

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

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6 **In the Matter of Charges and**) **Case No. 12-4518-1**
7)
8 **Complaint Against**) **FILED**
9) **MAY 13 2013**
10 **THEODORE M. THORP, M.D.,**)
11 **Respondent.**) **NEVADA STATE BOARD OF**
12) **MEDICAL EXAMINERS**
13) **By: _____**

14 **FIRST AMENDED COMPLAINT**

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

22 **FACTUAL BACKGROUND**

23 The following facts are pertinent to a determination on this matter.

24 **A. Respondent's Licensure Status in Nevada**

25 1. Respondent has been licensed by the Board since July 1, 1975, pursuant to the
26 provisions of the Medical Practice Act.

27 2. Respondent is currently licensed in active status (License No. 2979).

28 **B. Respondent's Supervision of Christa Swiatek, Medical Assistant**

1. At all times alleged herein, Respondent was the supervising physician for Christa Swiatek (Swiatek), Medical Assistant (MA).

1 4. Upon information and belief, the following was the customary practice in
2 Respondent's office in 2010: the MA conducted the initial patient in-take. Respondent or a
3 Physician Assistant-Certified (PA-C) evaluated the patient and assessed the patient's complaints.
4 Respondent or a PA-C outlined the patient's diagnosis and treatment plan in the patient's chart.
5 The MA reviewed the diagnosis and treatment plan for each patient. The PA-C filled out and
6 signed all prescription forms for his patients.

7 Respondent did not fill out the patient's prescription form. Instead, he provided the MA
8 with a pre-signed prescription form for each prescribed medication. The MA completed the
9 prescription form by filing in the type of medication, the quantity of medication, the patient's
10 name and the patient's date of birth. The MA was advised by Respondent that each prescribed
11 medication needed its own prescription form. However, Respondent failed to make sure the MAs
12 followed his instructions and wrote each prescribed medication on its own prescription form.

13 5. On or about October 6, 2010, Respondent's practice manager, Laura Carbajal,
14 conducted an audit of patient prescriptions after a local pharmacy suspected prescription fraud.
15 The audit revealed multiple prescriptions that were filled under Respondent's license for
16 individuals who were not his patients.

17 6. Respondent suspected Swiatek of fraud and advised her of the evidence. Swiatek
18 provided no response and immediately resigned.

19 **C. Respondent's Supervision of Alfredo Hibbert, PA-C**

20 7. At all times alleged herein, Respondent was the supervising physician for Alfredo
21 Hibbert (Hibbert), PA-C.

22 8. To protect the privacy of the patients referenced herein, their true identities are not
23 disclosed; however, their identities are disclosed in the Patient Designation served on Respondent
24 contemporaneously with a copy of this Complaint.

25 9. In or around June 2010, Nicholas Karel (Karel) solicited Hibbert to participate in a
26 scheme in which Karel would provide Hibbert with a list of names and copies of identification.
27 Hibbert would write controlled substance prescriptions for the names on the list and Karel would

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1 pay Respondent One Hundred Fifty and 00/100 Dollars (\$150.00) per controlled substance
2 prescription.

3 10. In or around June 2010, Hibbert leased office space from Respondent for the
4 purpose of performing cosmetic revisions to rough skin. Hibbert operated his practice on the
5 weekends.

6 11. Respondent supervised Hibbert's practice as follows: Respondent and Hibbert
7 conducted telephonic conferences once or twice a month to discuss Hibbert's patients.
8 Respondent never personally reviewed any charts for Hibbert's patients. In addition, Respondent
9 never visited Hibbert's office on the weekends while Hibbert was meeting with patients.

10 12. From approximately June 2010 through July 2011, Hibbert fraudulently created,
11 either in whole or in part, medical records and patient charts for at least thirteen (13) individuals
12 identified as Patients A – M on the Patient Designation for the purpose of prescribing controlled
13 substances.

14 13. From approximately June 2010 through July 2011, Hibbert fraudulently wrote
15 approximately 2000 controlled substance prescriptions in exchange for One Hundred Fifty and
16 00/00 Dollars (\$150.00) per prescription. These prescriptions were not authorized by the
17 Respondent.

18 **COUNT I**

19 **(Two Counts – Failure to Supervise PA-C)**

20 14. All of the allegations in the above paragraphs are hereby incorporated as if fully set
21 forth herein.

22 15. NRS 630.275(8) provides that the Board shall adopt regulations regarding the
23 licensure of a physician assistant, including, but not limited to, the supervision of medical services
24 of a physician assistant by a supervising physician.

25 16. NRS 630.306(2)(b) provides that engaging in any conduct that the Board has
26 determined is a violation of the standards of practice established by regulation of the Board is
27 grounds for initiating disciplinary action against a licensee.

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1 17. Nevada Administrative Code (NAC) 630.185 provides that NAC 630.185 through
2 NAC 630.230, inclusive, set forth the standards of practice established by the Board.

3 18. NAC 630.230(1)(i) provides that a physician shall not fail to provide adequate
4 supervision of a physician assistant.

5 19. NAC 630.370(3) provides that at least once a month, the supervising physician
6 shall spend part of a day at any location where the physician assistant provides medical services to
7 act as a consultant to the physician assistant and to monitor the quality of care provided by the
8 physician assistant.

9 20. NAC 630.370(5) provides that a physician who supervises a physician assistant
10 shall develop and carry out a program to ensure the quality of care provided by a physician
11 assistant. The program must include, without limitation, an assessment of the medical
12 competency of the physician assistant; a review and initialing of selected charts; an assessment of
13 a representative sample of the referrals or consultations made by the physician assistant with other
14 health professionals as required by the condition of the patient; direct observation of the ability of
15 the physician assistant to take a medical history from and perform an examination of patients
16 representative of those cared for by the physician assistant; and maintenance by the supervising
17 physician of accurate records and documentation regarding the program for each physician
18 assistant supervised.

19 21. Respondent violated NAC 630.370(3) by failing to spend part of a day, at least
20 once a month, at Hibbert's office as a consultant to Hibbert and to monitor the quality of care
21 provided by Hibbert.

22 22. Respondent violated NAC 630.370(5) by failing to develop and carry out a
23 program to ensure the quality of care provided by Hibbert.

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

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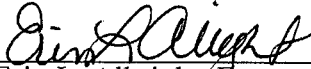
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5. That the Board take such other and further action as may be just and proper in these premises.

DATED this 13th day of May, 2013.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

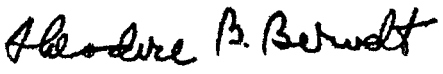
VERIFICATION

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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 13th day of May, 2013.



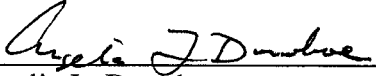
Theodore B. Berndt, M.D.

CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 13th day of May 2013; I served a filed copy of the FIRST AMENDED COMPLAINT via USPS mail to the following:

Matt Pearce, Esq.
Attorney for: Theodore M. Thorp, M.D.
3507 W. Charleston Blvd.
Las Vegas, NV 89102

Dated this 13th day of May, 2013.



Angelia L. Donohoe
Legal Assistant