

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF NEVADA

\* \* \* \* \*

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

Case No. 20-30921-1

FILED

SEP 18 2020

NEVADA STATE BOARD OF  
MEDICAL EXAMINERS

By: \_\_\_\_\_

FIRST AMENDED COMPLAINT

The Investigative Committee<sup>1</sup> (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

<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 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 with 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 physician assistant, who noted that  
15 Patient A's left foot exhibited gas bubbles. Based upon such gas bubbles, Patient A was sent to the  
16 UMC hospital, where he was seen by both a surgeon and an infectious disease specialist. Patient A  
17 had to have his second, third, and fourth toes amputated because of abscesses and osteomyelitis.

18  
19 **Count I**

20 **Malpractice (NRS 630.301(4))**

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

23 8. NRS 630.301(4) provides that malpractice by a practitioner (physician assistant) is  
24 grounds for initiating disciplinary action against a licensee if this malpractice is established by a  
25 preponderance of the evidence.

26 9. NAC 630.380(1)(f) provides that a physician assistant is subject to discipline by the  
27 Board if the Board finds the physician assistant is guilty of malpractice. Malpractice is the failure  
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1 to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances when  
2 treating a patient.

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

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

8 **Count II**

9 **Failure to Maintain Complete Medical Records (NRS 630.3062(1)(a))**

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

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

15 14. NAC 630.380(1)(m) provides that a physician assistant is subject to discipline by  
16 the Board if the Board finds the physician assistant is guilty of violating a provision of NRS  
17 630.301 to 630.3065, inclusive.

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

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

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

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

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

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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 what sanctions to impose if it determines there has been a violation or violations of the Medical Practice Act committed by Respondent;

4. That the Board make, issue and serve on Respondent its findings of fact, conclusions of law and order, in writing, that includes 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 13<sup>th</sup> day of September, 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 13th day of September, 2020.

INVESTIGATIVE COMMITTEE OF THE  
NEVADA STATE BOARD OF MEDICAL EXAMINERS

*M. NEIL DUXBURY*

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