### 9600 Gateway Drive Reno, Nevada 89521

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

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In the Matter of Charges and Complaint **Against:** 

ARNOLD DANIEL CHUNG, M.D., Respondent.

Case No. 21-40241-1

**FILED** 

MAY - 5 2021

**NEVADA STATE BOARD OF** MEDICAL EXAMINERS

### **COMPLAINT**

The Investigative Committee (IC)<sup>1</sup> of the Nevada State Board of Medical Examiners (Board), by and through SARAH A. BRADLEY, J.D., Deputy Executive Director and attorney for the IC, having a reasonable basis to believe that ARNOLD DANIEL CHUNG, M.D., (Respondent), violated the provisions of Nevada Revised Statutes (NRS) Chapter 630 and the Nevada Administrative Code (NAC) Chapter 630 (collectively Medical Practice Act), hereby issues its Complaint (Complaint), stating the IC's charges and allegations as follows:

- Respondent was at all times relevant to this Complaint a licensed medical doctor 1. holding an active license to practice medicine in the State of Nevada (License No. 14527). Respondent was originally licensed by the Board on August 29, 2012.
- Patient A<sup>2</sup> was initially seen at University Medical Center Hospital (UMC) on 2. May 13, 2018 with complaints of chest pain. A computed tomography angiography (CTA) of Patient A's chest was completed and a pulmonary nodule was identified on the scan. Nine (9) samples of the nodule were taken while Patient A was in the hospital. All nine (9) samples tested were negative for cancer pursuant to the pathology reports. Patient A was discharged from the hospital accordingly.

<sup>&</sup>lt;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 Victor M. Muro, M.D., Chair, Ms. April Mastroluca, and Weldon Havins, M.D., J.D.

<sup>&</sup>lt;sup>2</sup> Patient A's name is not disclosed in this Complaint to protect his identity, but is disclosed in the Patient Designation contemporaneously served on Respondent with a copy of this Complaint.

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- 3. Respondent's first encounter with Patient A occurred on July 3, 2018, wherein he had a lengthy discussion with Patient A and ordered for a positron emission tomography (PET) scan and bronchoscopy to be performed. Respondent determined the results to be lung cancer and created a plan of care that consisted of further testing to rule out mediastinal disease, which required a bronchoscopy and cervical mediastinoscopy. If the results of these tests were negative for mediastinal disease, Respondent intended to proceed with a right upper lobectomy.
- 4. Patient A underwent the bronchoscopy and cervical mediastinoscopy on July 13, 2018 which included lymph node biopsies. The pathology reports following the tenth (10th) biopsy performed on the patient indicated the lymph nodes were, again, negative for cancer.
- 5. Respondent treated Patient A for lung cancer and removed the right upper portion of Patient's A's lung.
- Respondent's letter to the Board dated September 11, 2019 providing his response 6. to the allegations in this case contained multiple statements regarding a diagnosis of lung cancer for Patient A that are not corroborated by Patient A's medical records.
- Respondent submitted a second letter to the Board dated December 20, 2019, 7. providing additional responses to the allegations in this case that contained multiple statements that are also not corroborated by Patient A's medical records.
  - 8. According to testing and his medical records, Patient A did not have lung cancer.
- Malpractice as interpreted by the Board in NAC 630.040 "means the failure of a 9. physician, in treating a patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances."
- Performing a cancer operation in the absence of a cancer diagnosis is not "the 10. reasonable care, skill, or knowledge ordinarily used under similar circumstances" unless there were mitigating circumstances, such as the location of a lesion.
- Patient A's lesion was not located in an area that a lobectomy was necessary in 11. order to receive a cancer diagnosis.
- There was no mention by Respondent in Patient A's medical records that he 12. considered a lesser resection, such as a wedge or segmentectomy.

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	13.	In this	case,	using th	e reaso	nable	care,	skill,	or	knowledge	ordinarily	used	under
similar	circum	stances	requir	ed that a	physic	ian ini	itially	confi	rm	the preopera	ative diagn	osis o	f lung
cancer	before p	perform	ing a l	lobectom	ıy.								

The UMC discharge summary clearly indicated that Patient A had multiple 14. bronchoscopic biopsies, none of which were positive for cancer.

### **COUNT I**

### NRS 630.301(4) (Malpractice)

- All of the allegations contained in the above paragraphs are hereby incorporated by 15. reference as though fully set forth herein.
- 16. NRS 630.301(4) provides that malpractice of a physician is grounds for initiating disciplinary action against a licensee.
- NAC 630.040 defines malpractice as the failure of a physician, in treating a patient, 17. to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances.
- As demonstrated by, but not limited to, the above-outlined facts, Respondent failed 18. to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when he removed the right upper portion of Patient's A's lung despite the fact that Patient A did not have lung cancer and Patient A's medical records did not support a lung cancer diagnosis.
- By reason of the foregoing, Respondent is subject to discipline by the Board as 19. provided in NRS 630.352.

### **COUNT II**

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

- All of the allegations contained in the above paragraphs are hereby incorporated by 20. reference as though fully set forth herein.
- NRS 630.3062(1)(a) provides that the failure to maintain timely, legible, accurate 21. and complete medical records relating to the diagnosis, treatment and care of a patient is grounds for initiating disciplinary action against a licensee.
- Respondent failed to maintain complete medical records relating to the diagnosis, 22. treatment and care of Patient A because Respondent's statements to the Board contain information

that is not included in Patient A's medical records and/or not supported by the information included in Patient A's medical records.

23. 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 him and give 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;
- 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 award fees and costs for the investigation and prosecution of this case as outlined in NRS 622.400;
- 4. That the Board determine what sanctions to impose if it finds and concludes that there has been a violation or violations of the Medical Practice Act committed by Respondent;
- 5. That the Board make, issue and serve on Respondent its findings of fact, conclusions of law and order, in writing, to include sanctions to be imposed; and
- 6. That the Board take such other and further action as may be just and proper in these premises.

DATED this 5th day of May, 2021.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

SARAH A. BRADLEY, J.D., MBA

Deputy Executive Director

9600 Gateway Drive Reno, NV 89521

Tel: (775) 688-2559

Email: <u>bradleys@medboard.nv.gov</u>
Attorney for the Investigative Committee

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

### **VERIFICATION**

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STATE OF NEVADA	)
	: SS.
COUNTY OF CLARK	)

Victor M. Muro, M.D., 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 **5**<sup>th</sup> day of May, 2021.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Um mund MED

VICTOR M. MURO, M.D. Chairman for the Investigative Committee

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

### **CERTIFICATE OF SERVICE**

I hereby certify that I am employed by the Nevada State Board of Medical Examiners and that on the 6th day of May, 2021, I served a file-stamped copy of the foregoing **COMPLAINT**, via U.S. Certified Mail to the following parties:

MARIE ELLERTON, ESQ. c/o Arnold Daniel Chung, M.D. Hall Prangle & Schoonveld, LLC 1140 North Town Center Dr., Ste. 350 Las Vegas, NV 89144 Certified Mail Receipt No.: 91

9171 9690 0935 0255 6180 88

DATED this day of May, 2021.

MERCEDES FUENTES

Legal Assistant

Nevada State Board of Medical Examiners