

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

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In The Matter of Charges and)
)
Complaint Against)
)
MICHAEL KAPLAN, M.D.)
)
Respondent.)
_____)

Case No. 11-8547-1

FILED

MAR 3 0 2011

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: _____

COMPLAINT

The Investigative Committee of the Nevada State Board of Medical Examiners, composed of Charles N. Held, M.D., Theodore B. Berndt, M.D. and Ms. Valerie Clark, BSN, RHU, LUTCF, having a reasonable basis to believe that Michael Kaplan, 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 suspended-indefinitely status (License No. 5983). Respondent was originally licensed on December 2, 1989 by the Nevada State Board of Medical Examiners pursuant to the provisions of Chapter 630 of the Nevada Revised Statutes and was licensed in active status until March 14, 2011.

2. On or about December 9, 2011, Respondent purchased and received a GE Logiq 200 MD Alpha Ultrasound System and GE MTZ 6.5 MHz Endocavity Transducer from Providian Medical Equipment. The ultrasound system, in conjunction with the endocavity transducer and a needle guide, may be utilized in specific urological procedures, including prostate biopsies, gold fiducial marker placements, and Visicoil marker placement.

3. Needle guides were provided with the ultrasound system and transducer; however the guides provided initially were not the appropriate guides for use with the transducer.

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1 4. On or about December 15, 2010, GE Endo Kit-GE E8C needle guides were sent via
2 over night shipping from Civco Medical Solutions. The GE Endo Kit-GE E8C needle guides are
3 disposable and are single-use only. The GE Endo Kit-GE E8C needle guides are purchased by the
4 box; each box containing twenty-four single-use needle guides. Each box contains a copy of the
5 “Endoscopy Disposable Needle Guide” reference guide from Civco. The reference guide states
6 that “[d]isposable components are packaged sterile and are single-use only”. The reference guide
7 does not include any instructions for cleaning the needle guides; rather it directs single-use
8 components to be disposed of as infectious waste.

9 5. Respondent’s office received shipments containing one box of GE Endo Kit-GE
10 E8C needle guides, which were shipped on December 15, 2010, February 4, 2011 and
11 March 7, 2011.

12 6. Between December 15, 2010 and March 11, 2011 a minimum of 115 procedures
13 involving Patients 1-115, whose identities are not revealed to protect their privacy but whose
14 identities have been provided to Respondent, requiring needle guides were performed in
15 Respondent’s Henderson office. Based on the number of needle guides shipped to Respondent’s
16 office, there were not enough disposable needle guides for all procedures that were performed
17 during this time period.

18 7. After procedures using the disposable needle guides, medical assistants would
19 attempt to clean and disinfect the needle guides by running them under water, attempt to scrape
20 out any remaining tissue or blood without using a brush and would then soak them in Cidex
21 solution and allow them to dry. Often bits of tissue or blood would remain after attempted
22 cleaning and disinfecting. Guides were disposed of after becoming too bloody.

23 8. Interviews conducted with staff indicated that they were instructed to reuse the
24 needle guides after procedures and continued to do so into the month of March 2011.

25 9. Respondent has admitted to reusing the needle guides.

26 10. On March 14, 2011, Respondent was served with an Order from the Investigative
27 Committee pursuant to NRS 630.326 summarily suspending his license to practice medicine based
28 on the preliminary findings of the investigation.

Count I

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

4 12. NRS 630.301(4) provides that malpractice is grounds for initiating discipline
5 against a licensee.

6 13. Respondent committed malpractice as defined by NAC 630.040 when he
7 knowingly allowed the reprocessing of disposable, single-use needle guides used during the
8 performance of urologic procedures and reuse of said disposable, single-use needle guides during
9 the time period set forth above, thus failing to use the reasonable care skill, or knowledge
10 ordinarily used under similar circumstances in his treatment of Patients 1-115 and, accordingly, is
11 in violation of NRS 630.301(4).

12 14. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
13 Board of Medical Examiners as provided in NRS 630.352.

Count II

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

19 16. Respondent, in knowingly allowing the reprocessing of disposable, single-use
20 needle guides used during the performance of urologic procedures and reusing said disposable,
21 single-use needle guides during the time period set forth above shows a continual failure to
22 exercise the skill or diligence ordinarily exercised under the same circumstances by physicians in
23 good standing practicing in the same specialty or field and therefore constitutes a violation of
24 NRS 630.306(7).

25 17. By reason of the foregoing, Respondent is subject to discipline by the Nevada State
26 Board of Medical Examiners as provided in NRS 630.352.

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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);

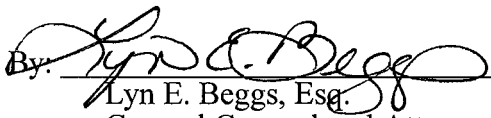
3. That the Nevada State Board of Medical Examiners determine what sanctions it determines to impose if it determines there has been a violation or violations of the Medical Practice Act (Nevada Revised Statutes Chapter 630) committed by Respondent;

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 action as may be just and proper in these premises.

DATED this 30th day of March, 2011.

THE INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: 

Lyn E. Beggs, Esq.
General Counsel and Attorney for the Investigative Committee

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
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VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF DOUGLAS)

CHARLES N. HELD, M.D., having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate, and correct.

DATED this 30th day of March, 2011.



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 30th day of March 2011, I served a file copy of the COMPLAINT, CONFIDENTIAL PATIENT DISCLOSURE & Fingerprint Information, by mailing via USPS certified regular mail to the following:

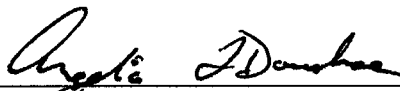
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3441 S. Eastern Ave., Ste. 402
Las Vegas, NV 89169

Dominic Gentile, Esq.
Gordon Silver
3960 Howard Hughes Pkwy., Ninth Floor
Las Vegas, NV 89169

By mailing via USPS regular mail, Complaint & Confidential Patient Disclosure:

Pat Dolan, J.D., Hearing Officer
7980 Meadow Vista Court
Reno, NV 89511

Dated this 30th day of March 2011.



Angelia L. Donohoe
Legal Assistant