

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA

\* \* \* \* \*

In the Matter of Charges and  
Complaint Against  
KATHLEEN D. SMITH M.D.,  
Respondent.

Case No. 19-28205-2

FILED

SEP 23 2019

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS  
By: 

COMPLAINT

The Investigative Committee (IC)<sup>1</sup> of the Nevada State Board of Medical Examiners (Board), by and through Robert Kilroy, Esq., General Counsel and attorney for the IC, having a reasonable basis to believe that Kathleen D. Smith, M.D. (Respondent) violated the provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630 (collectively, the Medical Practice Act), hereby issues its Complaint, stating the IC's charges and allegations as follows:

1. Respondent was at all times relative to this Complaint a licensed medical doctor holding an active license to practice medicine in the State of Nevada (License No. 10735). Respondent was originally licensed by the Board on December 4, 2003.

2. On December 17, 2013, Respondent wrote a prescription (Rx # 403874) for controlled substance (Schedule II) Testosterone powder, and this prescription was filled on December 17, 2013, at TLGRX Corporation (7278) pursuant to the Nevada Prescription Monitoring Program, which identifies the Respondent as both Patient and Prescriber. No emergency was noted in the medical records.

3. On June 30, 2014, Respondent wrote a prescription (Rx # 408150) for controlled substance (Schedule II) Testosterone powder, and this prescription was filled on June 30, 2014, at

<sup>1</sup> The Investigative Committee of the Nevada State Board of Medical Examiners, at the time this formal Complaint was authorized for filing, was composed of Board members, Mr. M. Neil Duxbury, Chairman, Aury Nagy, M.D., and Michael C. Edwards, M.D., FACS.

1 TLGRX Corporation (7278) pursuant to the Nevada Prescription Monitoring Program, which  
2 identifies the Respondent as both Patient and Prescriber. No emergency was noted in the medical  
3 records.

4 4. On March 2, 2015, Respondent wrote a prescription (Rx # 413915) for controlled  
5 substance (Schedule II) Testosterone powder, and this prescription was filled on March 2, 2015, at  
6 Solutions Specialty Pharmacy (7278) pursuant to the Nevada Prescription Monitoring Program,  
7 which identifies the Respondent as both Patient and Prescriber. No emergency was noted in the  
8 medical records.

9 5. Patient A's true identity is not disclosed herein to protect their privacy, but is  
10 disclosed in the Patient Designation served upon Respondent along with a copy of this Complaint.

11 6. From March 6, 2014, through April 28, 2014, Respondent billed Patient A for  
12 services not rendered, with the exception of April 24, 2014, when Respondent performed a  
13 Hemocyte Autograft injection (HAI), which is also known as a Platelet-Rich Plasma (PRP)  
14 injection. Respondent did not perform initial or follow-up evaluations for Patient A for medical  
15 services provided. Respondent billed for services rendered (to Patient A) by physical therapist  
16 Andrew Reed (Reed) by disregarding Reed's NPI number. Reed was out of the country on Patient  
17 A's dates of service: specifically, on March 19, 20, and 24, 2014, although Reed's signature is on  
18 the medical records on the aforementioned dates. Patient A was billed for Respondent's medical  
19 services rendered. Further, Respondent billed Medicare for HAI injections under a tissue graft  
20 (Code 20926), and Medicare does not allow for HAI or PRP injections.

21 7. Patient B's true identity is not disclosed herein to protect their privacy, but is  
22 disclosed in the Patient Designation served upon Respondent along with a copy of this Complaint.

23 8. From March 17, 2014 through May 27, 2014, Respondent billed Patient B for  
24 services not rendered. Respondent performed HAI/PRP treatments on the following dates:  
25 November 4 and 18, 2014, and December 2, 2014. There are no medical records for the  
26 aforementioned HAI/PRP treatment dates. Respondent did not perform initial or follow-up  
27 evaluations for Patient B for medical services provided. Respondent billed for services rendered  
28 (to Patient B) by PA-C Graham, although her signatures are on the medical records on the

1   aforementioned dates. Patient B was billed for Respondent's medical services rendered. Further,  
2   Respondent billed Medicare for HAI injections under a tissue graft (Code 20926), and Medicare  
3   does not allow for HAI or PRP injections.

4                                       **COUNT I**

5                                       **NRS 630.3062(1)(a)**

6                                       **(Failure to Maintain Complete Medical Records)**

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

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

12            11.      Respondent failed to maintain complete medical records relating to the diagnosis,  
13  treatment and care of the patient "Dr. Kathy Smith" as indicated under the PMP's Patients  
14  Identified section by failing to document any medical justifications for having a controlled  
15  substance, Schedule II Testosterone powder prescriptions on three (3) separate prescriptions  
16  written on 12/17/2013, 6/30/2014, and 3/2/2015. Medical records for Respondent were not  
17  timely, legible, accurate, and complete, because there were no medical records for the  
18  aforementioned dates.

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

21                                       **COUNT II**

22                                       **NRS 630.306(1)(b)(3)**

23                                       **(Engaging in Conduct That Violated Pharmacy Board Regulations)**

24            13.      All of the allegations in the above paragraphs are hereby incorporated by reference  
25  as though fully set forth herein.

26            14.      Pursuant to NRS 630.306(1)(b)(3), engaging in any conduct which is in violation  
27  of a regulation adopted by the State Board of Pharmacy is grounds for initiating disciplinary  
28  action against a licensee.

1 15. NRS 453.381 places limitations on prescribing, possessing, administering,  
2 transporting and dispensing controlled substances. In addition to the limitations imposed by  
3 NRS 453.256 and 453.3611 to 453.3648, inclusive, a physician, physician assistant, dentist,  
4 advanced practice registered nurse or podiatric physician may prescribe or administer controlled  
5 substances only for a legitimate medical purpose and in the usual course of his or her professional  
6 practice, and he or she shall not prescribe, administer or dispense a controlled substance listed in  
7 schedule II for himself or herself, his or her spouse or his or her children except in cases of  
8 emergency.

9 16. On December 17, 2013, Respondent wrote a prescription (Rx # 403874) for  
10 controlled substance (Schedule II) Testosterone powder, and this prescription was filled on  
11 December 17, 2013, pursuant to the Nevada Prescription Monitoring Program, which identifies  
12 the Respondent as both Patient and Prescriber. No emergency was noted in the medical records.

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

15 **COUNT III**

16 **NRS 630.306(1)(b)(3)**

17 **(Engaging in Conduct That Violated Pharmacy Board Regulations)**

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

20 19. Pursuant to NRS 630.306(1)(b)(3), engaging in any conduct which is in violation  
21 of a regulation adopted by the State Board of Pharmacy is grounds for initiating disciplinary  
22 action against a licensee.

23 20. NRS 453.381 places limitations on prescribing, possessing, administering,  
24 transporting and dispensing controlled substances. In addition to the limitations imposed by  
25 NRS 453.256 and 453.3611 to 453.3648, inclusive, a physician, physician assistant, dentist,  
26 advanced practice registered nurse or podiatric physician may prescribe or administer controlled  
27 substances only for a legitimate medical purpose and in the usual course of his or her professional  
28 practice, and he or she shall not prescribe, administer or dispense a controlled substance listed in

1 schedule II for himself or herself, his or her spouse or his or her children except in cases of  
2 emergency.

3 21. On June 30, 2014, Respondent wrote a prescription (Rx # 408150) for controlled  
4 substance (Schedule II) Testosterone powder, and this prescription was filled on June 30, 2014, at  
5 TLGRX Corporation (7278), pursuant to the Nevada Prescription Monitoring Program, which  
6 identifies the Respondent as both Patient and Prescriber. No emergency was noted in the medical  
7 records

8 **COUNT IV**

9 **NRS 630.306(1)(b)(3)**

10 **(Engaging in Conduct That Violated Pharmacy Board Regulations)**

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

13 23. Pursuant to NRS 630.306(1)(b)(3), engaging in any conduct which is in violation  
14 of a regulation adopted by the State Board of Pharmacy is grounds for initiating disciplinary  
15 action against a licensee.

16 24. NRS 453.381 places limitations on prescribing, possessing, administering,  
17 transporting and dispensing controlled substances. In addition to the limitations imposed by  
18 NRS 453.256 and 453.3611 to 453.3648, inclusive, a physician, physician assistant, dentist,  
19 advanced practice registered nurse or podiatric physician may prescribe or administer controlled  
20 substances only for a legitimate medical purpose and in the usual course of his or her professional  
21 practice, and he or she shall not prescribe, administer or dispense a controlled substance listed in  
22 schedule II for himself or herself, his or her spouse or his or her children except in cases of  
23 emergency.

24 25. On March 2, 2015, Respondent wrote a prescription (Rx # 413915) for controlled  
25 substance (Schedule II) Testosterone powder, and this prescription was filled on March 2, 2015, at  
26 Solutions Specialty Pharmacy (7278), pursuant to the Nevada Prescription Monitoring Program,  
27 which identifies the Respondent as both Patient and Prescriber. No emergency was noted in the  
28 medical records.

**COUNT V**

**NRS 630.3062(1)(a)**

**(Failure to Maintain Complete Medical Records)**

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

27. NRS 630.3062(1)(a) 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 a disciplinary action against a licensee.

28. Respondent failed to maintain complete medical records relating to the diagnosis, treatment and care of Patient A.

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

**COUNT VI**

**NRS 630.3062(1)(a)**

**(Failure to Maintain Complete Medical Records)**

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

31. NRS 630.3062(1)(a) 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 a disciplinary action against a licensee.

32. Respondent failed to maintain complete medical records relating to the diagnosis, treatment and care of Patient B.

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

**WHEREFORE**, the IC prays:

1. That the Board give Respondent notice of the charges herein against her and give her notice that she 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;

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


3           3.       That the Board determine what sanctions to impose if it finds and concludes that  
4 there has been a violation or violations of the Medical Practice Act committed by Respondent;

5           4.       That the Board make, issue and serve on Respondent its findings of fact,  
6 conclusions of law and order, in writing, to include sanctions to be imposed; and

7           5.       That the Board take such other and further action as may be just and proper in these  
8 premises.

9           DATED this 23 day of September, 2019.

10  
11                                   INVESTIGATIVE COMMITTEE OF THE  
12                                   NEVADA STATE BOARD OF MEDICAL EXAMINERS

13           By:   
14                                   Robert Kilroy, Esq.  
15                                   General Counsel  
16                                   Attorney for the Investigative Committee

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**VERIFICATION**

STATE OF NEVADA            )  
  : ss.  
COUNTY OF WASHOE        )

Mr. M. Neil Duxbury, 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 foregoing Complaint against the Respondent herein; that he has read the foregoing 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 Complaint against Respondent are true, accurate and correct.

Dated this 23<sup>rd</sup> day of September, 2019.

INVESTIGATIVE COMMITTEE OF THE NEVADA  
STATE BOARD OF MEDICAL EXAMINERS

By: M. Neil Duxbury  
M. Neil Duxbury, M.D., Chairman