

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

3 \* \* \* \* \*

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5  
6 **In the Matter of Charges and** )  
7 **Complaint Against** )  
8 **KENT ALAN SWAINE, M.D.,** )  
9 **Respondent.** )

**Case No. 14-20873-1**

**FILED**

**FEB - 5 2014**

**NEVADA STATE BOARD OF  
MEDICAL EXAMINERS**

By: \_\_\_\_\_

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11  
12 **COMPLAINT**

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

21 1. Respondent was originally licensed to practice medicine in the state of Nevada by  
22 the Board on July 1, 2001. On October 14, 2008, the Board revoked Respondent's license to  
23 practice medicine in the state of Nevada after obtaining evidence that Respondent was addicted to  
24 controlled substances and/or dangerous drugs.

25 2. On August 16, 2010, Respondent enrolled in the Nevada Professionals Assistance  
26 Program (NPAP). As part of his enrollment in NPAP, Respondent signed a contract agreeing to  
27 abstain from alcohol and drugs.

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

1           3.       On June 10, 2011, the Board issued Respondent an active license to practice  
2 medicine (License No. 13917) in the state of Nevada subject to several terms and conditions.  
3 Pursuant to these terms and conditions, Respondent was prohibited from prescribing any  
4 controlled substances or dangerous drugs to his immediate family or himself and was ordered to  
5 remain in compliance with the complete terms of his contract with the NPAP.

6           4.       On August 18, 2011, Respondent requested the Board approve a change in his  
7 monitoring program from NPAP to Professionals Reaching Nevada (PRN).

8           5.       On September 20, 2011, with the Board's approval, Respondent terminated his  
9 relationship with NPAP and enrolled in PRN. As part of his enrollment in PRN, Respondent  
10 signed a contract agreeing to abstain from alcohol and drugs.

11           6.       On August 5, 2011, Alexander Hyt, date of birth September 23, 1926 (Mr. Hyt),  
12 passed away from pancreatic cancer. Mr. Hyt was an inpatient at Nathan Adelson Hospice.  
13 Respondent was listed on the clinical notes for Mr. Hyt from Nathan Adelson Hospice as a family  
14 friend during the admission visit at Mr. Hyt's home.

15           7.       On October 24, 2013, Respondent wrote Mr. Hyt a prescription for ninety (90)  
16 tablets of Hydromorphone four (4) milligram (mg). Respondent noted the diagnosis as gastric  
17 cancer.

18           8.       Respondent presented this prescription on October 25, 2013, at CVS pharmacy  
19 #8809, located at 4014 S. Rainbow Blvd, Las Vegas, Nevada. When asked for photo  
20 identification, Respondent produced photo identification for Mr. Hyt. The prescription was filled.  
21 Respondent paid for and left with the prescription.

22           9.       On November 8, 2013, Respondent wrote Mr. Hyt a prescription for ninety (90)  
23 tablets of Hydromorphone four (4) milligram (mg). Respondent noted the diagnosis as gastric  
24 cancer.

25           10.       Respondent presented this prescription on November 11, 2013, at CVS pharmacy  
26 #8809, located at 4014 S. Rainbow Blvd, Las Vegas, Nevada. When asked for photo  
27 identification,

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1           11.     Respondent produced photo identification for Mr. Hyt. The prescription was filled.  
2 Respondent paid for and left with the prescription.

3           12.     On November 22, 2013, Respondent wrote Mr. Hyt a prescription for ninety (90)  
4 tablets of Hydromorphone four (4) milligram (mg). Respondent noted the diagnosis as gastric  
5 cancer.

6           13.     Respondent presented this prescription on November 24, 2013, at CVS pharmacy  
7 #8809, located at 4014 S. Rainbow Blvd, Las Vegas, Nevada. When asked for photo  
8 identification, Respondent produced photo identification for Mr. Hyt. The prescription was filled.  
9 Respondent paid for and left with the prescription.

10          14.     On December 16, 2013, Respondent wrote Mr. Hyt a prescription for ninety (90)  
11 tablets of Hydromorphone four (4) milligram (mg). Respondent noted the diagnosis as gastric  
12 cancer.

13          15.     Respondent presented this prescription on December 16, 2013, at CVS pharmacy  
14 #8809, located at 4014 S. Rainbow Blvd, Las Vegas, Nevada. When asked for photo  
15 identification, Respondent produced photo identification for Mr. Hyt. The prescription was filled.  
16 Respondent paid for and left with the prescription.

17          16.     The records from CVS show that Mr. Hyt's first filled prescription was on  
18 February 25, 2012. Mr. Hyt's prescriptions have been filed at four (4) different CVS pharmacies  
19 in Las Vegas, Nevada.

20          17.     According to CVS, Mr. Hyt's medications include hydromorphone, methadone and  
21 oxycodone-apap. All of Mr. Hyt's medications were prescribed by Respondent. The controlled  
22 substance prescriptions written by Respondent for Mr. Hyt total more than fourteen (14) pages.

23          18.     On or about January 30, 2014, Dr. Swaine tested positive for amphetamines,  
24 benzodiazepine and opiates. This positive test also violates the terms of his contract with PRN.

25          19.     The Prescription Monitoring Program demonstrates that Dr. Swaine wrote  
26 controlled substance and/or dangerous drug prescriptions for his wife, Jean Swaine, and his father-  
27 in-law, Crisostomo Oliveros, in violation of the restrictions currently placed on his license to  
28 practice medicine in the state of Nevada.

1 20. On or about February 3, 2014, Respondent entered an inpatient controlled  
2 substance rehabilitation program.

3 **COUNT I**

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

6 22. NRS 630.306(1)(b) provides that engaging in any conduct that violates the  
7 standards of practice established by regulation of the Board is grounds for initiating discipline  
8 against a licensee.

9 23. NAC 630.185 provides that NAC 630.185 to 630.230, inclusive, set forth the  
10 standards of practice established by the Board.

11 24. NAC 630.230(1)(d) provides that a physician shall not acquire any controlled  
12 substances from any pharmacy or other source by misrepresentation, fraud, deception or  
13 subterfuge.

14 25. As outlined above, Respondent has been acquiring controlled substances from CVS  
15 pharmacies by misrepresentation, fraud, deception or subterfuge when he prescribed controlled  
16 substances to a deceased patient, presented the deceased patient's prescriptions to CVS  
17 pharmacies to be filled, and paid for and left with the deceased patient's filled controlled  
18 substance prescriptions.

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

21 **COUNT II**

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

24 28. NRS 630.306(1)(b) provides that engaging in any conduct that violates the  
25 standards of practice established by regulation of the Board is grounds for initiating discipline  
26 against a licensee.

27 29. NAC 630.185 provides that NAC 630.185 to 630.230, inclusive, set forth the  
28 standards of practice established by the Board.

1 30. NAC 630.230(1)(k) provides that a physician shall not write prescriptions for  
2 controlled substances to treat acute or chronic pain in a manner that deviates from the policies set  
3 forth in the *Model Policy for Use of Controlled Substances for the Treatment of Pain* and any  
4 subsequent revision as adopted by reference in NAC 630.187.

5 31. As outlined above, Respondent violated the policies set forth in the *Model Policy*  
6 *for Use of Controlled Substances for the Treatment of Pain* when he prescribed controlled  
7 substances to a deceased individual.

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

10 COUNT III

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

13 34. NRS 630.306(3) provides that administering, dispensing or prescribing any  
14 controlled substance, or any dangerous drug, to himself or others in violation of law is grounds for  
15 initiating discipline against a licensee.

16 35. As outlined above, Respondent violated the law when he prescribed controlled  
17 substances and/or dangerous drugs to his wife, his father-in-law, and a deceased patient in  
18 violation of the MPA.

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

21 COUNT IV

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

24 38. NRS 630.306(8) provides that dependency on controlled substances is grounds for  
25 initiating discipline against a licensee.

26 39. As outlined above, Respondent is dependent on controlled substances and has  
27 enrolled in an inpatient controlled substance rehabilitation program.

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

3   COUNT V

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

6           42.    NRS 630.301(9) provides that engaging in conduct that brings the medical  
7 profession into disrepute is grounds for initiating discipline against a licensee.

8           43.    As outlined above, Respondent's acts of fraudulently filling prescriptions from  
9 approximately February 2012 to present is conduct that brings the medical profession into  
10 disrepute.

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

13   COUNT VI

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

16          46.    NRS 630.3065 provides that willful failure to comply with an order of the Board is  
17 grounds for initiating disciplinary action against a licensee.

18          47.    Respondent violated an order of the Board by prescribing controlled substances  
19 and/or dangerous drugs to his wife and his father -in-law.

20          48.    Respondent violated an order of the Board when he consumed controlled  
21 substances and/or dangerous drugs.

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

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

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

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- 1           2.       That the Board set a time and place for a formal hearing after holding an  
2 Early Case Conference pursuant to NRS 630.339(3);  
3           3.       That the Board determine the sanctions it will impose if it finds Respondent  
4 violated the Medical Practice Act;  
5           4.       That the Board make, issue and serve on Respondent, in writing, its findings of  
6 fact, conclusions of law and order, which shall include the sanctions imposed; and  
7           5.       That the Board take such other and further action as may be just and proper in these  
8 premises.

9           DATED this 5<sup>th</sup> day of February, 2014.

10  
11           By: \_\_\_\_\_



Erin L. Albright, 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 Complaint against the  
7 Respondent herein; that he has read the foregoing Complaint; and that based upon information  
8 discovered during the course of the investigation into a complaint against Respondent, he believes  
9 the allegations and charges in the foregoing Complaint against Respondent are true, accurate and  
10 correct.

11 Dated this 5<sup>th</sup> day of February, 2014.

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13 Theodore B. Berndt  
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 5<sup>th</sup> day of February 2014; I served a filed copy of COMPLAINT & FINGERPRINT INFORMATION, via USPS e-certified mail to the following:

Kent Swaine, M.D.  
10217 Nightowl Creek Place  
Las Vegas, NV 89144

Dated this 5<sup>th</sup> day of February, 2014.

  
\_\_\_\_\_  
Angelia L. Donohoe  
Legal Assistant