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

In the Matter of Charges and)
)
Complaint Against)
)
THEODORE M. THORP, M.D.,)
)
Respondent.)

Case No. 12-4518-1

FILED

NOV - 5 2012

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

COMPLAINT

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

FACTUAL BACKGROUND

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

A. Respondent's Licensure Status in Nevada

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

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

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

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

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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)(h) 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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1 COUNT II

2 **(Two Counts – Unprofessional Conduct)**

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

5 25. NRS 630.306(16) provides that engaging in any act that is unsafe or unprofessional
6 conduct in accordance with regulations adopted by the Board is grounds for initiating disciplinary
7 action against a licensee.

8 26. NAC 630.230(1)(h) provides that failure to provide adequate supervision of a MA
9 who is employed or supervised by the physician constitutes unprofessional conduct.

10 27. NAC 630.230(1)(i) provides that failure to provide adequate supervision of a
11 physician assistant constitutes unprofessional conduct.

12 28. Respondent violated NAC 630.230(1)(h) when he failed to adequately supervise
13 Swiatek as outlined above.

14 29. Respondent violated NAC 630.230(1)(i) when he failed to adequately supervise
15 Hibbert as outlined above.

16 30. By failing to adequately supervise both Hibbert and Swiatek, Respondent engaged
17 in unprofessional conduct.

18 31. By reason of the foregoing, Respondent is subject to discipline by the Board as
19 provided in NRS 630.652.

20 COUNT III

21 **(Failure to Supervise MA)**

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

24 33. NRS 630.306(18) provides that failure to adequately supervise a MA pursuant to
25 the regulations of the Board is grounds for initiating disciplinary action against a licensee.

26 34. NAC 630.230(1)(h) provides that failure to provide adequate supervision of a MA
27 who is employed or supervised by the physician constitutes unprofessional conduct.

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1 35. Respondent's failure to adequately supervise Swiatek as outlined above violates the
2 regulations of the Board.

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

5 **COUNT IV**

6 **(Signing a Blank Prescription Form)**

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

9 38. NRS 630.304(4) provides that signing a blank prescription form is grounds for
10 initiating disciplinary action against a licensee.

11 39. At the times alleged in this Complaint, Respondent customarily provided his MAs
12 with signed blank prescription forms.

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

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

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

19 2. That the Board set a time and place for a formal hearing after holding an
20 Early Case Conference pursuant to NRS 630.339(3);

21 3. That the Board determine the sanctions it will impose if it finds Respondent
22 violated the Medical Practice Act;

23 4. That the Board make, issue and serve on Respondent, in writing, its findings of
24 fact, conclusions of law and order, which shall include the sanctions imposed; and

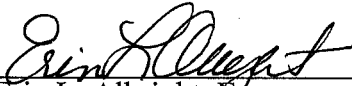
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5. That the Board take such other and further action as may be just and proper in these premises.

DATED this 5th day of November, 2012.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

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

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 5th day of November, 2012.

Theodore B. Berndt
Theodore B. Berndt, M.D.

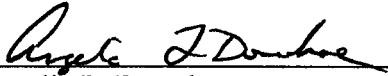
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CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 6th day of November 2012; I served a filed copy of the Complaint, Patient Designation & Fingerprint Information via USPS e-certified mail return receipt to the following:

Theodore Thorp, M.D.
2801 W. Charleston, Ste. 200
Las Vegas, NV 89102

Dated this 6th day of November 2012.



Angelia L. Donohoe
Legal Assistant