

1 The Board, after due consideration of the record, evidence and law, and being fully
2 advised in the premises, makes its FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
3 ORDER in this matter as follows:

4 **FINDINGS OF FACT**

5 **I.**

6 Respondent held a license to practice medicine in the State of Nevada issued by the Board
7 at all relevant times.

8 **II.**

9 On October 23, 2015, the Investigative Committee filed the Complaint in this matter
10 alleging Respondent violated the Medical Practice Act, specifically, alleging a violation of
11 NRS 630.3062(1) by failing to maintain timely, legible, accurate and complete medical records
12 relating to the diagnosis, treatment and care of Patients A through C. Respondent was duly served
13 with the Complaint by mail on October 27, 2015. Respondent did not file a formal answer.
14 Pursuant to NAC 630.460(4), the allegations of the Complaint are deemed generally denied if an
15 answer is not filed. An Order Scheduling Early Case Conference was mailed to Respondent's
16 then-counsel on February 8, 2016, and the Early Case Conference was held on March 16, 2016,
17 with Robert Kilroy, Esq., appearing on behalf of the Board, and Carrie Parker, Esq., appearing on
18 behalf of the Respondent. In compliance with NAC 630.465, on March 21, 2016, the Order
19 Setting Pre-Hearing Conference and Hearing was filed with the Board and mailed to Respondent's
20 then-counsel. A Prehearing Conference was held as ordered. On or about May 25, 2016, a
21 Stipulation and Order to Continue Hearing was filed with the Board. On August 9, 2016, an
22 Order Rescheduling Hearing was filed with the Board, setting the hearing for September 28, 2016.
23 On September 28, 2016, the Hearing Officer entered an Order to Continue Hearing Date to
24 October 21, 2016. On December 28, 2016, the Hearing Officer entered an Order Scheduling
25 Additional Hearing Dates for February 17, 2017, and February 24, 2017.

26 On September 29, 2016, the Hearing Officer's Recommendation to the Nevada State
27 Board of Medical Examiners Regarding Respondent's Motion to Dismiss and the Investigative
28 Committee's Motion to Strike was filed.

1 The hearing was held on October 21, 2016, February 17, 2017, and February 24, 2017, as
2 noticed and ordered. Colleen Platt, Esq., appeared as counsel for the Respondent, and Jasmine
3 Mehta, Esq., Deputy General Counsel, and Robert Kilroy, Esq., General Counsel, appeared on
4 behalf of the Investigative Committee of the Board. Respondent was present in person or via
5 video teleconference for all of the hearing except for the morning of February 24, 2017.

6 On November 6, 2017, Respondent was provided the Investigative Committee's
7 Memorandum of Costs and Disbursements and Attorneys' Fees by hand-delivery to Respondent's
8 counsel.

9 **III.**

10 The Board unanimously adopted the Hearing Officer's Synopsis of the Hearing and the
11 Recommendations therein.

12 **IV.**

13 The Complaint alleges one violation of NRS 630.3062(1) for failure to maintain timely,
14 legible, accurate and complete medical records relating to Respondent's treatment of Patients A
15 through C.

16 **V.**

17 The true identities of Patients A, B and C are not disclosed herein to protect their privacy,
18 but were disclosed in the Patient Designation that was served upon Respondent along with a copy
19 of the Complaint.

20 **VI.**

21 Respondent's medical records relating to the diagnosis, treatment and care of Patients A
22 through C are not accurate, legible, timely or complete.

23 **VII.**

24 Many of the medical records lacked sufficient information to show how or why Dr.
25 Gabroy arrived at the treatment plan that he did. In many cases, it was unclear what medical
26 diagnoses the medications prescribed by Dr. Gabroy were intended to treat. Dosing information
27 was missing or illegible as well, all of which demonstrates that the records were not accurate or
28 complete.

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VIII.

The medical records had handwritten dates on them, many of which were crossed out with a new date or dates entered beneath the crossed out dates, such that it cannot be determined when services were rendered, demonstrating that the records were not maintained in a timely, accurate or complete manner.

IX.

Significant portions of the medical records at issue could not be read by witnesses for either the Respondent or the Investigative Committee because Respondent's handwriting was not legible. Dr. Lynda Molloy, the expert witness for the Investigative Committee, testified that Dr. Gabroy's records were the least legible records she had ever seen. Synopsis at 17, ll. 9-11. All of the adjudicating Board members who commented on the record expressed concern about the illegibility of the medical records and the impact on the ability of medical care providers other than Respondent to provide care based on the illegibility of the records.

X.

At the hearing, Respondent introduced new medical records for the same time periods and same patients of the records at issue. These new records were not produced in response to the Investigative Committee's allegation letter and request to Respondent for his medical records, and they differ substantially from those previously produced by Dr. Gabroy. In some instances, there were two or even three medical records for the same patient on the same date, each different from the other. Synopsis at 81, ll. 19-28; 82, ll. 1-7. The expert witness for the Investigative Committee, as well as Dr. Leo Spaccavento, on behalf of the Respondent, both testified that they did not understand why there would be multiple different medical records for the same patient for the same date, and that this is unusual in their experience. Synopsis at 81, ll. 24-28. Even Respondent's own medical assistant, Ms. Ruby Casillen, could not explain why there were multiple different records for the same patient on the same day (Synopsis at 82, ll. 1-7), and she could not determine which set of records was to be relied on as a medical record. Synopsis at 54, ll. 11-28, 24-26. The existence of multiple different medical records for the same patient for the same date demonstrates that the medical records at issue were not accurate or complete.

1 **XI.**

2 Some medical records were written on a form with a border with rounded corners, while
3 other records for the same patient on the same date were written on a form that was distinct, with a
4 border with sharp corners and different pre-printed words on the form. The number of different
5 medical records bearing the same date for the same patient, but differing in other aspects,
6 including the form of the record, demonstrates that the latter produced records were created or
7 recreated many months or years after the patient encounters at issue, further demonstrating that the
8 Respondent did not maintain timely, accurate or complete records. Synopsis at 84, ll. 5-21.

9 **XII.**

10 Respondent's witness, Ms. Ruby Casillen, a medical assistant working for Respondent,
11 testified that Respondent had asked her to rewrite the medical records, but she could not recall
12 when he had asked her to do so. Synopsis at 54, ll. 2-11; 55, ll. 2-10; 55, ll. 11-15, 21-26; 56, ll.
13 12-17. Respondent himself testified that he rewrote his records, but could not recall when he did
14 so. Synopsis at 83, ll. 20-26. Records were rewritten without following the proper procedure for
15 marking the changes as an amendment or an addendum. Synopsis at 82, ll. 15-17; 83, ll. 20-26.
16 The Board agrees with the Hearing Officer's statement that it is reasonable to conclude that the
17 documents that Respondent provided during the hearing, and not previously exchanged with the
18 Investigative Committee, were created well after they were written, demonstrating that these
19 records were not timely. Synopsis at 84, ll. 16-20.

20 **XIII.**

21 Based on any one or all of the aforementioned findings, the Board finds by a
22 preponderance of the evidence that Respondent violated NRS 630.3062(1) as alleged in the
23 Complaint, as Respondent failed to maintain timely, legible, accurate and complete medical
24 records related to the diagnosis, treatment and care of Patients A through C.

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XIV.

The Board has reviewed Respondent's Motion to Dismiss the Complaint and the opposition and reply associated therewith, the Investigative Committee's Motion to Strike and the opposition and reply associated therewith, and the Hearing Officer's Recommendations to the Nevada State Board of Medical Examiners Regarding Respondent's Motion to Dismiss and the Investigative Committee's Motion to Strike. At the adjudication, the Board voted to deny both motions.

XV.

The Board has reviewed the Investigative Committee's Memorandum of Costs and Disbursements and Attorneys' Fees, and the Board finds them to be the actual fees and costs incurred by the Board as part of its investigative, administrative and disciplinary proceedings against Respondent, and finds them to be reasonable based on: (1) the abilities, training, education, experience, professional standing and skill demonstrated by Board staff and attorneys; (2) the character of the work done, its difficulty, its intricacy, its importance, the time and skill required, the responsibility imposed and the prominence and character of the parties where, as in this case, they affected the importance of the litigation; (3) the work actually performed by Board's attorneys and staff, and the skill, time and attention given to that work, and; (4) the product of the work and benefits to the Board and the people of Nevada that were derived therefrom.

XVI.

Additionally, counsel for the Investigative Committee conceded that it was appropriate to remove the attorney fees incurred for responding to Respondent's public record requests, and since the tasks had been block-billed rather than itemized, counsel for the IC recommended reducing the fees for each entry in which it appeared that some of the work was attributed to responding to public record requests, for a total of \$1,746.20. The Board finds that it is reasonable to reduce the attorneys' fees by \$1,746.20.

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ORDER

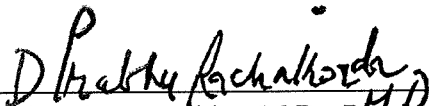
Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing therefore,

IT IS HEREBY ORDERED that:

1. Respondent shall be issued a written public reprimand.
2. Respondent shall pay a fine of \$5,000.00 within 120 days of the date of this Order.
3. Respondent shall take ten hours of continuing medical education on medical recordkeeping to be completed within ninety days from the date of this order.
4. Respondent shall reimburse the Board the reasonable costs and expenses actually incurred in the investigation and prosecution of this case in the amount of \$45,641.85, less \$1,746.20, for a total of \$43,895.65, which amount Respondent shall pay within 120 days of the date of this Order.

Dated this 11th day of May, 2018.

NEVADA STATE BOARD OF MEDICAL EXAMINERS



Rachakonda D. Prabhu, M.D., President
Nevada State Board of Medical Examiners

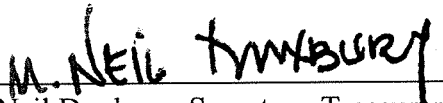
CERTIFICATION

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I certify that the foregoing is the full and true original FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER on file in the office of the Board of Medical Examiners in the matter of JAMES B. GABROY, M.D., Case No. 15-10986-1.

I further certify that Rachakonda D. Prabhu, M.D., is the President of the Nevada State Board of Medical Examiners and that full force and credit is due to his official acts as such; and that the signature to the foregoing ORDER is the signature of said Rachakonda D. Prabhu, M.D.

IN WITNESS THEREOF, I have hereunto set my hand in my official capacity as Secretary-Treasurer of the Nevada State Board of Medical Examiners.

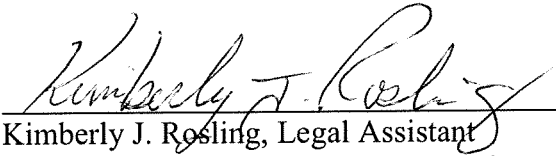

M. Neil Duxbury, Secretary-Treasurer
Nevada State Board of Medical Examiners

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Nevada State Board of Medical Examiners and on this 11th day of May, 2018, I personally served a filed copy of the foregoing, **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**, to the following:

Colleen L. Platt, Esq.
PLATT LAW GROUP
1575 Delucchi Lane, Suite 115-105F
Reno, Nevada 89502

DATED this 11th day of May, 2018.



Kimberly J. Rosling, Legal Assistant
Nevada State Board of Medical Examiners