

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA

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In The Matter of Charges and )  
Complaint Against )  
**JAMES S. TATE, M.D.,** )  
Respondent. )

Case No. 10-9809-2

**FILED**

**DEC 30 2011**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

The above-entitled matter came on regularly for decision on the Complaint filed herein before the Nevada State Board of Medical Examiners, hereinafter "Board," on Friday, December 2, 2011, at the Board's offices located at 1105 Terminal Way, Suite 301, Reno, Nevada, 89502, and by video conference at the offices of the Nevada State Board of Dental Examiners located at 6010 S. Rainbow Boulevard, Building A, Suite 1, Las Vegas, Nevada 89118. James S. Tate, M.D., hereinafter "Respondent," was present at the Board meeting in Las Vegas with his attorneys, Robert McKenna, Esq. and Jacob Hafter, Esq.

The members of the Board participating in the decision were: Beverly A. Neyland, M.D., Michael J. Fischer, M.D., Ms. Donna A. Ruthe, and Mrs. Sue Lowden. Harry Ward, J.D., Deputy Attorney General, acted as legal counsel to the Board.

The Board, having received and read the Complaint and exhibits admitted in this matter, as well as the Synopsis of Record prepared by the hearing officer who presided over the hearing and the transcript of the hearing, proceeded to make a decision pursuant to the provisions of NRS Chapters 233B and 630.

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1 The Board, after due consideration of the record, evidence and law, and being fully  
2 advised in the premises, makes its FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
3 ORDER in this matter as follows:

4 **FINDINGS OF FACT**

5 I.

6 Respondent held a license to practice as a physician in the state of Nevada at all  
7 relevant times.

8 II.

9 On September 29, 2010, the Investigative Committee filed the Complaint in this matter  
10 alleging violations of Chapter 630 of the Nevada Revised Statutes ("NRS") and  
11 Chapter 630 of the Nevada Administrative Code ("NAC").

12 III.

13 On August 9-10, 2011, a hearing was held before an appointed hearing officer on the  
14 allegations contained within Count I of the Complaint. Respondent was present and  
15 represented by counsel, Robert McKenna, Esq. The Investigative Committee was  
16 represented by Bradley O. Van Ry, Esq.

17 IV.

18 Patient A was a sixty-two (62) year-old male who checked into the emergency room at  
19 University Medical Center (UMC) on August 26, 2006. He complained of abdominal pain that  
20 was found to be mild with no abdominal guarding or rebound tenderness, and no fever or  
21 chills were present.

22 Two days later, on August 28, 2006, Respondent took Patient A into the OR for a  
23 laparoscopic cholecystectomy. During the laparoscopic procedure, dense adhesions were  
24 encountered that made identification of the internal structures difficult. As a result, the  
25 laparoscopic surgery was converted to an open surgery. The gall bladder was removed.

26 Numerous complications arose as a result of the procedures. Patient A remained in  
27 the hospital for approximately one month. During the course of Patient A's hospital stay,

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1 Respondent performed four (4) procedures and spent over nine (9) hours in surgery with  
2 Patient A.

3 The record shows that Respondent never consulted with a specialist in hepato-biliary  
4 surgery on behalf of Patient A, and Patient A was never transferred to a tertiary biliary center  
5 at any time for proper expertise in treatment of the numerous complications in anatomy and  
6 arising from the multiple surgical procedures.

7 Patient A subsequently was transferred to his native country, England, and died there  
8 on October 30, 2006.

9 **V.**

10 The Board finds by a preponderance of the evidence that Respondent violated  
11 NRS 630.301(4) and NAC 630.040 when he failed and omitted to consult with a specialist in  
12 hepato-biliary surgery at any time and failed to transfer Patient A to a tertiary center with  
13 adequate specialization in biliary surgery in order to surgically treat Patient A.

14 **VI.**

15 If any of the foregoing Findings of Fact is more properly deemed a Conclusion of Law,  
16 it may be so construed.

17 **CONCLUSIONS OF LAW**

18 **I.**

19 The Board has jurisdiction over Respondent.

20 **II.**

21 Respondent was properly served with notice of the hearing via certified mail at the  
22 address on file with the Board pursuant to NRS Chapter 630 and  
23 NRS Chapter 233B.

24 **III.**

25 The Board concludes that Respondent has violated NRS 630.301(4) and  
26 NAC 630.040, as described above and as alleged in Count I of the Complaint, and, that  
27 accordingly, he is subject to discipline pursuant to NRS 630.352.

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1 IV.

2 If any of the foregoing Conclusions of Law is more properly deemed a Finding of Fact,  
3 it may be so construed.

4 **ORDER**

5 Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause  
6 appearing therefore,

7 **IT IS HEREBY ORDERED that:**

- 8 1. Respondent shall be issued a public reprimand;
- 9 2. Respondent shall pay a fine of \$5,000.00 within six (6) months of the  
10 entry of these Findings of Fact, Conclusions of Law and Order;
- 11 3. Respondent shall attend and participate in ten (10) hours of  
12 Continuing Medical Education in biliary injuries arising during abdominal  
13 surgery within one (1) year of the entry of these Findings of Fact,  
14 Conclusions of Law and Order, in addition to the normal requirements  
15 regularly imposed upon Respondent as a condition of licensure in the  
16 state of Nevada and provide proof of attendance to the Board; and,
- 17 4. Respondent shall pay all costs of the investigation and prosecution in the  
18 amount of \$29,623.39 within six (6) months of the entry of these Findings  
19 of Fact, Conclusions of Law and Order.

20 DATED this 30<sup>th</sup> day of December, 2011.

21 NEVADA STATE BOARD OF MEDICAL EXAMINERS

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24 Benjamin J. Rodriguez, M.D., President  
25 Nevada State Board of Medical Examiners  
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1 **CERTIFICATION**

2 I certify that the foregoing is the full and true original  
3 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER on file in the office of the  
4 Board of Medical Examiners in the matter of JAMES S. TATE, M.D., Case No. 10-9809-2.

5 I further certify that BENJAMIN J. RODRIGUEZ, M.D., is the President of the Nevada  
6 State Board of Medical Examiners and that full force and credit is due to his official acts as  
7 such; and that the signature to the foregoing ORDER is the signature of said  
8 BENJAMIN J. RODRIGUEZ, M.D.

9 IN WITNESS THEREOF, I have hereunto set my hand in my official capacity as  
10 Secretary-Treasurer of the Nevada State Board of Medical Examiners.

11 DATED this ~~30<sup>th</sup>~~ day of December, 2011.

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13 VALERIE J. CLARK, BSN, RHU, LUTCF  
14 Secretary-Treasurer  
15 Nevada State Board of Medical Examiners