BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

* * * * *

in the Matter of Charges and) Case No. 13-28205-1
Complaint Against)
KATHLEEN D. SMITH, M.D.,) FILED
	OCT 1 7 2013
Respondent.	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., Board General Counsel and attorney for the IC, having a reasonable basis to believe that Kathleen D. Smith, M.D. (Respondent), violated the provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630 (collectively, the Medical Practice Act), hereby issues its formal Complaint, stating the IC's charges and allegations as follows:

- 1. Respondent is currently licensed in active status (License No. 10735), and has been so licensed by the Board since December 4, 2003, pursuant to the provisions of the Medical Practice Act.
- 2. Patient A was a fifty-four (54)-year-old male at the time of the incidents in question. His true identity is not disclosed in this Complaint to protect his identity, but his identity is disclosed in the Patient Designation contemporaneously served on Respondent with this Complaint.

///

3.	On or about December 8	, 2009, Patient	A presented to Res	pondent to establish as a
patient for V	aser Liposuction.			
4.	On or about December	17, 2009, Pati	ient A presented to	Respondent for Vase

- 4. On or about December 17, 2009, Patient A presented to Respondent for Vaser Liposuction of the chin and jaw line. This procedure was uneventful.
- 5. On or about December 23, 2009, Patient A presented to Respondent for Vaser Liposuction of the upper and lower abdomen.
- 6. During the second liposuction procedure, Patient A became unstable and emergency medical services (EMS) were called. EMS arrived and transported Patient A to the hospital, where he was admitted for an altered mental status, anoxic encephalopathy and leukocytosis.
- 7. While being admitted to the hospital, Patient A complained of increasing abdominal pain. He was found to be tachypneic and tachycardic. A CT scan of Patient A's abdomen and pelvis showed free air that was suspicious for perforated viscus.
- 8. On or about December 24, 2009, Patient A underwent an exploratory laparotomy and was found to have adhesions from his Vaser Liposuction procedure along with enteric contents in the peritoneal cavity. Patient A was noted to have several perforations in the small bowel at approximately the junction of the proximal two-thirds and distal one-third of the small bowel that was contained within a fifteen (15) centimeter segment. A small bowel resection and primary anastomosis was performed.
 - 9. During Patient A's hospital stay he was also diagnosed with a pulmonary embolus.
- 10. Patient A's medical records do not contain a preoperative physical exam and/or preoperative abdominal physical exam performed by Respondent. The records only contain a brief history, which was performed by a registered nurse/medical assistant. The brief history was never signed by Respondent.

COUNT I (Medical Records Violation)

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

///

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

	12.	NRS 630.3062(1) pro	vides that the f	ailure to m	aintain ti	imely, legi	ble, accura	te and
comple	te med	ical records relating to	the diagnosis,	treatment	and care	of a patie	ent is groun	ds fo
initiatin	ng disci	pline against a licensee	5.					

- 13. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to maintain accurate and/or complete medical records relating to the diagnosis, treatment and care of Patient A when she failed to document in Patient A's medical chart the preoperative physical exam she performed on Patient A.
- 14. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

COUNT II (Malpractice)

- All of the allegations contained in the above paragraphs are hereby incorporated by 15. reference as though fully set forth herein.
- 16. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating disciplinary action against a licensee.
- 17. NAC 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.
- 18. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when she failed to obtain an abdominal CT scan from Patient A prior to performing the Vaser Liposuction.
- 19. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when she failed to refer Patient A to a general surgeon prior to performing the Vaser Liposuction.
- 20. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

///

///

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

WHEREFORE, the Investigative Committee prays:

- 1. That the Board give Respondent notice of the charges herein against her and give her notice that she 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):
- 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 17 day of October, 2013.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

Erin L. Albright, Esq

General Counsel

Attorney for the Investigative Committee

OFFICE OF THE GENERAL COUNSEL Nevada State Board of Medical Examiners

VERIFICATION

STATE OF NEVADA)
COUNTY OF WASHOE	: ss.)

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, he believes the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

Dated this 17th day of October, 2013.

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

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 17th day of October 2013; I served a filed copy of the COMPLAINT, PATIENT DESIGNATION and Fingerprint Information, via USPS e-certified return receipt mail to the following:

Kathleen D. Smith, M.D. 8660 Spring Mountain Ste. 101 Las Vegas, NV 89117

Dated this 17th day of October, 2013.

Angelia L. Donohoe Legal Assistant