressed herein was so licensed.

2. Respondent operates a medical practice specializing in Family Practice and Pediatrics.

3. Previous to the preparation of this Complaint, the Nevada State Board of Medical Examiners has solicited the services of an independent medical expert to review the medical records of numerous patients treated by Respondent. The review, received on November 4, 2008, concluded that Respondent's controlled substances prescribing patterns and

associated medical record keeping was severely lacking and inconsistent with the expected standard of care in multiple patients treated by Respondent. Four of the medical records relate to patients who will be herein referred to as Patients A, B, C and D. The patients' true identities have not been disclosed to protect their privacy, but are disclosed in a separate Patient Designation incorporated by reference to this Complaint.

4. From approximately April 4, 2007 to April 2, 2008, Respondent wrote approximately forty-nine prescriptions for controlled substances for Patient A. Respondent's medical record keeping relating to the prescribing of controlled substances for Patient A does not include any evaluation of the response to prescribed medications, reasons for medication increases, functional changes or evaluations, or explanation or justification as to why Alprazolam therapy was initiated for Patient A or why the therapy was started at the maximum allowable dosage without any titration or trial of a lower prescriptive dosage. Further, there is no indication in Patient A's medical records that Respondent discharged the patient from his practice.

5. From approximately June 29, 2006 through April 4, 2008, Respondent wrote approximately sixty-one prescriptions for controlled substances for Patient B. Patient B received large doses of controlled substances without adequate documentation in the medical records of Patient B's response to the medications, the reasons for increases in the prescriptions, or justification for the initiation of Alprazolam therapy or why the therapy was started at the maximum allowable dosage without any titration or trial of a lower prescriptive dosage. Further, there is no indication in Patient B's medical records that Respondent discharged the patient from his practice.

6. From approximately January 18, 2007 to April 9, 2008, Respondent wrote approximately seventy-one prescriptions for controlled substances for Patient C. Respondent's medical record keeping relating to the prescribing of controlled substances for Patient C include very minimal record keeping relating to examinations and reasons for medication changes relating to narcotics, benzodiazepines and muscle relaxers. Additionally, there are no records relating to treatment outcomes, intensity or duration of pain, beyond Patient C's initial

///

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

presentation, no documentation of changes in ability to function or continued unrelieved pain that justified increases in controlled substance prescriptions.

7. From approximately May 13, 2004 to December 14, 2005, Respondent wrote approximately thirty-four prescriptions for controlled substances for Patient D. Respondent's controlled substances prescribing patterns and associated medical record keeping is severely lacking, and further, Respondent's excessive prescribing of Oxycontin and Kadian to Patient D at the end of Respondent's treatment course, contributed to the death of Patient D, due to Respondent's failure to recognize that Patient D had become narcotic naïve due to a protracted lapse in Patient D's narcotic usage.

8. Respondent's medical records relating to the aforementioned patients as well as the opinions of the independent medical expert were reviewed by Jerry Calvanese, M.D. Dr. Calvanese's review concluded that Respondent's medical record keeping for the medical treatment of prescribing controlled substances for Patients A, B, C, D and other patients was inconsistent with the standard of care that should be expected in the same or similar circumstances. See Exhibit 1 - Affidavit of Jerry Calvanese, M.D.

9. NRS 0.031 defines Controlled Substances as a drug, immediate precursor or other substance with is listed in schedule I, II, III, IV or V for control by the State Board of Pharmacy pursuant to NRS 453.146 and NAC 453.510 to NAC 453.550.

10. As a standard of practice, the Nevada State Board of Medical Examiners has adopted the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain under NAC 630.187. The guidelines require before a physician may prescribe controlled substances for a patient, he must perform an evaluation of the patient, take a complete medical history, perform a physical examination of the patient, formulate a treatment plan, conduct periodic reviews for adjustments and stated treatment objectives, and all must be fully documented in the patient's medical office chart.

COUNT I

11. All of the above paragraphs are incorporated by reference as though fully set forth herein.

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

12. Respondent's prescribing of controlled substances for Patients A, B, C and D constitutes malpractice.

13. Malpractice is defined at NAC 630.040 as "the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances."

14. By reason of the foregoing, Respondent has violated NRS 630.301(4) and NAC 630.187, and is subject to discipline as provided by NRS 630.352.

COUNT II

15. All of the above paragraphs are incorporated by reference as though fully set forth herein.

16. Respondent failed to maintain accurate and complete medical records relating to his prescribing of controlled substances for Patients A, B, C and D.

17. NRS 630.3062(1) states that failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient is grounds for discipline.

18. By reason of the foregoing, Respondent has violated NRS 630.3062(1) and NAC 630.187, and is subject to discipline as provided by NRS 630.352.

COUNT III

19. All of the above paragraphs are incorporated by reference as though fully set forth herein.

20. NAC 630.230(1)(l) provides that a physician shall not engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the guidelines set forth in the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain adopted by reference in NAC 630.187.

21. Respondent's prescribing of controlled substances to Patients A, B, C and D without maintaining accurate records is not authorized by law.

22. NRS 630.306(3) provides that it is grounds for initiating disciplinary action if a licensee administers, dispenses, or prescribes any controlled substance to others except as authorized by law.

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

23. By reason of the foregoing, Respondent has violated NRS 630.306(3), NAC 630.187, and NAC 630.230(1)(l), and is subject to discipline as provided by NRS 630.352.

WHEREFORE, the Investigative Committee of the Nevada State Board of Medical Examiners prays as follows:

1. That the Nevada State Board of Medical Examiners schedule an emergency meeting by telephone conference, and that the Board review the above Complaint, with exhibits, and any other evidence, argument or presentation, find that Respondent poses a threat to the health and safety of patients he sees and treats, or may see and treat, as well as the public in general, and summarily suspend Respondent's ability to prescribe, administer, or dispense controlled substances in Nevada pending a hearing on this Complaint, and,

2. That the Nevada State Board of Medical Examiners conduct a hearing on the Complaint herein as provided by statute, find and determine that Respondent has violated one or more provisions of the Medical Practice Act (NRS Chapter 630), enter findings of fact, conclusions of law, and an order imposing sanctions upon Respondent according to NRS 630.352; and

3. That the Nevada State Board of Medical Examiners take such other and further action as may be just and proper in these premises.

DATED this 12th day of November, 2008.

INVESTIGATIVE COMMITTEE OF
THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____
Edward O. Cousineau
Attorney for the Investigative Committee of
The Nevada State Board of Medical Examiners

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF DOUGLAS)

CHARLES N. HELD, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that investigated the complaint against Respondent herein; that he has read the foregoing Complaint; and that based upon the results of the Investigative Committee's investigation into a complaint against Respondent, the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

Dated this 12th day of November 2008.

CHARLES N. HELD, M.D.

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way #301
Reno, Nevada 89502
(775) 688-2559

EXHIBIT

1

BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

In The Matter of Charges and Complaint Against KEVIN R. BUCKWALTER, M.D., Respondent.	)	Case No. 08-12069-1

AFFIDAVIT OF JERRY C. CALVANESE

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, JERRY CALVANESE, being first duly sworn upon oath, hereby depose and state under penalty of perjury as follows:

1. I have been a licensed physician in the state of Nevada since 1979 and I am Board certified in Emergency Medicine.
2. Currently, I am employed as a Medical Reviewer for the Nevada State Board of Medical Examiners.
3. I make this Affidavit in support of the Complaint and Request for Summary Suspension of Dr. Buckwalter's ability to prescribe controlled substances being advanced by the Nevada State Board of Medical Examiners.
4. The statements herein are based upon my own personal knowledge except as otherwise expressly stated, or indicated by the context, to be upon information and belief.
5. As part of my duties as a Medical Reviewer, I have reviewed the medical records of numerous patients who were prescribed controlled substances during their care and treatment by Dr. Buckwalter, along with the professional opinions of independent medical expert retained by the Nevada State Board of Medical Examiners.
6. A vast majority of the records include essentially no physical exam. Even when there is documentation in the records of a physical exam, the documentation is mostly illegible. In

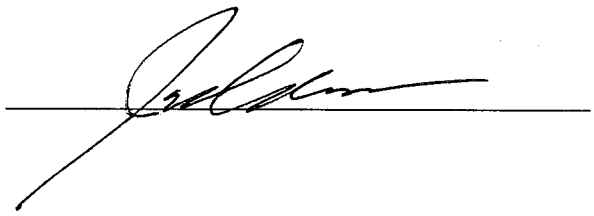
OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way # 301
Reno, Nevada 89502
(775) 688-2559

the few legible records, the medical documentation is extremely generalized. As a result, the lack of documentation makes it nearly impossible to assess and analyze Dr. Buckwalter's medical decision making regarding the controlled substance prescriptions he wrote for the patients.

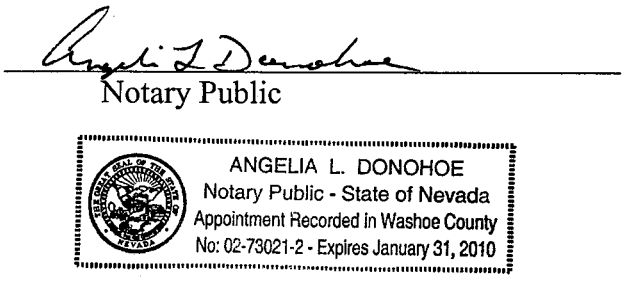
7. In addition, my review has created concerns in my mind that Dr. Buckwalter has administered inappropriate narcotic shots in the office setting and not taken proper steps to ensure patient safety thereto.

8. I believe that the vague, haphazard, and illegible documentation of Dr. Buckwalter's medical decision making is both inconsistent with the expectations enunciated in the Model Guidelines for the Use of Controlled Substances for the Treatment of Pain and with the expected medical standard of care as it relates to prescribing controlled substances.

Further Affiant sayeth naught.



Subscribed and sworn to before me
this 7th day of November, 2008.



Notary Public

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
1105 Terminal Way # 301
Reno, Nevada 89502
(775) 688-2559