BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In the Matter of Charges and Complaint Against Michael S. Mall, M.D., Respondent.	**Case No. 15-8666-1**

FILED
SEP 2 3 2015
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

COMPLAINT

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) hereby issues this formal Complaint (Complaint) against Michael S. Mall, M.D. (Respondent), a licensed physician in Nevada. After investigating this matter, the IC has a reasonable basis to believe that Respondent has violated provisions of Nevada Revised Statutes (NRS) chapter 630 and Nevada Administrative Code (NAC) chapter 630 (collectively Medical Practice Act). The IC alleges the following facts:

1. Respondent is currently licensed in active status (License No. 6074), and has been licensed by the Board since July 1, 1990 pursuant to the provisions of the Medical Practice Act.

2. Respondent's specialty listed with the Board is family practice.

3. At the time of the incidents alleged herein, Patient A was being treated by Respondent for pain management. His true identity is not disclosed in this Complaint to protect his identity, but his identity is disclosed in the Patient Designation served on Respondent along with a copy of this Complaint.

4. Patient A first presented to Respondent on or about May 2002 with complaints of pain relating to Fibromyalgia.

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5. On or about July 19, 2002, Patient A presented to Respondent with complaints of pain. Respondent increased Patient A's Oxycontin 40-milligram (mg) prescription from one twice a day to two twice a day and prescribed five mg of extended release Oxycodone. The medical records from this visit are illegible.

6. On or about August 16, 2002, Patient A presented to respondent with complaints of pain. Respondent increased Patient A's Oxycontin 40-mg prescription from two twice a day to three twice a day. The medical records from this visit are illegible.

7. On or about November 5, 2004, Respondent prescribed Patient A a Duragesic patch, which is the transdermal delivery method for Fentanyl, and Actiq, which is the oral delivery method for Fentanyl. The medical records from this visit are illegible.

8. On July 5, 2005, Respondent increased Patient A's Actiq medication from 800 micrograms (mcg) to 1,200 mcg. The medical records from this visit are illegible.

9. On or about July 11, 2006, Patient A's medical records demonstrate that Patient A was taking four different benzodiazepines-Xanax, Valium, Restoril and Klonopin. On this same date, Respondent increased Patient A's Actiq medication from 1,200 mcg to the maximum allowed dose of 1,600 mcg. The medical records from this visit are illegible. There is no medical rationale for this daily combination of four benzodiazepines.

10. On or about December 12, 2006, Respondent prescribed Patient A 800 mcg of Fentora, which is the highest dose available for Fentora. Fentora is another mouth-absorbing Fentanyl product. Respondent also prescribed Patient A 1,600-mcg of Actiq, which is the highest dose available for Actiq. He also prescribed Patient A two 75-mcg Duragesics and four different benzodiazepines. Thus, at this visit, Respondent prescribed Patient A the maximum allowable dose for two different Fentanyl medications, a third Fentanyl medication, and four different benzodiazepine medications. The medical records from this visit are illegible.

11. Respondent's medical records for Patient A lack documentation regarding the etiology of the patient's pain, the nature and intensity of the patient's pain, the effect of pain on the patient's ability to function, the presence of recognized medical indications for the use of

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controlled substances, and the fact that other treatment modalities or adjuvant therapies were considered, tried and failed prior to prescribing controlled substances.

12. Respondent's medical records for Patient A lack documentation demonstrating that Respondent checked Patient A's prescription monitoring profile with the Nevada State Board of Pharmacy (BOP) before prescribing controlled substances and that Patient A underwent urine drug screens.

13. Respondent failed to refer Patient A to a pain management specialist.

14. Respondent's medical records for Patient A lack pain management contracts signed by the patient, drug profiles, urine toxicology screens, complete physical examinations, complete motor or neurological exams to assess for nerve root involvement, diagnostic tests, outside consultations with pain management specialists, and additional examinations/testing to determine the etiology of the alleged pain.

COUNT I
(Medical Records Violation)

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

16. 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 discipline against a licensee.

17. 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 he failed to document the nature and intensity of the Patient's pain, the effect of pain on the Patient's ability to function, and the presence of recognized medical indications for the use of controlled substances.

18. 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 he failed to document that other treatment modalities or adjuvant therapies had been considered.

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19. 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 he failed to document that he checked Patient A's prescription monitoring profile with the BOP prior to prescribing Patient A controlled substances.

20. 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 he failed to maintain legible medical records for Patient A.

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

COUNT II
(Malpractice)

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

23. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating disciplinary action against a licensee.

24. 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.

25. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to use reasonable care, skill or knowledge ordinarily used under similar circumstances when he failed to check Patient A's prescription monitoring profile with the BOP prior to prescribing Patient A controlled substances; failed to further evaluate and/or order diagnostic testing to determine the etiology of Patient A's pain; failed to treat Patient A's nonmalignant pain with other modalities and/or adjuvant therapies prior to prescribing Patient A controlled substances; failed to prescribe controlled substances in accordance with the law and failed to refer Patient A to a pain management specialist.

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

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COUNT III
(Unlawful Administration, Dispensing or Prescribing of Controlled Substances)

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

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

29. As demonstrated by, but not limited to, the above-outlined facts, Respondent prescribed controlled substances in violation of the law when he failed to determine the etiology of pain for Patient A; failed to check Patient A's prescription monitoring profile with the BOP prior to prescribing Patient A controlled substances; failed to treat the nonmalignant pain of Patient A with other modalities and/or adjuvant therapies prior to prescribing controlled substances; failed to perform urine drug testing on Patient A, and failed to follow the policies set forth in the *Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain* (Model Policy), adopted by reference in NAC 630.18, when prescribing controlled substances to Patient A.

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

COUNT IV
(Practicing Beyond the Scope of Training)

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

32. NRS 630.306(5) provides that practicing or offering to practice beyond the scope permitted by law or performing services that the licensee knows or has reason to know that he is not competent to perform or which are beyond the scope of his or her training is grounds for initiating disciplinary action against a licensee.

33. Respondent's specialty is family medicine, not pain management. As demonstrated by, but not limited to, the above-outlined facts, Respondent was prescribing controlled substances to Patient A without first determining the etiology of Patient A's pain and considering other modalities and/or adjuvant therapies prior to prescribing Patient A controlled

substances. Further, as demonstrated by, but not limited to, the above-outlined facts, Respondent was practicing beyond the scope permitted by law and/or was performing services that were beyond the scope of his training.

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

COUNT V
(Continual Failure to Exercise the Skill or Diligence or Use the Methods Exercised by Physicians in the Same Specialty or Field)

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

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

37. Respondent's specialty is family medicine, not pain management. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to exercise the skill or diligence or use the methods exercised by physicians in the same specialty or field when he prescribed controlled substances to Patient A without first checking Patient A's prescription monitoring profile with the BOP prior to prescribing Patient A controlled substances, without determining the etiology of Patient A's pain, without considering other modalities and/or adjuvant therapies prior to prescribing Patient A controlled substances and without referring Patient A to a pain management specialist.

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

COUNT VI
(Conduct That Violates the Standards of Practice)

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

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40. NRS 630.306(2)(b) provides that if the licensee engages in any conduct that is a violation of the standards of practice established by regulation of the Board it is grounds for initiating disciplinary action against the licensee.

41. NAC 630.185 provides that NAC 630.185 to 630.230, inclusive, set forth the standards of practice established by the Board.

42. NAC 630.230(k) provides that a licensee shall not engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the policies set forth in the Model Policy.

43. As demonstrated by, but not limited to, the above-outlined facts, Respondent prescribed controlled substances in violation of the law when he failed to determine the etiology of pain for Patient A, failed to check Patient A's prescription monitoring profile with the BOP prior to prescribing Patient A controlled substances, failed to treat the nonmalignant pain of Patient A with other modalities and/or adjuvant therapies prior to prescribing controlled substances, and failed to perform urine drug testing on Patient A.

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

WHEREFORE, the Investigative Committee prays:

1. That the Board 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 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);

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

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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 23rd day of September, 2015.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

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CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on 23rd day of September 2015; I served a file stamp copy of COMPLAINT, PATIENT DESIGNATION & FINGERPRINT INFORMATION via USPS e-certified return receipt mail to the following:

Michael Mall, M.D.
c/o John Savage, Esq.
7900 West Sahara Ste. 200
Las Vegas, NV 89117

Dated this 23rd day of September, 2015.

Angelia L. Donohoe
Legal Assistant

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