

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

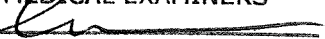
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In the Matter of Charges and Complaint
Against
JOSIAH ERWIN SMITH, PA-C,
Respondent.

Case No. 20-30921-1

FILED

FEB 12 2020

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

COMPLAINT

The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners (Board), by and through Robert G. Kilroy, Esq., General Counsel and attorney for the IC, having a reasonable basis to believe that Josiah Erwin Smith, PA-C (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 physician assistant holding an active license to practice medicine in the State of Nevada (License No. PA939). Respondent was originally licensed by the Board on October 13, 2005.

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 11, 2015, Patient A was seen at the University Medical Center (UMC) for pain, swelling, and erythematic on his left foot, and was prescribed Bactrim with a diagnosis of cellulitis. Pain was 10/10.

4. On July 13, 2015, Patient A presented to the Southwest Medical Associates Urgent Care (Urgent Care) with an infection on his left plantar foot. Respondent treated Patient A, ordered an

¹ 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 Theodore B. Berndt, M.D., Chairman, Wayne Hardwick, M.D., and Mr. M. Neil Duxbury.

1 X-ray for the infected area, and took no further action but keeping Patient A on the Bactrim
2 medication.

3 5. On July 15, 2015, the Radiology Diagnostic Report (X-ray) on Patient A indicated the
4 following:

- 5 a. Finding: Plantar forefoot soft tissue gas and swelling observed overlying the
6 third MTP joint on the AP film;
- 7 b. Impression: Plantar forefoot soft tissue swelling and gas compatible with the
8 provided history of infection. No radiographically evident osteomyelitis. If
9 there is clinical suspicion of osteomyelitis, conduct nuclear medicine bone scan
10 or MRI for further assessment.
- 11 c. Note: PROVIDER NOTIFICATION SYSTEM IMPLEMENTED.

12 Respondent provided no follow up to Patient A following his review of the aforementioned report.

13 6. On July 20, 2015, Patient's symptoms of pain, redness and heat had continued to
14 worsen, he returned to Urgent Care, and was seen by another PA-C, who noted that Patient A's left
15 foot exhibited gas bubbles. Based upon such gas bubbles, Patient A was sent to the UMC hospital,
16 where he was seen by both a surgeon and an infectious disease specialist. Unfortunately, Patient A
17 had to have his second, third, and fourth toes amputated because of abscesses and osteomyelitis.

18
19 **Count I**

20 **(Malpractice)**

21 **NRS 630.301(4)**

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

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

26 9. NAC 630.040 defines malpractice as the failure of a physician, in treating a patient,
27 to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances.

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1 10. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
2 to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when
3 rendering medical services to Patient A.

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

6 **Count II**

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

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

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

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

14 14. Respondent failed to maintain complete medical records relating to the diagnosis,
15 treatment and care of Patient A, by failing to document his actions when he treated Patient A,
16 whose medical records were not timely, legible, accurate, and complete.

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

19 **Count III**

20 **(Violation of Standards of Practice Established by Regulation)**

21 **NRS 630.306(1)(b)(2)/NAC 630.210**

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

24 17. Violation of a standard of practice adopted by the Board is grounds for initiating
25 disciplinary action against a licensee pursuant to NRS 630.306(1)(b)(2).

26 18. NAC 630.210 requires a physician to seek consultation with another provider of
27 health care in doubtful or difficult cases whenever it appears that consultation may enhance the
28 quality of medical services.

1 19. Respondent failed to timely seek consultation with regard to Patient A’s medical
2 condition from July 13, 2015 to July 15, 2015; Respondent should have consulted with an
3 appropriate care provider to address the doubtfulness of the diagnosis of Patient A’s medical
4 condition, and such a timely consultation would have confirmed or denied such a diagnosis and
5 may have enhanced the quality of medical care provided to Patient A with regard to his left foot.

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

8 **WHEREFORE**, the Investigative Committee prays:

9 1. That the Board give Respondent notice of the charges herein against him and give
10 him notice that he may file an answer to the Complaint herein as set forth in NRS 630.339(2)
11 within twenty (20) days of service of the Complaint;

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

14 3. That the Board determine what sanctions to impose if it determines there has been
15 a violation or violations of the Medical Practice Act committed by Respondent;

16 4. That the Board make, issue and serve on Respondent its findings of fact,
17 conclusions of law and order, in writing, that includes the sanctions imposed; and

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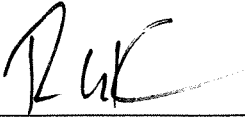
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5. That the Board take such other and further action as may be just and proper in these premises.

DATED this 12 day of February, 2020.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

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VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

Mr. M. Neil Duxbury, having been duly sworn, hereby deposes and states under penalty of perjury that he is the Chairman of the Investigative Committee of the Nevada State Board of Medical Examiners that authorized the Complaint against the Respondent herein; that he has read the foregoing Complaint; and that based upon information discovered in the course of the investigation into a complaint against Respondent, he believes that the allegations and charges in the foregoing Complaint against Respondent are true, accurate and correct.

DATED this 12th day of February, 2020.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

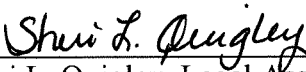
By: M. Neil Duxbury
M. Neil Duxbury, Chairman

CERTIFICATE OF MAILING

I hereby certify that I am employed by Nevada State Board of Medical Examiners and that on the 13th day of February, 2020, I served a filed copy of the formal COMPLAINT, via USPS e-certified, return receipt mail to the following:

**Josiah Erwin Smith, PA-C
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145**

Dated this 13th day of February, 2020.



Sheri L. Quigley, Legal Assistant

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