BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

In The Matter of Charges and

Complaint Against

JAMES LEE UNGER, M.D.,

Respondent.

NOV 2 9 2010

NEVADA STATE BOARD OF MEDIOAL EXAMINERS

FIRST AMENDED COMPLAINT

The Investigative Committee of the Nevada State Board of Medical Examiners, composed at the time filing of Charles N. Held, M.D., Chairman, Theodore B. Berndt, M.D., Member, and Valerie J. Clark, Member, having a reasonable basis to believe that James Lee Unger, M.D., hereinafter referred to as Respondent, has violated the provisions of NRS Chapter 630, hereby issues its First Amended Complaint, stating the Investigative Committee's charges and allegations, as follows:

- 1. Respondent is currently licensed in active status (License No. 4223), and has been so licensed since January 1, 1981 by the Nevada State Board of Medical Examiners pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes.
- 2. Patient A was a thirty year old (30) female at the time of the incidents in question. Her true identity is not disclosed to protect her privacy, but her identity was disclosed in the Patient Designation served on Respondent along with a copy of the original Complaint.
- 3. On November 4, 2008, Respondent diagnosed a cervical biopsy from Patient A. He found it to be malignant.
- 4. As a result and based upon the malignant diagnosis, Patient A underwent surgery for removal of the malignancy. The surgery was a radical vaginal trachelectomy and lymph node dissection which involved removal of her cervix, parametrium, associated lymph node and upper 2

Reno, Nevada 89502

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cm. of her vagina. Following the surgery, the diagnosis of Patient A was amended to a benign diagnosis of squamous dysplasia rather than invasive carcinoma.

- 5. The records indicate that Respondent had paperwork belonging to Patient A and the pathology slide belonging to another patient. That patient's slide was a malignant diagnosis but was given to Patient A, who in reality had a benign cervix and related slide.
- 6. The diagnosis was incorrectly given to Patient A as named in the paperwork rather than the patient named on the slide. Respondent failed to correlate the correct paperwork with the slide information. The paperwork had been switched from one tray to another.
- 7. Had Respondent recognized the discrepancy, the misdiagnosis would have been avoided. Significantly, had the misdiagnosis been avoided, Patient A would not have had the unnecessary surgery.

Count I

- 8. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.
- 9. Nevada Administrative Code Section 630.040 defines malpractice as the failure of a physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances.
- 10. Nevada Revised Statute Section 630.301(4) provides that malpractice is grounds for initiating disciplinary action against a licensee.
- 11. Respondent failed to use the reasonable care, skill, or knowledge ordinarily used under the same or similar circumstances when he failed and omitted to correlate the name on the pathology slide with the name to which the diagnosis is assigned as indicated by the paperwork.
- 12. By reason of the foregoing, Respondent is subject to discipline by the Nevada State Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

WHEREFORE, the Investigative Committee prays:

1. That the Nevada State Board of Medical Examiners give Respondent notice of the charges herein against him and give him notice that he may file an answer to the Complaint herein ///

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as set forth in Section 630.339 of the Nevada Revised Statutes within twenty (20) days of service of the Complaint.

- 2. That the Nevada State Board of Medical Examiners set a time and place for a formal hearing after holding an Early Case Conference pursuant to NRS §630.339(3);
- 3. That the Nevada State Board of Medical Examiners determine what sanctions it determines to impose if it determines there has been a violation or violations of the Medical Practice Act (Nevada Revised Statutes Chapter 630) committed by Respondent; and
- 4. That the Nevada State Board of Medical Examiners make, issue and serve on Respondent its findings of facts, conclusions of law and order, in writing, that includes the sanctions imposed; and
- 5. 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 29 day of November, 2010.

THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Bradley O. Van Ry, Esq.

Deputy General Counsel and Attorney for the Investigative Committee

VERIFICATION

STATE OF NEVADA)
COUNTY OF DOUGLAS	: ss.

Charles N. Held, M.D., hereby deposes and states under penalty of perjury under the laws of the state of Nevada that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the foregoing First Amended Complaint against the Respondent herein; that he has read the foregoing First Amended Complaint; and that based upon information discovered during the course of the investigation into a complaint against Respondent, that he believes the allegations and charges in the foregoing First Amended Complaint against Respondent are true, accurate, and correct.

Dated this 29th day of November, 2010.

CHARLES N. HELD, M.D.