

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

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6 **In the Matter of Charges and** )  
7 **Complaint Against** )  
8 **MICHAEL KAPLAN, M.D.,** )  
9 **Respondent.** )  
10 \_\_\_\_\_ )  
11

Case No. 11-8547-1

**FILED**

**JUL 24 2013**

**NEVADA STATE BOARD OF  
MEDICAL EXAMINERS**

By: 

12 **FIRST AMENDED COMPLAINT**

13 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners  
14 (Board), composed of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark,  
15 BSN, RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, by and through  
16 Bradley O. Van Ry, Esq., Board General Counsel and attorney for the IC, having a reasonable  
17 basis to believe that Michael Kaplan, M.D. (Respondent) violated the provisions of  
18 Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC)  
19 Chapter 630, collectively the Medical Practice Act (MPA), hereby issues its First Amended  
20 Complaint, stating the IC's charges and allegations, as follows:

21 1. Respondent was originally licensed to practice medicine on December 2, 1989 by  
22 the Board pursuant to the MPA. Respondent is currently licensed to practice medicine in active  
23 status (License #5983). Respondent's license to practice medicine was previously suspended-  
24 indefinite status from March 14, 2011 until April 11, 2011, and then Respondent was on active  
25 status with temporary conditions from April 12, 2011 to August 11, 2011.

26 2. Between December 15, 2010 and March 11, 2011, a minimum of 115 procedures  
27 requiring disposable needle guides involving Patients 1-115 were performed in Respondent's  
28 Henderson office, whose identities are not revealed to protect their privacy but whose identities

1 have been provided to Respondent. Based on the number of disposable, single use needle guides  
2 shipped to Respondent's office, there were not enough disposable needle guides for all procedures  
3 that were performed during this time period.

4 3. After procedures using the disposable, single use needle guides, medical assistants  
5 (MAs) would attempt to clean and disinfect the disposable, single use needle guides by running  
6 them under water, attempt to scrape out any remaining tissue or blood without using a brush and  
7 would then soak them in Cidex solution and allow them to dry.

8 4. Interviews conducted with staff indicated that they were instructed by Respondent  
9 to reuse the disposable, single use needle guides after procedures and continued to do so into the  
10 month of March 2011.

11 5. Respondent admitted to reusing the disposable, single use needle guides.

12 6. On March 14, 2011, Respondent was served with an Order from the  
13 IC, pursuant to NRS 630.326, summarily suspending his license to practice medicine based on the  
14 preliminary findings of the Board's investigation.

15 7. On August 12, 2011, Respondent's license to practice medicine was returned to  
16 full, active status, as all conditions/restrictions on his license were removed based upon his full  
17 cooperation with the IC.

18 **Count I**

19 8. All of the allegations contained in the above paragraphs are hereby incorporated by  
20 reference as though fully set forth herein.

21 9. NAC 630.230(1)(h) provides that the failure to adequately supervise an MA who is  
22 employed or supervised by the physician is grounds for initiating discipline against a licensee.

23 10. Respondent failed to adequately supervise his MAs when, among other things, he  
24 knowingly allowed the reprocessing of disposable, single-use needle guides used during the  
25 performance of urologic procedures and reuse of said disposable, single-use needle guides during  
26 the time period set forth above, in the treatment of Patients 1-115.

27 11. By reason of the foregoing, Respondent is subject to discipline by the Board as  
28 provided in NRS 630.352.

Count II

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

13. NRS 630.306(7) provides that the continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing, practicing in the same specialty or field is grounds for initiating disciplinary action against a licensee.

14. Respondent continually failed to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing, practicing in the same specialty or field by, among other things, knowingly allowing the reprocessing of disposable, single-use needle guides used during the performance of urologic procedures and reusing of said disposable, single-use needle guides during the time period set forth above and in his failure to adequately supervise MAs as set forth above.

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

**WHEREFORE**, the IC prays:

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

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

3. That the Board determine the sanctions it will impose if it finds Respondent violated the MPA;

4. That the Board make, issue and serve on Respondent its findings of facts, conclusions of law and order, in writing, that includes the sanctions imposed; and

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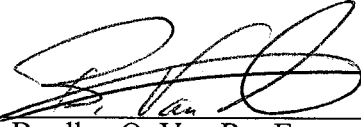
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5. That the Board take such other and further action as may be just and proper in these premises.

DATED this 24<sup>th</sup> day of July, 2013.

THE INVESTIGATIVE COMMITTEE OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS

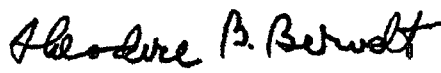
By:   
Bradley O. Van Ry, Esq.  
General Counsel  
Attorney for the Investigative Committee

VERIFICATION

1 STATE OF NEVADA )  
2 : ss.  
3 COUNTY OF WASHOE )

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

11 Dated this 24<sup>th</sup> day of July, 2013.

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14 Theodore B. Berndt, M.D.


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**CERTIFICATE OF SERVICE**

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 24<sup>th</sup> day of July 2013; I served a filed copy of the FIRST AMENDED COMPLAINT, via USPS e-certified mail to the following:

Patricia Daenhke, Esq.  
Bonne Bridges  
3441 S. Eastern Ave., Ste. 402  
Las Vegas, NV 89169

Dated this 24<sup>th</sup> day of July, 2013.

  
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Angelia L. Donohoe  
Legal Assistant