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

BEFORE THE BOARD OF MEDICAL EXAMINERS

OF THE STATE OF NEVADA

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In the Matter of Charges and Complaint Against MARK HOEPFNER, M.D., Respondent.	**Case No. 16-8164-1**

FILED
JAN 27 2016
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

COMPLAINT

The Investigative Committee[1] (IC) of the Nevada State Board of Medical Examiners (Board) hereby issues this formal Complaint (Complaint) against Mark Hoepfner, 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, the Medical Practice Act).

The IC alleges the following facts:

1. Respondent is currently licensed in active status (License No. 5680), and has been so licensed by the Board since July 1, 1988, and, at all times alleged herein, Respondent was licensed in an active status by the Board pursuant to the provisions of the Medical Practice Act.

2. Previous to the preparation of this Complaint, the Board solicited the services of an independent medical expert (IME) to review the medical records of Patient A and render an opinion regarding whether Respondent failed to perform to the standard of care and treatment, which could constitute malpractice under the Medical Practice Act.

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[1] The Investigative Committee of the Nevada State Board of Medical Examiners was composed of Board members Beverly A. Neyland, M.D., Bashir Chowdhry, M.D., and Ms. Sandy Peltyn.

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3. Patient A, a female, at the time of the events at issue, and, her true identity is not disclosed herein to protect her privacy, but is disclosed in the Patient Designation served upon Respondent along with a copy of this Complaint.

4. On or about December 31, 2011, Patient A, a resident of Michigan, while visiting Las Vegas, Nevada and intending to stay until March 2012, was admitted into the emergency department (ED) with severe abdominal pain on her right side. A CT scan revealed an appendix of 12mm diameter and suggested appendicitis. Respondent noted that Patient A had abdominal pain, on-going diabetes and morbid obesity. Additionally, Respondent concluded that Patient A had probable mild, early acute appendicitis. Patient did not recall whether her appendix had been previously removed.

5. On or about January 1, 2012, Respondent proceeded with an emergency laparoscopic appendectomy, and removed what he believed to be Patient A's remaining appendix, which Respondent measured at 5.2 x 1.3 x 0.3 cm.

6. On or about January 2, 2012, Patient A was discharged in an improved and essentially pain-free condition. Respondent did not prescribe any antibiotics.

7. On or about January 3, 2012, lab results returned indicating that "[t]here was no gross evidence of an appendix" in the specimen.

8. On or about January 4, 2012, Respondent learned of the pathology findings.

9. On or about January 5, 2012, after receiving the written pathology report, Respondent contacted and explained the pathology results to Patient A as what may have been evidence of stump appendicitis from a prior appendectomy or a disintegrated appendix at the time of surgery. Patient A reported to Respondent that she felt well, was eating fine and had no infection. Respondent directed Patient A to follow up with her primary care physician when she returned to Michigan.

10. On or about March 28, 2012, Patient A underwent an appendectomy in Michigan after the hospital learned from the pathology report that Patient A's appendix was not removed. The structure obtained measured 7.5 x 1.0 x 0.9 cm.

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11. In response to the Board's inquiry, Respondent indicated that, at the time he operated, Patient A's anatomy was relatively indiscernible and compromised due to Patient A's past operations. Respondent removed what was discerned to be the appendix based on context, knowledge of past known and unknown abdominal procedures and diagnostic tests of this CT and ultrasound.

12. The IME concluded that Respondent missed Patient A's appendix during the appendectomy, and failed to properly notify Patient A about the significance of the pathology report. Accordingly, by taking Patient A to the operating room, Respondent had an obligation to take Patient A's appendix out.

13. The IME believes what Respondent found during the surgery was inconsistent with what the radiologist described in the CT scan (a 12 mm diameter appendix). If Respondent could not identify the appendix laparoscopically—which happened—then Respondent had an obligation to use the open technique to find the appendix. Importantly, Respondent was notified after the surgery that the specimen he collected from the surgery was not the appendix. However, Respondent did not conduct a follow-up physical examination of the patient, a repeat CT scan, or offer Patient A, a repeat surgery.

14. The IME concluded that Respondent committed malpractice "for failing to treat this patient using [the] responsible care, skill, and knowledge that would be used under similar circumstances" because the evidence clearly shows that Respondent: i) failed to remove Patient A's appendix; ii) did not perform a post operative visit; and iii) when Respondent was notified by the pathology report that the specimen he collected was not the appendix, Respondent should have taken immediate steps to notify Patient A, have another CT scan, or even conduct another surgery.

15. The IME believed that this case represented a case of radiological, surgical and pathological discordance, because the Respondent was responsible for treating Patient A's medical issue. By not treating Patient A with the reasonable care, skill, or and knowledge that would ordinarily be used under similar circumstances for appendicitis, Respondent committed medical malpractice.

16. The IME believed that Respondent, knowing that Patient A was returning to Michigan, should have attempted to communicate with Patient A's care provider, including

providing a letter explaining the events that occurred under Respondent's care and that the appendix was not removed.

17. Based upon the foregoing, the IC charges Respondent with the following violations of the Medical Practice Act.

COUNT I

(Malpractice - NRS 630.301(4))

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

19. NRS 630.301(4) provides that malpractice, as defined in NAC 630.040, means the failure of a physician, in treating a patient, to use the reasonable care, skill or knowledge ordinarily used under similar circumstances, is grounds for discipline.

20. As demonstrated by, but not limited to, the above-outlined facts, Respondent committed malpractice in the course of providing care and treatment to Patient A when he: i) failed to remove Patient A's appendix; ii) did not perform a post operative visit; and iii) when Respondent was notified by the pathology report that the specimen he collected was not the appendix, Respondent failed to take immediate steps to notify Patient A, to have another CT scan, or even conduct another surgery.

21. 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;

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4. That the Board make, issue and serve upon the 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 27 day of January, 2016.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____
Robert Kilroy, Esq.
General Counsel for the Board
Attorney for the Investigative Committee

VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF CLARK)

Beverly A. Neyland, M.D., hereby deposes and states under penalty of perjury under the laws of the state of Nevada that she is the Chairwoman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the foregoing Complaint against the Respondent herein; that she has read the foregoing Complaint; and based upon information discovered during the course of the investigation into a complaint against Respondent, she believes the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

Dated this 27th day of January, 2016.

_____
Beverly A. Neyland, 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 27th day of January 2016; I served a file stamp copy of the COMPLAINT, PATIENT DESIGNATION & Fingerprint information, via USPS e-certified return receipt mail to the following:

Mark Hoepfner, M.D.
c/o Robert C. McBride, Esq.
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody
8329 W. Sunset Rd., Ste. 260
Las Vegas, NV 89113

Dated this 27th day of January, 2016.

Angelia L. Donohoe
Legal Assistant

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