

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

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6 **In the Matter of Charges and**)
7 **Complaint Against**)
8 **JOHN JOSEPH DUDEK, JR., M.D.,**)
9 **Respondent.**)
10 _____)
11

Case No. 12-4879-1

FILED

JUN - 3 2014

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: _____

12 **SECOND AMENDED COMPLAINT**

13 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners
14 (Board) composed, at the time filing was approved, of Theodore B. Berndt, M.D.,
15 Ms. Valerie J. Clark, BSN, RHU, LUTCF, and Michael J. Fischer, M.D., having a reasonable
16 basis to believe that John Joseph Dudek, Jr., M.D. (Respondent), has violated the provisions of
17 Nevada Revised Statutes (NRS) Chapter 630, hereby issues its formal Complaint, stating the IC's
18 charges and allegations, as follows:

19 1. Respondent is licensed to practice medicine in the state of Nevada
20 (License No. 3293), and was originally licensed by the Board on March 13, 1977, pursuant to the
21 provisions of Chapter 630 of the NRS.

22 2. Respondent practices urology at 2020 Goldring Avenue, Suite 506, in Las Vegas,
23 Nevada.

24 3. Respondent rents space within his office to Riveka Frey, R.N., aka Reva Frey, who
25 owns and operates her independent business, "Facial Enhancements by Reva," in the office space
26 rented from Respondent.

27 4. Respondent purportedly acts in the capacity as "medical director" for Ms. Frey's
28 practice and is available if there is a medical issue that arises from Ms. Frey's procedures.

1 However, Ms. Frey performs evaluations of the patients upon which she performs procedures and
2 determines the treatment to be provided, including which dangerous drug(s) to administer to
3 patients, independently from Respondent. Pursuant to NRS 454.213, as applied to this matter,
4 dangerous drugs may only be possessed and administered by a licensed practitioner, as defined by
5 NRS 454.00958, or they may be administered by a registered nurse at the direction of a prescribing
6 physician. Ms. Frey's patients are not evaluated by Respondent nor are they prescribed dangerous
7 drugs by Respondent.

8 5. Respondent, until very recently, knowingly allowed Ms. Frey to order dangerous
9 drugs, including, but not limited to, Botox, Restylane, Juvederm and other dangerous drugs used
10 commonly in cosmetic procedures, through his account with various drug wholesalers. Ms. Frey
11 would indicate to Respondent's office manager what drugs she wished to order and would pay for
12 them with her credit card. Respondent signed an acknowledgment for receipt of the drugs after
13 delivery of the drugs to his office and the drugs would be turned over to Ms. Frey.

14 6. The dangerous drugs ordered by Ms. Frey and delivered to Respondent's office
15 included Latisse, a drug that is to be dispensed only. Pursuant to NRS 454.215(3), a licensed
16 physician may only dispense a dangerous drug if authorized by the Nevada State Board of
17 Pharmacy in accordance with NRS 639.23505. Respondent does not, nor has he ever, held a
18 certificate of registration from the Nevada State Board of Pharmacy to dispense controlled
19 substances or dangerous drugs in the state of Nevada. Ms. Frey was not legally authorized to
20 dispense any dangerous drugs either.

21 7. On or about February 21, 2013, Respondent applied for, and subsequently received,
22 a dispensing license from the Nevada State Board of Pharmacy.

23 8. On May 9, 2013, Ms. Frey entered into an Agreement for Reprimand with the
24 Nevada State Board of Nursing. In that Agreement, Ms. Frey admitted that from approximately
25 April 2011 through March 9, 2012, she worked in Respondent's office as a Licensed Professional
26 Nurse performing cosmetic procedures.

27 9. Ms. Frey further admitted that she failed to maintain and/or produce written
28 protocols for procedures that she performed as required by law.

1 10. Ms. Frey also admitted that Respondent denied having knowledge of orders placed
2 for injectable hyaluronic acid (Restylane) and other prescription medications used for the
3 procedures she performed.

4 11. Ms. Frey further admitted that her conduct constituted a violation of NRS
5 632.320(1)(g), unprofessional conduct, a violation of NAC 632.890(2), practicing beyond scope of
6 practice, and a violation of NAC 632.890(27), for failing to perform nursing functions in a manner
7 consistent with established or customary standards.

8 12. Significantly, Respondent is not a trained dermatologist or plastic surgeon and has
9 little or no experience or training in cosmetic procedures, including the performance of facial
10 cosmetic procedures, and therefore would not be qualified to have performed the evaluations or
11 make the diagnoses and treatment determinations for those patients that saw Ms. Frey in her
12 independent practice operating in Respondent's office.

13 13. Patient A was a sixty-one (61)-year-old female at the time of the incidents in
14 question. Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
15 Patient Designation served on Respondent along with a copy of this Complaint.

16 14. Patient A saw Ms. Frey for an injection of Botox, 20 units, on March 23, 2012.
17 The medical records do not include any history and/or physical, nor do the records accurately
18 depict Patient A's current medical and/or physical condition. Furthermore, it appears from the
19 records that at no time did Respondent see, examine and/or treat Patient A.

20 15. Patient B was a thirty-six (36)-year-old female at the time of the incidents in
21 question. Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
22 Patient Designation served on Respondent along with a copy of this Complaint.

23 16. Patient B saw Ms. Frey for an injection of Restylane, hyaluronic acid, on
24 March 20, 2012. Then, on March 22, 2012, Ms. Frey injected Patient B with 1 syringe of
25 Radiesse. The medical records do not include any history and/or physical, nor do the records
26 accurately depict Patient B's current medical and/or physical condition. Furthermore, it appears
27 from the records that at no time did Respondent see, examine and/or treat Patient B.

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1 17. Patient C was a sixty-six (66)-year-old female at the time of the incidents in question.
2 Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
3 Patient Designation served on Respondent along with a copy of this Complaint.

4 18. Patient C saw Ms. Frey for an injection of Restylane, hyaluronic acid, 2 units, into
5 her lips on March 22, 2012. The medical records do not include any history and/or physical, nor
6 do the records accurately depict Patient C's current medical and/or physical condition.
7 Furthermore, it appears from the records that at no time did Respondent see, examine and/or treat
8 Patient C.

9 19. Patient D was a fifty-two (52)-year-old female at the time of the incidents in question.
10 Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
11 Patient Designation served on Respondent along with a copy of this Complaint.

12 20. Patient D saw Ms. Frey for an injection of Dysport, 60 units, into her forehead on
13 March 22, 2012. The medical records do not include a complete history and/or physical, nor do
14 the records accurately depict Patient D's current medical and/or physical condition. Furthermore,
15 it appears from the records that at no time did Respondent see, examine and/or treat Patient D.

16 21. Patient E was a fifty-five (55)-year-old female at the time of the incidents in question.
17 Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
18 Patient Designation served on Respondent along with a copy of this Complaint.

19 22. Patient E saw Ms. Frey for an injection of Radiesse, 3 syringes, to her face on
20 March 20, 2012. The medical records do not include any history and/or physical, nor do the
21 records accurately depict Patient E's current medical and/or physical condition. Furthermore, it
22 appears from the records that at no time did Respondent see, examine and/or treat Patient E.

23 23. Patient F was a forty-six (46)-year-old female at the time of the incidents in question.
24 Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
25 Patient Designation served on Respondent along with a copy of this Complaint.

26 24. Patient F saw Ms. Frey for an injection of Dysport, 60 units, into her face on
27 March 22, 2012. The medical records do not include a complete history and/or physical, nor do

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1 the records accurately depict Patient F's current medical and/or physical condition. Furthermore,
2 it appears from the records that at no time did Respondent see, examine and/or treat Patient F.

3 25. Patient G was a female of unknown age at the time of the incidents in question. Her
4 true identity is not disclosed to protect her privacy, but her identity is disclosed in the
5 Patient Designation served on Respondent along with a copy of this Complaint.

6 26. Patient G saw Ms. Frey for multiple injections from August 8, 2010, to December
7 21, 2011. Patient G was injected with Botox, 50 units, on August 8, 2010. She was injected with
8 Radiesse, 2 syringes, and Botox, 50 units, on January 12, 2011. She was injected with an
9 unknown substance on January 25, 2011. She was injected with Botox, 50 units, on April 25,
10 2011. She was injected with Botox, 50 units, on July 13, 2013. She was injected with Dysport,
11 unknown quantity, on October 15, 2011. She was injected with Dysport and Radiesse, unknown
12 quantities, on December 21, 2011.

13 27. The medical records do not include any history and/or physical, nor do the records
14 accurately depict Patient G's current medical and/or physical condition. Furthermore, it appears
15 from the records that at no time did Respondent see, examine and/or treat Patient G.

16 28. Patient H was a male or female of unknown age at the time of the incidents in
17 question. Patient H's true identity is not disclosed to protect privacy, but the identity is disclosed
18 in the Patient Designation served on Respondent along with a copy of this Complaint.

19 29. Patient H saw Ms. Frey for an injection of Dysport, 25 units on November 30,
20 2011. Patient H also saw Ms. Frey for an injection of Dysport, 60 units, on March 22, 2012. The
21 medical records do not include any history and/or physical, nor do the records accurately depict
22 Patient H's current medical and/or physical condition. Furthermore, it appears from the records
23 that at no time did Respondent see, examine and/or treat Patient H.

24 30. Patient I was a twenty-eight (28)-year-old female at the time of the incidents in
25 question. Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
26 Patient Designation served on Respondent along with a copy of this Complaint.

27 31. Patient I saw Ms. Frey for an injection of Dysport, 60 units, into her forehead on
28 March 22, 2012. The medical records do not include any history and/or physical, nor do the

1 records accurately depict Patient I’s current medical and/or physical condition. Furthermore, it
2 appears from the records that at no time did Respondent see, examine and/or treat Patient I.

3 32. Patient J was a thirty-four (34)-year-old female at the time of the incidents in
4 question. Her true identity is not disclosed to protect her privacy, but her identity is disclosed in the
5 Patient Designation served on Respondent along with a copy of this Complaint.

6 33. Patient J saw Ms. Frey for an injection of Dypsort, an unknown quantity, on March
7 22, 2012. The medical records do not include any history and/or physical, nor do the records
8 accurately depict Patient J’s current medical and/or physical condition. Furthermore, it appears
9 from the records that at no time did Respondent see, examine and/or treat Patient J.

10 **Count I**

11 34. All of the allegations contained in the above paragraphs are hereby incorporated by
12 reference as though fully set forth herein.

13 35. NRS 630.305(1)(e) provides that aiding, assisting, employing or advising, directly
14 or indirectly, any unlicensed person to engage in the practice of medicine is grounds for the
15 initiation of discipline.

16 36. NRS 630.020(1) states that the practice of medicine means “[t]o diagnose, treat,
17 correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other
18 condition...by any means or instrumentality.”

19 37. Respondent allowed and assisted an unlicensed individual, directly and indirectly,
20 from at least April 2011 to March 9, 2012, and with Patients A-J, to engage in the practice of
21 medicine when he knowingly allowed Ms. Frey to operate her own independent practice out of his
22 office from which she independently evaluated and treated patients and administered dangerous
23 drugs, which is the practice of medicine.

24 38. Accordingly, Respondent is in violation of NRS 630.305(1)(e) and is subject to
25 discipline by the Board as provided in NRS 630.352.

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Count II

(Multiple Counts)

39. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

40. NRS 630.306(3) provides that administering, dispensing or prescribing a controlled substance or dangerous drug except as authorized by law is grounds for initiating discipline against a licensee.

41. As indicated above, NRS 454.213, as applied to this matter, provides that dangerous drugs may only be possessed and administered by a licensed practitioner or by a registered nurse at the direction of a prescribing physician.

42. Respondent knowingly allowed Ms. Frey to possess and administer dangerous drugs from at least April 2011 to March 9, 2012, and to Patients A-J, patients for whom he had not evaluated, diagnosed, nor prescribed dangerous drugs.

43. Accordingly, Respondent is in violation of NRS 630.306(3) and is subject to discipline by the Board as provided in NRS 630.352.

Count III

(Multiple Counts)

44. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

45. NRS 630.306(3) provides that administering, dispensing or prescribing a controlled substance or dangerous drug except as authorized by law is grounds for initiating discipline against a licensee.

46. As indicated above, NRS 454.215 provides that a licensed physician may only dispense a dangerous drug if authorized by the Nevada State Board of Pharmacy in accordance with NAC 639.742(1).

47. NRS 639.23505 provides that a practitioner shall not dispense for human consumption any controlled substance or dangerous drug unless the practitioner obtains a certificate from the Nevada State Board of Pharmacy and issues a written prescription.

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Count V

(Multiple Counts)

55. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

56. NRS 630.306(3) provides that administering, dispensing or prescribing a controlled substance or dangerous drug except as authorized by law is grounds for initiating discipline against a licensee.

57. NAC 639.742(3)(b) provides that only a licensed dispensing practitioner can receive and account for the controlled substances or dangerous drugs.

58. Respondent, from at least April 2011 to March 9, 2012, and with Patients A-J, allowed Ms. Frey to receive and account for the Botox, Dysport, Radiesse, Restylane, Juvederm and Latisse. Furthermore, Respondent was not responsible to receive and account for the aforementioned dangerous drugs as required by law.

59. Accordingly, Respondent is in violation of NRS 630.306(3) and is subject to discipline by the Board as provided in NRS 630.352.

Count VI

(Multiple Counts)

60. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

61. NRS 630.306(3) provides that administering, dispensing or prescribing a controlled substance or dangerous drug except as authorized by law is grounds for initiating discipline against a licensee.

62. NAC 639.742(3)(c) provides that all controlled substances or dangerous drugs are to be stored in a secure, locked room or cabinet to which the dispensing practitioner has the only key or lock combination.

63. Respondent, from at least April 2011 to March 9, 2012, and with Patients A-J, allowed Ms. Frey, and others, to have free and easy access to Botox, Dysport, Radiesse, Restylane,

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1 Juvederm and Latisse. Thus, Respondent did not have the only key or lock combination to a
2 secure, locked room or cabinet as required by law.

3 64. Accordingly, Respondent is in violation of NRS 630.306(3) and is subject to
4 discipline by the Board as provided in NRS 630.352.

5 **Count VII**

6 **(Multiple Counts)**

7 65. All of the allegations contained in the above paragraphs are hereby incorporated by
8 reference as though fully set forth herein.

9 66. NRS 630.306(3) provides that administering, dispensing or prescribing a controlled
10 substance or dangerous drug except as authorized by law is grounds for initiating discipline
11 against a licensee.

12 67. NAC 639.742(3)(e) provides that no prescription is to be dispensed to a patient
13 unless the dispensing practitioner is on-site at the facility.

14 68. Respondent, from at least April 2011 to March 9, 2012, and with Patients A-J,
15 allowed Ms. Frey, on numerous occasions, to dispense Botox, Dysport, Radiesse, Restylane,
16 Juvederm and Latisse to patients when Respondent was not on site at the facility.

17 69. Accordingly, Respondent is in violation of NRS 630.306(3) and is subject to
18 discipline by the Board as provided in NRS 630.352.

19 **Count VIII**

20 **(Multiple Counts)**

21 70. All of the allegations contained in the above paragraphs are hereby incorporated by
22 reference as though fully set forth herein.

23 71. NRS 630.306(3) provides that administering, dispensing or prescribing a controlled
24 substance or dangerous drug except as authorized by law is grounds for initiating discipline
25 against a licensee.

26 72. NAC 639.742(4)(a) provides that only the dispensing practitioner may enter the
27 room or cabinet in which drugs are stored.

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1 Respondent did evaluate or prescribe dangerous drugs for the purpose of facial procedures for any
2 of Ms. Frey's patients/clients, he was practicing beyond the scope of his training and was not
3 competent to perform said procedures. Nor was he competent to act as the Medical Director and
4 adequately supervise Ms. Frey, from at least April 2011 to March 9, 2012, and with Patients A-J,.

5 83. Accordingly, Respondent is in violation of NRS 630.306(5) and is subject to
6 discipline by the Board as provided in NRS 630.352.

7 **Count XI**

8 **(Ten Counts)**

9 84. All of the allegations contained in the above paragraphs are hereby incorporated by
10 reference as though fully set forth herein.

11 85. NRS 630.3062(1) provides that the failure to maintain timely, legible, accurate and
12 complete medical records relating to the diagnosis, treatment and care of a patient is grounds for
13 initiating disciplinary action against a licensee.

14 86. Respondent failed to maintain timely, legible, accurate and complete medical
15 records relating to the diagnosis, treatment and care of Patients A-J

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

18 **WHEREFORE**, the IC prays:

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

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

24 3. That the Board determine what sanctions it determines to impose if it determines
25 there has been a violation or violations of the NRS 630 committed by Respondent;

26 4. That the Board make, issue and serve on Respondent its findings of fact,
27 conclusions of law and order, in writing, that includes 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 30th day of June, 2014.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: 
Bradley O. Van Ry, Esq.
General Counsel
Counsel for the Investigative Committee

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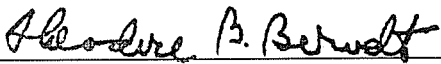
VERIFICATION

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STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

THEODORE B. BERNDT, 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 Second Amended Complaint against the Respondent herein; that he has read the foregoing Second Amended 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 Second Amended Complaint against Respondent are true, accurate, and correct.

DATED this 3rd day of June, 2014.



THEODORE B. BERNDT, M.D.