

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 **STEVEN A. HOLPER, M.D.,**)
9 **Respondent.**)
10 _____)
11

Case No. 14-8552-1

FILED

OCT 22 2014

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: _____

12 **COMPLAINT**

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

20 **FACTUAL ALLEGATIONS**

21 The following facts are pertinent for a determination in this matter.

22 **A. Respondent's Licensure Status**

23 1. Respondent was originally licensed by the Board on July 1, 1990 (License No.
24 6061), pursuant to the provisions of the Medical Practice Act.

25 2. On June 7, 2013, Respondent's licensure status was changed to active-probation
26 status, pursuant to the provisions of the Medical Practice Act.

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1 **B. Treatment of Chronic Pain Under the Nevada Medical Practice Act**

2 3. The Medical Practice Act and related regulations establish the standards of practice
3 for the treatment of pain and adopt by reference the "Model Policy for the Use of Controlled
4 Substances for the Treatment of Pain" (Model Policy). The Model Policy establishes adequate
5 treatment policies for the treatment of chronic pain, including the use of controlled substances.
6 The Model Policy establishes that physicians have a responsibility to minimize the potential for
7 abuse and diversion of controlled substances and to follow related pain-treatment policies.

8 4. The Model Policy outlines the criteria by which the Board will evaluate
9 Respondent's treatment of pain in Patient A. The Model Policy requires, at a minimum, that a
10 medical history and physical examination be obtained, evaluated and documented in the patient's
11 medical record. The medical record should document the nature and intensity of the pain, current
12 and past treatments for pain, underlying or coexisting diseases or conditions, the effect of the pain
13 on physical and psychological function, history of substance abuse, and the presence of one or
14 more recognized medical indications for the use of a controlled substance. The medical record
15 should contain a written treatment plan that states objectives that will be used to determine
16 treatment success and should indicate if any further diagnostic evaluations or treatments are
17 planned. The medical record should document that the physician discussed the risks and benefits
18 of the use of controlled substances with the patient, persons designated by the patient or with the
19 patient's guardian. If the patient is at high risk for medication abuse or has a history of substance
20 abuse, the physician should enter into a written treatment agreement with the patient. If the
21 patient's progress is unsatisfactory, the physician should assess the appropriateness of continued
22 use of controlled substances and should consider the use of other treatment modalities.

23 5. Respondent failed to follow the Model Policy in his medical care and treatment of
24 Patient A.

25 **C. Standard of Care For Prescribing Methadone**

26 6. Prior to prescribing a patient Methadone, the physician shall inform the patient
27 about arrhythmia risk, inquire about any history of structural heart disease arrhythmia or syncope,
28 and mandate that the patient have a pretreatment electrocardiogram (ECG).

1 7. After the patient has started the Methadone treatment program, the physician shall
2 require the patient undergo a follow-up ECG within thirty (30) days.

3 **D. Patient A**

4 8. At the time of the incidents alleged herein, Patient A was being treated by
5 Respondent for pain management of his chronic pain. His true identity is not disclosed in this
6 Complaint to protect his identity, but his identity is disclosed in the Patient Designation served on
7 Respondent along with a copy of this Complaint.

8 9. Patient A first presented to Respondent on or about November 2010, following a
9 motor vehicle accident. Patient A treated with Respondent until January 21, 2014.

10 10. During his care and treatment of Patient A, Respondent repeatedly prescribed
11 Patient A the following controlled substances: Alprazolam, Methadone, Oxycodone and Xanax.

12 11. From July 11, 2012 through December 21, 2012, Patient A was prescribed
13 Oxycodone, Xanax and Methadone from multiple physicians, including Respondent.

14 12. Patient A's medical chart lacks documentation demonstrating that Respondent
15 performed a family history, social history and/or past medical history on Patient A at any time
16 during his care and treatment of Patient A.

17 13. Patient A's medical chart lacks documentation demonstrating that Respondent
18 documented Patient A's prior narcotic use through the Nevada State Board of Pharmacy's
19 prescription monitoring program (PMP) before prescribing controlled substances to Patient A.

20 14. Patient A's medical chart lacks documentation demonstrating the nature and
21 intensity of the patient's pain, the effect of pain on the patient's ability to function and the
22 presence of recognized medical indications for the use of controlled substances.

23 15. Patient A's medical chart lacks documentation supporting the continued use,
24 increase and/or change in Patient A's prescribed controlled substances.

25 16. Patient A's medical chart lacks documentation demonstrating that Respondent
26 requested that Patient A's urine drug tests be quantified to determine whether the drug levels in
27 the urine corresponded with the amount of medication prescribed.

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1 17. Patient A's medical chart lacks documentation demonstrating that Respondent
2 ordered Patient A to submit to an ECG prior to initiating Patient A's Methadone treatment
3 program.

4 18. Patient A's medical chart lacks documentation demonstrating that Respondent
5 ordered Patient A to submit to an ECG thirty (30) days after starting Patient A on the Methadone
6 treatment program.

7 19. Patient A's medical chart lacks documentation demonstrating that other treatment
8 modalities or adjuvant therapies were considered by Respondent before prescribing controlled
9 substances.

10 20. Further, Patient A's medical records are also inaccurate, illegible and/or
11 incomplete.

12 **COUNT I**

13 **(Malpractice)**

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

16 22. NAC 630.040 defines malpractice as the failure of a physician, in treating a patient,
17 to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances.

18 23. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating
19 disciplinary action against a licensee.

20 24. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
21 to use the reasonable care, skill and/or knowledge ordinarily used under similar circumstances
22 when treating Patient A by failing to initially and subsequently check Patient A's narcotic use
23 through the PMP, failing to request that Patient A's urine drug tests be quantified to ensure the
24 drug levels in the urine corresponded with the prescribed medications, failing to order Patient A to
25 submit to an ECG before initiating the Methadone treatment program, failing to order Patient A to
26 submit to an ECG thirty (30) days after initiating the Methadone treatment program; failing to
27 order diagnostic testing and/or imaging to determine the etiology of Patient A's pain, failing to
28 prescribe controlled substances to Patient A in accordance with the law, and failing to treat

1 Patient A's pain with other modalities and/or adjuvant therapies prior to prescribing controlled
2 substances.

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

5 **COUNT II**

6 **(Medical Records Violation – Five Counts)**

7 26. All of the allegations in the above paragraphs are hereby incorporated as if fully set
8 forth herein.

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

12 28. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
13 to maintain accurate and/or complete medical records relating to the diagnosis, treatment and care
14 of Patient A when he failed to document the nature and intensity of the patient's pain, the effect of
15 pain on the patient's ability to function, and the presence of recognized medical indications for the
16 use of controlled substances.

17 29. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
18 to maintain accurate and/or complete medical records relating to the diagnosis, treatment and care
19 of Patient A when he failed to document that other treatment modalities or adjuvant therapies had
20 been considered by Respondent prior to prescribing controlled substances to Patient A.

21 30. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
22 to maintain accurate and/or complete medical records relating to the diagnosis, treatment and care
23 of Patient A when he failed to document that he had obtained the patient's prior narcotic use
24 through the PMP.

25 31. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
26 to maintain accurate and/or complete medical records relating to the diagnosis, treatment and care
27 of Patient A when he failed to document that he performed a family history, social history and/or
28 past medical history on Patient A.

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32. 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 Complaint herein as set forth in NRS 630.339(2) within twenty (20) days of service of the 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 Medical Practice Act;

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 22nd day of October, 2014.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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 20th day of October, 2014.

12
13 Theodore B. Berndt
14 Theodore B. Berndt, M.D.

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

CERTIFICATE OF SERVICE

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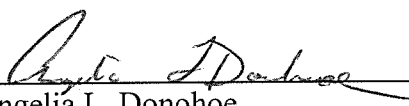
I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 22nd day of October 2014; I served a filed copy of COMPLAINT, PATIENT DESIGNATION and FINGERPRINT INFORMATION, USPS e-certified return receipt mail to the following:

Steven A. Holper, M.D.
3233 W. Charleston Blvd., #202
Las Vegas, NV 89102

Sent a copy of the Complaint and Patient Designation only to the following via USPS regular mail:

L. Kristopher Rath, Esq.
Hutchison & Steffen
10080 West Alta Dr., Ste. 200
Las Vegas, NV 89145

Dated this 22nd day of October, 2014.



Angelia L. Donohoe
Legal Assistant