

1 **THE BOARD OF MEDICAL EXAMINERS**
2 **OF THE STATE OF NEVADA**

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4 **In the Matter of Charges and**
5 **Complaint Against**
6 **ROSNER PATRICK LUSS, M.D.,**
7 **Respondent.**

Case No. 19-10860-1

FILED

FEB 10 2020

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

8
9 **FIRST AMENDED COMPLAINT**

10 The Investigative Committee (IC) of the Nevada State Board of Medical Examiners (Board)
11 hereby issues this First Amended Complaint (Complaint) against Rosner Patrick Luss, M.D.
12 (Respondent), a licensed physician in Nevada. After investigating this matter, the IC¹ has a
13 reasonable basis to believe that Respondent has violated provisions of Nevada Revised Statutes
14 (NRS) Chapter 630 and Nevada Administrative Code (NAC) Chapter 630 (collectively, the Medical
15 Practice Act). The IC alleges the following facts:

16 1. Respondent was licensed by the Board, pursuant to the provisions of the Medical
17 Practice Act, on July 1, 1998, and is currently licensed in active status (License No. 8699).

18 2. Patient A's true identity is not disclosed herein to protect her privacy, but is
19 disclosed in the Patient Designation served upon Respondent along with a copy of this Complaint.

20 3. On August 3, 2013, Patient A, a 70-year-old female, presented to St. Rose
21 Dominican Hospital and complained of shortness of breath with a past medical history of coronary
22 artery disease, asthma/COPD, insulin-dependent diabetes, obesity with sleep apnea, hypertension,
23 anemia, and a history of DVT on chronic anticoagulation therapy.

24 4. On August 9, 2013, Respondent took over care of Patient A without a "sign out"
25 and lacked information about this patient's medical condition. Respondent was contacted by the
26 nursing staff, informing him that he was now the attending physician. Respondent ordered IV

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28 ¹ At the time filing of the Complaint was approved, the IC was composed of M. Neil Duxbury, Chairman,
Aury Nagy, M.D., and Michael C. Edwards, M.D., FACS.

1 Solu-Medrol and epinephrine for swelling of the neck and shortness of breath, as Patient had
2 difficulty breathing, along with IV Hydralazine for hypertension. Additionally, Respondent
3 ordered an upper GI and MRI of the neck to evaluate Patient A's dysphasia and neck swelling,
4 and she was transferred to the ICU for close observation. Patient A received a CT scan of her
5 neck without contrast. As the ordering physician, Respondent did not indicate any findings within
6 the medical records, from the ordered CT scan. Respondent documented Patient A's condition of
7 epiglottitis, but did not document the possibility of an infectious etiology or suggest starting
8 antibiotics, despite medical information indicating Patient A's high risk. Respondent documented
9 Patient A's white blood count spike on August 9, 2013 was attributed to the steroids ordered that
10 morning, but Patient A's blood was drawn at essentially the same time the steroids were given,
11 and her white blood cell count spiked as her steroids were being tapered.

12 5. While Respondent was acting as the Attending Physician, Patient A's condition
13 worsened. She was intubated and then transferred to the Intensive Care Unit (ICU), where Patient
14 A's care was directed by the ICU primary care doctor. Respondent continued to monitor Patient
15 A's condition and care, but at no time did Respondent ever conduct an examination of Patient A
16 or her throat, as indicated in the medical records, while acting as the Attending Physician

17 6. Previous to the preparation of this Complaint, the Board solicited the services of an
18 independent medical expert (IME) to review Patient A's medical records and the care provided to
19 such patient by Respondent. This IME opined that Respondent's care of Patient A violated the
20 Medical Practice Act.

21 Count I

22 (Malpractice)

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

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

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

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

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

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

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

18 **Count III**

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

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

22 17. Violation of a standard of practice adopted by the Board is grounds for disciplinary
23 action pursuant to NRS 630.306(1)(b)(2).

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

27 19. Respondent failed to timely seek consultation with regard to Patient A's medical
28 condition during the morning of August 9, 2013, and Respondent should have consulted with an

1 appropriate care provider to address the doubtfulness of the diagnosis of Patient A's medical
2 condition. Such a timely consultation would have confirmed or denied such a diagnosis.

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

5 **WHEREFORE**, the IC prays:

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

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

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

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

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

17
18 DATED this 10 day of February, 2020.

19
20 INVESTIGATIVE COMMITTEE OF THE
21 NEVADA STATE BOARD OF MEDICAL EXAMINERS

22 By: 

23 Robert Kilroy, Esq.
24 General Counsel
25 Attorney for the Investigative Committee
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VERIFICATION

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STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

Mr. M. Neil Duxbury, 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 10th day of February, 2020.

INVESTIGATIVE COMMITTEE OF THE NEVADA
STATE BOARD OF MEDICAL EXAMINERS

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 9th day of April, 2019, I served a filed copy of the formal FIRST AMENDED COMPLAINT, via USPS e-certified, return receipt mail to the following:

**Rosner Patrick Luss, M.D.
c/o Anthony D. Lauria, Esq.
Lauria Tokunaga Gates & Linn, LLP
1755 Creekside Oaks Drive, Suite 240
Sacramento, CA 95833**

Dated this 11th day of February, 2020.



Sheri L. Quigley, Legal Assistant

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