## THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

\* \* \* \* \*

In the Matter of Charges and

Case No. 19-2134-1

**Complaint Against** 

FILED

TERRANCE J. KWIATKOWSKI, M.D.,

JAN 3 1 2019

Respondent.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

NEVADA STATE BOARD OF MEDICAL EXAMINERS

### **COMPLAINT**

The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board) hereby issues this Complaint (Complaint) against Terrance J. Kwiatkowski, M.D. (Respondent), a licensed physician in Nevada. After investigating this matter, the IC<sup>1</sup> has a reasonable basis to believe that Respondent has violated provisions of Nevada Revised Statutes (NRS) Chapter 630 and the Nevada Administrative Code (NAC) Chapter 630 (collectively, the Medical Practice Act). The IC alleges the following facts:

- 1. Respondent was licensed by the Board, pursuant to the provisions of the Medical Practice Act, on August 27, 2001, and is currently licensed in active status (License No. 9962).
- 2. Patient A's true identity is not disclosed herein to protect his privacy, but is disclosed in the Patient Designation served upon Respondent along with a copy of this Complaint.
- 3. On July 1, 2014, Patient A presented to the Desert Springs Hospital Emergency Room (ER) with a complaint of right facial swelling and a diagnosis of parotitis, and was subsequently discharged with oral antibiotics (Amoxicillin) and pain medications.

23

24

//

///

////

25

26

27

28 At the time filing of the Complaint was approved, the IC was composed of Theodore B. Berndt, M.D., Chairman, Michael J. Fischer, M.D., and Ms. Valerie J. Clark.

- 4. On July 2, 2014, Patient A returned to Desert Springs Hospital ER with a complaint of worsening symptoms, and was transferred to Sunrise Hospital for an Ear, Nose and Throat (ENT) specialist consult. Patient A was started on IV antibiotics (Clindamycin) and a CT scan indicated a parotid edema on the right side and 3 mm stone in the parotid duct on the same side.
- 5. On July 5, 2014, Patient A presented to Respondent, who recommended intravenous steroids and antibiotics overnight, and he also recommended Patient A be discharged with oral antibiotics for 10 days and a steroid taper.
- 6. On July 6, 2014, Patient A was discharged, based on Respondent's treatment plan, with oral Clindamycin and pain medications. Steroids were prescribed by Respondent on July 7, 2014.
- 7. On July 8, 2014, Patient A presented to St. Rose Siena Hospital, with no improvement in symptoms and with difficulty opening his mouth, and was admitted with ENT and Infectious Disease was consulted. Patient A was started on intravenous antibiotics (Vancomycin & Zosyn), pursuant to the Infectious Disease doctor.
- 8. On July 9, 2014, Patient A was seen by Respondent, who recommended that the current treatment of IV antibiotics be continued, but did not recommend sialogogues (drugs that increase saliva production), which Respondent believed would have worsened Patient A's parutitis condition. Respondent recommended to staff that he be informed if Patient A's condition got worse.
- 9. On July 14, 2014, Patient A had another CT scan due to no improvement and worsening symptoms. This CT scan indicated "wall thickening, rim enhancing collection occupying the parotid, spacing measuring 3 x 2.3 cm as well as calcifications within the parotid gland consistent with an abscess," pursuant to the Radiology report. Respondent saw Patient A and reviewed the scan with a Radiologist. Respondent's recommendation was to continue IV antibiotics, and determined that Patient A's condition was not an abscess.

 $\|_{L}$ 

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- On July 18, 2014, another CT scan was conducted because of Patient A's condition 10. and worsening symptoms. This CT scan read "increased in right parotid hypodensity," measuring 3.6 x 4.6 cm compared to the July 9, 2014 CT scan, which measured 2 x 2.7 cm. Diagnosis was an abscess with a compression of the jugular vein or thrombosis and some airway compromise.
- On July 19, 2014, Respondent was contacted by staff at 4:00 am, with information 11. that Patient A was experiencing increased difficulty breathing and the results of the CT scan (7/18/14). Respondent did not see Patient A at this time. Four hours later, at 8:00 am, Respondent called the staff nurse and instructed her to place Patient A on NPO (no food or liquids), with plans to later take Patient A to the operating room to drain the previously nondiagnosed abscess. At 8:10 am, the nurse informed Respondent that Patient A was experiencing respiratory distress. Respondent recommended the nurse call the code team. Patient A coded for approximately 90 minutes, several unsuccessful attempts were made to secure a clear airway, and an emergent airway was placed. Patient A's condition was discussed with family, and it was decided that life support was withdrawn on July 20, 2014.
- Patient A's death was found to be the parotid abscess, which caused airway 12. obstruction resulting in an anoxic encephalopathy.
- Previous to the preparation of this Complaint, the Board solicited the services of an 13. independent medical expert (IME) to review Patient A's medical records and the care provided to such patient by Respondent. This IME opined that Respondent's care of Patient A violated the Medical Practice Act due to his acts and omissions when rendering care to Patient A.

### Count I

### (Malpractice)

- All of the allegations contained in the above paragraphs are hereby incorporated by 14. reference as though fully set forth herein.
- NRS 630.301(4) provides that malpractice of a physician is grounds for initiating 15. disciplinary action against a licensee.
- NAC 630.040 defines malpractice as the failure of a physician, in treating a patient, 16. to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

17.	As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
to use the r	easonable care, skill or knowledge ordinarily used under similar circumstances when
he rendered	medical care and treatment to Patient A, who died from a non-diagnosed abscess.

By reason of the foregoing, Respondent is subject to discipline by the Board as 18. provided in NRS 630.352.

#### **Count II**

### (Failure to Maintain Complete Medical Records)

- All of the allegations contained in the above paragraphs are hereby incorporated by 19. reference as though fully set forth herein.
- NRS 630.3062(1)(a) provides that the failure to maintain timely, legible, accurate 20. and complete medical records relating to the diagnosis, treatment and care of a patient is grounds for initiating discipline against a licensee.
- Respondent failed to maintain complete medical records relating to the diagnosis, 21. treatment and care of Patient A, by failing to document his actions when he treated Patient A, whose medical records were not timely, legible, accurate, and complete.
- By reason of the foregoing, Respondent is subject to discipline by the Board as 22. provided in NRS 630.352.

### WHEREFORE, the IC prays:

- That the Board give Respondent notice of the charges herein against him and give 1. 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;
- 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);
- That the Board determine what sanctions to impose if it finds and concludes that 3. there has been a violation or violations of the Medical Practice Act committed by Respondent;
- That the Board make, issue and serve on Respondent its findings of fact, 4. conclusions of law and order, in writing, to include sanctions to be imposed; and

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

day of January, 2019. **DATED** this

> INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

Robert Kilroy, Esq. General Counsel

Attorney for the Investigative Committee

# OFFICE OF THE GENERAL COUNSEL Nevada State Board of Medical Examiners

correct.

### **ATION**

	VERIFICATION	
STATE OF NEVADA	)	
COUNTY OF WASHOE	: ss. )	
Wayne Hardwick, M	I.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 cours	e of the investigation into a complaint against Respondent, he believes	
the allegations and charges in the foregoing Complaint against Respondent are true, accurate and		

Dated this <u>31</u> day of January, 2019.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

Wayne Hardwick, M.D., Chairman

# OFFICE OF THE GENERAL COUNSEL

### 

### **CERTIFICATE OF MAILING**

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on the 31st day of January, 2019, I served a filed copy of the COMPLAINT, via USPS e-certified return receipt mail to the following:

> Terrance J. Kwiatkowski, M.D. Southwest Ear & Sinus Center 8530 W. Sunset Road, Suite 240 Las Vegas, NV 89113

Dated this 31st day of January, 2019.

Sheri L. Quigley Legal Assistant

# BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

\* \* \* \* \*

In the Matter of Charges and

Complaint Against

TERRANCE J. KWIATKOWSKI, M.D.,

Respondent.

### ERRATA TO COMPLAINT

This is an errata to correct an insubstantial error in the Complaint filed January 9, 2019, in this matter, and should be appended thereto.

Case No. on page 1 should read as follows:

"Case No. 19-21834-1."

Dated this \_\_\_\_ day of February, 2019.

Ву:\_\_\_\_\_

Robert G. Kilroy, General Counsel

Attorney for the Investigative Committee