BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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FILED

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NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____

In The Matter of Charges and Complaint Against JAMES TATE, M.D., Respondent.	**Case No. 10-9809-2**

COMPLAINT

The Investigative Committee of the Nevada State Board of Medical Examiners ("Board"), composed at the time of filing of Charles N. Held, M.D., Chairman, Theodore B. Berndt, M.D., Member, and Valerie J. Clark, Member, by and through Bradley O. Van Ry, Deputy General Counsel, having a reasonable basis to believe that James Tate, M.D., hereinafter referred to as "Respondent", has violated the provisions of NRS Chapter 630, hereby issues its formal Complaint, stating the Investigative Committee's charges and allegations, as follows:

1. Respondent is currently licensed in active status (License No. 5717), and has been so licensed since July 1, 1988 by the Nevada State Board of Medical Examiners pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes.

2. Patient A was a sixty-two year old (62) male at the time of the incidents in question. His true identity is not disclosed to protect his privacy, but his identity is disclosed in the Patient Designation served on Respondent along with a copy of this Complaint.

3. Patient A checked into the emergency room ("ER") at University Medical Center on August 26, 2006. He complained of abdominal pain that was found to be mild with no abdominal guarding or rebound tenderness, and no fever or chills were present.

4. The pertinent lab tests showed: WBC, 16; bilirubin, 2.1. An ultrasound scan showed 2 gallstones in the gallbladder. No signs of acute cholecystitis were evident, and no

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sonographic Murphy's sign was evident which would be expected if Patient A had acute cholecystitis.

5. Antibiotics were given, and a surgical consultation was requested. The surgical consult reiterated the findings of the ER doctor, but also wanted an ERCP to be performed in order to look for common duct stones. The tentative diagnosis was acute cholecystitis.

6. The next morning, August 27, 2006, Patient A's WBC had dropped to 13.1. He was afebrile, and the abdominal exam was essentially normal.

7. Patient A, however, became jaundiced as his serum bilirubin rose from 2.1 to 4.7. The surgeons again requested an ERCP. The evidence at this point supported a diagnosis of common duct stones, and an ERCP was the only treatment strongly indicated.

8. On August 28, 2006, the surgeon again reiterated the need for an ERCP for probable common duct stones. The Internal Medicine ("IM") physician noted the increasing evidence for a bile duct obstruction and reported that a GI consult/surgeon would be contacted to perform the ERCP.

9. The ERCP was not performed, and no notes exist to explain why. Instead, Respondent took Patient A into the OR at 10:30 a.m. for a laparoscopic cholecystectomy. As stated above, no preoperative notes exist to demonstrate the reasons why the ERCP was not performed or the reasons for the change in treatment plans. It is likely that an ERCP and removal of the common duct stones was all the treatment necessary to resolve Patient A's acute illness, and a cholecystectomy was unnecessary.

10. The cholecystectomy, by Respondent, began as a laparoscopic operation and was converted to a laparotomy because of very dense adhesions encountered that made the identification of the structures impossible. The gall bladder was removed with great difficulty after the abdomen was opened up.

11. Upon removal of the gallbladder, by Respondent, the following complications arose: a puncture of the portal vein that resulted in the loss of 2 units of blood, resection of the central portion of the common duct and resection of the right hepatic artery. An operative cholangiogram could not be performed to clarify the anatomy because no cystic duct could be

found. The gallbladder bed continued to bleed after removal and required packing with surgical sponges. The sponges had to be surgically removed the following day on August 29, 2006.

12. On September 1, 2006, an ERCP showed that the common duct could only be opacified about half way when it was then blocked by a clip. Two gallstones were removed, the largest of which was 1.5 cm in diameter.

13. That same day an exploratory laparotomy was performed in a futile search for bile ducts. A transhepatic (right lobe) catheterization of the biliary tree and a percutaneous CT-guided drainage of a subhepatic bile collection also took place.

14. The exploratory laparotomy was not indicated and should not have taken place. It simply increased the extent of the damage.

15. Another laparotomy was performed on September 4, 2006. This too was not indicated, but at a minimum, should not have been for the purpose of ligating the leaking ducts. Nothing was accomplished by this procedure.

16. Since the second operation on August 29, 2006, Patient A's serum bilirubin level stayed in the range of 10-20 mg%. His hepatic lobe was infarcted and nonfunctioning. Respondent's treatment plan at this point, to await spontaneous dilatation of the bile ducts, was hopeless.

17. On September 23, 2006, a vena cava filter was inserted. The indications for this filter were insufficient because Patient A had no manifestations of venous thrombosis or pulmonary embolism and no contraindications to anticoagulants.

18. Patient A subsequently was transferred to England and gradually deteriorated where he died of hepatic failure on October 30, 2006. The postmortem examination showed malnutrition, an infarcted right liver lobe, absent common duct and a large hematoma where the vena cava filter had eroded through the wall of the cava.

19. Based upon the foregoing, Respondent's medical care fell below the standard of care on numerous occasions in the treatment of Patient A.

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20. Respondent failed to treat the common duct obstruction before performing a cholecystectomy. A strongly indicated ERCP was not performed before and in lieu of performing a cholecystectomy.

21. Respondent improperly dissected tissues in the hilum of the liver when he was uncertain of the anatomy. This resulted in a severe bile duct injury and infarction of the right lobe of the liver. A cholecysteostomy should have been done instead.

22. Respondent failed to seek the advice of another surgeon during the unusually difficult cholecystectomy.

23. Respondent failed after the cholecystectomy was completed to seek input from a surgeon with expertise in treating bile duct injuries.

24. Respondent failed after the cholecystectomy was completed to transfer Patient A to the care of a surgeon with expertise in treating bile duct injuries.

25. Respondent inappropriately performed a third operation in search of the missing bile ducts that had been excised during the first operation. Even if Respondent had found the ducts, he did not have the knowledge or experience to do anything that might benefit Patient A. The operation was unnecessary, unsuccessful and harmful to Patient A.

26. Respondent inappropriately performed a fourth operation with the intention of ligating the bile ducts when such procedure was not indicated.

27. Respondent inappropriately performed an unnecessary operation to insert a vena cava filter that later eroded through the wall of the cava and produced a large retroperitoneal hematoma.

Count I

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

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

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30. Nevada Revised Statute Section 630.301(4) provides that malpractice is grounds for initiating disciplinary action against a licensee.

31. Respondent failed to use the reasonable care, skill, or knowledge ordinarily used under the same or similar circumstances as indicated above. Respondent exhibited global deficiencies in knowledge, judgment and problem-solving strategies in the treatment of Patient A. The treatment plan was faulty, and when complications developed that were beyond his competence, Respondent failed in his obligation to arrange for Patient A's care to be assumed by a physician with the requisite experience, training and knowledge.

32. By reason of the foregoing, Respondent is subject to discipline by the Nevada State Board of Medical Examiners as provided in Section 630.352 of the Nevada Revised Statutes.

WHEREFORE, the Investigative Committee prays:

1. That the Nevada State Board of Medical Examiners 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 Section 630.339 of the Nevada Revised Statutes within twenty (20) days of service of the Complaint.

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

3. That the Nevada State Board of Medical Examiners determine what sanctions it determines to impose if it determines there has been a violation or violations of the Medical Practice Act (Nevada Revised Statutes Chapter 630) committed by Respondent; and

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

5. That the Nevada State Board of Medical Examiners take such other and further

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action as may be just and proper in these premises.

DATED this 14th day of September, 2010.

THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

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VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF DOUGLAS)

Charles N. Held, 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 29th day of September, 2010.

Charles N. Held, M.D.

CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 29th day of September 2010; I served a file copy of the COMPLAINT & PATIENT DESIGNATION, by mailing via USPS certified return receipt to the following:

Jacob L. Hafter, Esq.
Jacob Hafter & Associates
7201 Lake Mead Blvd., Ste. 210
Las Vegas, NV 89128

Dated this 29th day of September 2010.

Angelia L. Donohoe
Legal Assistant

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