

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

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4
5 **In the Matter of Charges and**
6 **Complaint Against:**
7 **JOSETTE ELLEN SPOTTS, M.D.,**
8 **Respondent.**
9

Case No. 21-10144-1

FILED

JUL 14 2021

NEVADA STATE BOARD OF
MEDICAL EXAMINERS

By: 

10 **COMPLAINT**

11 The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through Robert G. Kilroy, Esq., Senior Deputy General Counsel and attorney for the
13 IC, having a reasonable basis to believe that Josette Ellen Spotts, M.D., (Respondent) violated the
14 provisions of Nevada Revised Statutes (NRS) Chapter 630 and Nevada Administrative Code (NAC)
15 Chapter 630 (collectively, the Medical Practice Act), hereby issues its Complaint, stating the IC's
16 charges and allegations as follows:

17 1. At all times relative to this Complaint, Respondent held an active license to practice
18 medicine in the State of Nevada (License No. 6917), and originally licensed by the Board on
19 October 2, 1993.

20 2. Patient A² was a fifty-six (56) year-old female at the time of the events at issue.

21 3. On September 27, 2016, Patient A underwent a diagnostic mammogram and
22 ultrasound, which revealed bilateral BI-RADS 4 breast masses. The radiologist recommended an
23 ultrasound guided breast biopsy.

24 4. On October 5, 2016, Patient A was referred to Respondent. Patient A had an
25 abnormal mammogram and breast ultrasound for which a biopsy was recommend. Respondent

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27 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 Wayne Hardwick, M.D., Mr. M. Neil
Duxbury, and Aury Nagy, M.D.

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

1 examined Patient A, and based upon her evaluation of the patient and review of previous
2 mammograms from 2016 and 2015, Respondent believed the patient's findings were more
3 consistent with a heterogeneously dense breast described in the 2015 mammogram study instead
4 of the bilateral BI-RADS 4 breast masses indicated on the 2016 mammogram report. Following
5 Respondent's review of the ultrasound report of both of Patient A's breasts, it was her medical
6 opinion that the findings were consistent with benign fibrocystic changes in both breasts.
7 Respondent determined that the previously recommended biopsy by the radiologist was not
8 necessary. Specifically, Respondent's records state "the findings are consistent with benign
9 fibrocystic changes bilaterally and the findings in the breast, seen by ultrasound, are, in my
10 opinion, not suspicious for malignancy, therefore biopsy is not recommended."

11 5. On February 15, 2017, Patient A presented to Respondent and reported that since
12 her last visit on October 5, 2016, she felt a new mass on her right axilla. A biopsy was performed
13 on the breast tissues on both sides and the pathology report listed an invasive ductal carcinoma in
14 both breasts. When Patient A presented to Respondent to discuss the pathology results and
15 treatment options, Respondent ordered an MRI with and without contrast on both breasts.
16 Respondent did not note the inconsistent, discordant results of the right axillary biopsy and
17 characterized Patient A as a Stage 1 breast cancer patient. Respondent did not recognize that her
18 clinical exam of a firm right axillary lymph node, along with the biopsy result that did not reveal
19 any lymph node tissue within the biopsy specimen, which should have warranted further
20 evaluation by Respondent. Here, Respondent characterized Patient A as "T1c N0 MX" and
21 documented that she was "lymph node negative" and based upon these two factors, Respondent
22 recommended that Patient A proceed with surgery instead of a less-invasive treatment of
23 neoadjuvant chemotherapy. Both factors were incorrect in Respondent's diagnosis and treatment
24 plan and thus were in error.

25 6. On February 21, 2017, Patient A had the MRI on both breasts and the report from
26 the MRI stated the following: a) the right breast had several masses with susceptibility
27 characteristic of malignancy; b) the left breast had a mass most characteristic of malignancy.
28 Respondent did not have any further involvement in her care since Patient A did not return.

1 On February 27, 2021, Patient A Informed Respondent that she was no longer comfortable
2 continuing her care because Respondent did not conduct or order a biopsy of her breasts during
3 the October 5, 2016 visit because Respondent misdiagnosed her condition as benign. Patient A
4 was eventually diagnosed with Stage 3 breast cancer.

5 **COUNT I**

6 **NRS 630.301(4) (Malpractice)**

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

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

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

13 10. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
14 to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when
15 she provided medical services to Patient A by not recommending nor ordering a biopsy after the
16 October 5, 2016 mammogram findings. Additionally, she failed to diagnose Patient A's clinical
17 presentation of breast cancer. The inaction of not ordering a biopsy was unreasonable. Respondent
18 made inappropriate recommendations regarding Patient A's treatment and ultimately causing the
19 patient to make inappropriate and delayed decisions about her medical plan. Respondent acted
20 unreasonably with her care, skill and knowledge regarding her characterization of Patient A as
21 "T1c N0 MX" and when she documented that Patient A she was "lymph node negative." Based
22 upon these incorrect two factors, Respondent recommended that Patient A proceed with surgery
23 instead of a less-invasive treatment of neoadjuvant chemotherapy.

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

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1 **COUNT II**

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

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

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

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

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

13 **COUNT III**

14 **NRS 630.306(1)(b)(2) (Violation of Standards of Practice Established by Regulation)**

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

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

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

22 19. Respondent failed to timely seek consultation with another care provider regarding
23 Patient A's medical condition and treatment plan. Respondent should have consulted with an
24 appropriate care provider to address the proper treatment plan for Patient A based on the test
25 results provided by the 2016 mammogram. This consultation could have enhanced Patient A's
26 treatment and eliminated delay of the diagnosis of breast cancer.

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

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VERIFICATION

STATE OF NEVADA)
 : ss.
COUNTY OF WASHOE)

Bret W. Frey, 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 13th day of July, 2021.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: 

BRET W. FREY, M.D.
Chairman of the Investigative Committee