BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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In the Matter of Charges and

Complaint Against

DONALD DEAN YARBRO, JR., M.D.,

Respondent.

Case No. 12-6960-1

JAN 2 3 2014

NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

MEDICAL EXAMINERS

By:

FIRST AMENDED COMPLAINT

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board), comprised of Theodore B. Berndt, M.D., Chairman, Valerie J. Clark, BSN, RHU, LUTCF, Member, and Michael J. Fischer, M.D., Member, by and through Bradley O. Van Ry, Esq., Board General Counsel and attorney for the IC, having a reasonable basis to believe that Donald Dean Yarbro, Jr., M.D. (Respondent), has violated the provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630, collectively the Medical Practice Act (MPA), hereby issues its First Amended Complaint, stating the IC's charges and allegations, as follows:

- 1. Respondent is currently licensed in active status (License No. 4777), and he has been so licensed by the Board since April 9, 1983, pursuant to the provisions of the MPA.
- 2. Patient A was a forty-six (46)-year-old female at the time of the incidents in question. Her true identity is not disclosed to protect her privacy, but her identity was disclosed in the Patient Designation served on Respondent along with a copy of the formal Complaint.
- 3. On or about March 30, 2011, Patient A suffered a fall from a sixteen (16)-foot ladder and injured her right leg and knee. She presented to Concentra Medical Center for diagnosis, treatment and care.

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- As a result of the examination, the treating physician ordered x-rays. The treating physician ordered three (3) x-ray views of the right knee. The x-rays were taken that day.
- 5. Respondent was the reviewing radiologist of the x-rays. He viewed and interpreted the three (3) x-ray views on April 1, 2011.
- Respondent dictated an April 1, 2011 report with findings, "[n]o fracture is noted. Joint alignment and soft tissues are unremarkable. Bone density and morphology are within normal limits. There is no evidence of radiopaque foreign body noted." The impression was, "[n]o significant abnormality of the knee."
- 7. Unfortunately, Respondent failed to note an unexpected artifact or defect in the record. A large joint effusion existed in the suprapatellar region which was not mentioned in Respondent's report. There was also a displaced fracture of the lateral tibial plateau that was not noted in the record.
- Due to the patient's inability to bear weight, the treating physician also ordered magnetic resonance imaging (MRI) on that same day. The MRI was performed on March 31, 2011, and confirmed the lateral tibial plateau fracture and large joint effusion not mentioned in Respondent's report.

Count I

- 9. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.
- 10. 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.
- 11. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating disciplinary action against a licensee.
- 12. Respondent's care and treatment of Patient A, as described above, shows a failure to use reasonable care, skill, or knowledge ordinarily used under similar circumstances.
- By reason of the foregoing, Respondent is subject to discipline by the 13. Board as provided in NRS 630.352.

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Count II

- All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.
- 15. NRS 630.3062(1) provides that the failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient is grounds for initiating disciplinary action against a licensee.
- 16. Respondent's failure to note an unexpected artifact in the record, as detailed above, constitutes a failure to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient.
- 17. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

WHEREFORE, the IC prays:

- That the Board give Respondent notice of the charges herein against him and give him notice that he may file an answer to the First Amended Complaint herein as set forth in NRS 630.339 within twenty (20) days of service of the First Amended 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 what sanctions it will impose if it determines there has been a violation or violations of the MPA committed by Respondent;
- That the Board make, issue and serve on Respondent its findings of fact, conclusions of law and order, in writing, that includes the sanctions imposed; and,
- That the Board take such other and further action as may be just and proper in these 5. premises.

DATED this $\mathcal{A}^{\mathcal{T}}$ day of January

> INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

Van Ry, 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. Bernd	t, M.D

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 First Amended Complaint against the Respondent herein; that he has read the foregoing First Amended 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 First Amended Complaint against Respondent are true, accurate and correct.

Dated this 24th day of JAnuary, 2014.

THEODORE B. BERNDT, M.D.

CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 24th day of January 2014; I served a filed copy of the FIRST AMENDED COMPLAINT, via USPS to the following:

David J. Mortensen, Esq. 7401 West Charleston Blvd. Las Vegas, NV 89117-1401

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

Dated this 24th day of January, 2014.

Angelia L. Donohoe Legal Assistant