

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA**

\* \* \* \* \*

**In the Matter of Charges and** )  
)  
**Complaint Against** )  
)  
**ALBERT H. CAPANNA, M.D.,** )  
)  
**Respondent.** )

Case No. 12-6789-1

**FILED**

**DEC 14 2012**

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: 

**COMPLAINT**

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), composed at the time of filing of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, by and through Erin L. Albright, Esq., Board Deputy General Counsel and attorney for the IC, having a reasonable basis to believe that Albert H. Capanna, M.D. (Respondent), violated the provisions of Nevada Revised Statutes (NRS) Chapter 630 (Medical Practice Act), hereby issues its formal Complaint, stating the IC's charges and allegations as follows:

1. Respondent is currently licensed in active status (License No. 4594), and has been so licensed by the Board since June 19, 1982, pursuant to the provisions of the Medical Practice Act.

2. Patient A was a twenty-one (21)-year-old male at the time of the incidents in question. His true identity is not disclosed in this Complaint to protect his identity, but his identity is disclosed in the Patient Designation contemporaneously served on Respondent with a copy of this Complaint.

3. Patient A sought care from Respondent for a low back injury he sustained while playing collegiate football. To determine the source of Patient A's pain, Respondent ordered an

1 MRI of Patient A's lumbar spine. The MRI revealed a left lumbar disc injury at the L5-S1 level.  
2 Based on these findings, Respondent recommended Patient A undergo a lumbar discectomy at the  
3 L5-S1 level.

4 4. On September 17, 2010, Respondent performed a lumbar discectomy on Patient A.  
5 This surgery was scheduled to be performed on the L5-S1 level of Patient A's lumbar spine.

6 5. On September 29, 2010, Patient A presented to Respondent for a post-surgical visit  
7 with complaints of extreme pain in his lower back. Respondent ordered another MRI of Patient  
8 A's lumbar spine. The MRI revealed post-surgical changes to Patient A's lumbar spine from a left  
9 L4 laminectomy and microdiscectomy.

10 6. On October 7, 2010, Respondent advised Patient A that the second MRI showed  
11 significant edema but, according to the health care records in the Board's possession, Respondent  
12 failed to disclose to Patient A the post-surgical changes at the L4-L5 level of Patient A's lumbar  
13 spine.

14 7. On October 22, 2010, Respondent underwent a subsequent lumbar discectomy.  
15 The subsequent operation demonstrated that Patient A still had a mild diffuse disc bulging at the  
16 L5-S1 level of Patient A's lumbar spine and that Respondent performed a discectomy at the L4-L5  
17 level of Patient A's lumbar spine, which was the wrong level.

18 8. A review of Patient A's chart, demonstrates that Respondent performed Patient A's  
19 September 17, 2010 lumbar discectomy at the L5-S1 level, not the L4-L5 level, that he failed to  
20 disclose the post-surgical changes at the L4-L5 level of Patient A's lumbar spine to Patient A, and  
21 that the notes are incomplete, illegible and/or inaccurate.

22 **COUNT I**

23 **(Malpractice)**

24 9. All of the allegations contained in the above paragraphs are hereby incorporated by  
25 reference as though fully set forth herein.

26 10. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating  
27 disciplinary action against a licensee.

28 ///

1 11. Nevada Administrative Code 630.040 defines malpractice as the failure of a  
2 physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used  
3 under similar circumstances.

4 12. Respondent failed to use reasonable care, skill or knowledge ordinarily used under  
5 similar circumstances when he performed a lumbar discectomy at the L4-L5 level of Patient A's  
6 lumbar spine instead of the L5-S1 level of Patient A's lumbar spine.

7 13. By reason of the foregoing, Respondent is subject to discipline by the Board as  
8 provided in NRS 630.352.

9 **COUNT II**

10 **(Records Violation)**

11 14. All of the allegations contained in the above paragraphs are hereby incorporated by  
12 reference as though fully set forth herein.

13 15. NRS 630.3062(1) provides that the failure to maintain timely, legible, accurate and  
14 complete medical records relating to the diagnosis, treatment and care of a patient is grounds for  
15 initiating discipline against a licensee.

16 16. Respondent failed to maintain timely, legible, accurate and complete medical  
17 records relating to the diagnosis, treatment and care of Patient A as outlined above.

18 17. By reason of the foregoing, Respondent is subject to discipline by the Board as  
19 provided in NRS 630.352.

20 **WHEREFORE**, the Investigative Committee prays:

21 1. That the Board give Respondent notice of the charges herein against him and give  
22 him notice that he may file an answer to the Complaint herein as set forth in NRS 630.339(2)  
23 within twenty (20) days of service of the Complaint;

24 2. That the Board set a time and place for a formal hearing after holding an  
25 Early Case Conference pursuant to NRS 630.339(3);

26 3. That the Board determine the sanctions it will impose if it finds Respondent  
27 violated the Medical Practice Act;

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. That the Board make, issue and serve on Respondent, in writing, its findings of fact, conclusions of law and order, which shall include the sanctions imposed; and

5. That the Board take such other and further action as may be just and proper in these premises.

DATED this 14<sup>th</sup> day of December, 2012.

INVESTIGATIVE COMMITTEE OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:   
Erin L. Albright, Esq.  
Deputy General Counsel  
Attorney for the Investigative Committee

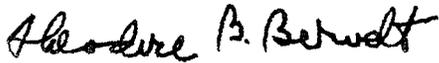
VERIFICATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STATE OF NEVADA            )  
  : ss.  
COUNTY OF WASHOE        )

Theodore B. Berndt, 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 Complaint against the Respondent herein; that he has read the foregoing 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 Complaint against Respondent are true, accurate and correct.

Dated this 14<sup>th</sup> day of December, 2012.

  
\_\_\_\_\_  
Theodore B. Berndt, M.D.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 14<sup>th</sup> day of December 2012; I served a filed copy of the Complaint, Patient Designation and Fingerprint information via USPS e- certified return receipt mail to the following:

Albert Capanna, M.D.  
716 South Sixth Street  
Las Vegas, NV 89101

Dated this 14<sup>th</sup> day of December, 2012.



---

Angelia L. Donohoe  
Legal Assistant