BEFORE THE BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

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In the Matter of Charges and Complaint Against: **AJUMOBI CHARLES AGU, M.D.** **Respondent.**	**Case No. 22-12518-1**

FILED
JUL 29 2022
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521
(775) 688-2559

COMPLAINT

The Investigative Committee[1] (IC) of the Nevada State Board of Medical Examiners (Board), by and through Ian J. Cumings, J.D., Deputy General Counsel, and attorney for the IC, having a reasonable basis to believe that Ajumobi Charles Agu, M.D., (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 medical doctor holding an active license to practice medicine in the State of Nevada (License No. 8857). Respondent was originally licensed by the Board on November 23, 1998.

PATIENT A

2. Patient A[2] was a 20-year-old male at the time of the events at issue.

3. On January 6, 2020, Patient A presented to Respondent for treatment, with complaints of a cough. Respondent did not record in the medical records a complete patient medical history, nor did he notate Patient A's history of habitual behaviors such as the abuse of alcohol, drugs, and/or smoking. Respondent did record in the medical records that Patient A had a

[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 Bret W. Frey, M.D., Aury Nagy, M.D. and Col. Eric D. Wade, USAF (Ret.).

[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.

cough with phlegm and prescribed Flonase, azithromycin, and Phenergan with codeine (240 ml) with a diagnosis of bronchitis. Respondent's notes were handwritten and largely illegible.

4. On February 3, 2020, Patient A returned again with complaints of a cough. Respondent recorded minimal history of Patient A in his medical records, noting that Patient A "looked healthy." Respondent refilled the prescriptions for Phenergan with codeine (240 ml) and Azithromycin.

5. On February 26, 2020, Patient A once again presented to Respondent with complaints of a cough. Respondent once again did not indicate in the medical record Patient A's vital signs and temperature and had notes that were handwritten and largely illegible. Respondent noted that Patient A was looking healthy with a clear chest. Respondent again refilled Patient A's prescriptions for Phenergan with codeine (240 ml), Azithromycin and Flonase.

6. On March 18, 2020, Patient A once again presented to Respondent with complaints of a cough. Respondent once again did not indicate in the medical record Patient A's vital signs and temperature and had notes that were handwritten and largely illegible. Respondent again refilled Patient A's prescriptions for Phenergan with codeine (240 ml), Azithromycin and Flonase.

7. Patient A was seen four (4) times over a two (2) month period in which Respondent treated him with a total of 960 ml of Phenergan with codeine without having ordered a chest film, performed a sinus evaluation, or performed a physical examination. Respondent did not prescribe any inhalers yet prescribed a mucous decongestant in the form of cough syrup with an opioid (codeine). Respondent did not indicate within Patient A's medical records the medical analysis and validation for prescribing the opioid cough suppressant (Phenergan with codeine (240 ml) once, much less refilling the prescription three (3) more times. Further, Respondent did not document any questions presented to Patient A of risk for habitual behavior or request any information on his family history of addiction. Moreover, there was no indication a Prescription Monitoring Program report (PMP Report) was ordered from the Nevada State Board of Pharmacy for Patient A, so that Respondent was aware of this patient's prescription history or current medication taken.

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COUNT I

NRS 630.301(4) - Malpractice

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

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

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

11. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when rendering medical services to Patient A. Respondent committed malpractice when he failed to properly conduct or provide the medical validation for the prescriptions, he provided to Patient A, especially the prescription opioid cough syrup. Respondent further diagnosed Patient A with bronchitis without any tests or examinations confirming the diagnosis was correct. Respondent failed to either document or perform any physical examinations, failed to obtain, and review family and social histories, and failed to refer Patient A for any testing before writing a prescription for an opioid cough suppressant (Phenergan with codeine (240 ml)) on three (3) separate encounters, which is not using reasonable care, skill, or knowledge ordinarily used under similar circumstances, violating NRS 630.301(4) malpractice.

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

COUNT II

NRS 630.3062(1)(a) - Failure to Maintain Proper Medical Records

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

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

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

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

COUNT III

NRS 630.306(1)(b)(2) - Violation of Standards of Practice by Engaging in the Practice of Writing Prescriptions for Controlled Substances in a Manner That Deviates from the *Guidelines for the Chronic Use of Opioid Analgesics* (Model Policy)

17. All the allegations in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

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

19. The Board adopted by reference the Model Policy in NAC 630.187.

20. Pursuant to NAC 630.230(1)(k), a licensee shall not engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the standards set forth in the Model Policy.

21. The Model Policy requires "Patient Evaluation and Risk Stratification." This includes the records reflecting "...the presence of one or more recognized medical indications and absence of psychosocial contraindications..." a contraindication would include addictive behavior by the patient or a family history of habitual behavior that was not screened for by Respondent during any of the four (4) encounters he had with Patient A. Completion of these evaluations should occur concurrently with the decision of whether to prescribe the opioid medication or not, according to the Model Policy.

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22. As demonstrated by, but not limited to, the above-outlined facts, Respondent wrote prescriptions to Patient A for cough syrup with opioid analgesics (cough suppressant Phenergan with codeine 240 ml) to treat Patient A's medical symptom of coughing with phlegm in a manner that deviated from the Model Policy. Respondent failed to provide a medical analysis and validation for the prescriptions provided to Patient A based on records with no medical history and no questions presented to Patient A of risk for habitual behavior nor questions related to a family history of addiction.

23. Respondent did not request a PMP report from the Nevada State Board of Pharmacy before issuing prescriptions for controlled substances to Patient A. There is no indication that a PMP was ordered, nor was there one present in the patient's chart.

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

PATIENT B

25. Patient B[3] was a 20-year-old female at the time of the events at issue.

26. On February 3, 2020, Patient B presented to Respondent for treatment with complaints of a cough, nasal congestion and difficulty sleeping. Respondent did not document viral signs, or obtain a complete patient medical history, including a history of habitual behavior, use and/or abuse of alcohol, drugs, and/or smoking, the patient's health maintenance, an immunization history, nor a menstrual history. Respondent noted that Patient B had a cough with nasal congestion based upon his limited physical examination of her chest only. Respondent prescribed Flonase, Azithromycin, Phenergan with codeine (240 ml) with a diagnosis of bronchitis.

27. On February 26, 2020, Patient B had her second encounter with Respondent. Patient B complained of coughing with nasal congestion, headaches, and difficulty sleeping. Respondent did not indicate in Patient B's medical record a significant medical history, her vital signs, nor an examination of her head, neck. Respondent noted Patient B was "healthy looking"

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[3] Patient B's 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.

with no obvious discomfort, but prescribed Phenergan with codeine (240 ml), Augmentin 875 mg and Flonase.

28. On March 18, 2020, Patient B had her third encounter with Respondent. She complained to Respondent about having nasal congestion and difficulty sleeping. Respondent did not record any vital signs or obtain a chest x-ray for Patient B at this encounter. Respondent again noted that Patient B was healthy looking and diagnosed Patient B with bronchitis. Respondent prescribed Phenergan with codeine (240 ml), Azithromycin and Flonase without a proper medical analysis or reasoning.

29. Patient B's summary of treatment from Respondent includes three (3) prescriptions of an opioid cough suppressant of 240 ml for each prescription over forty-eight (48) days. Respondent prescribed a total of 720 ml of Phenergan with codeine (240 ml) in this short span of time. Additionally, he continued to prescribe Azithromycin and Flonase without referring Patient B for a chest x-ray after months of upper respiratory infection-type symptoms. Moreover, Respondent failed to perform a sinus evaluation and failed to perform or document a physical examination. Respondent did not indicate in the patient's medical records any medical analysis or validation for the prescription of an opioid cough suppressant (Phenergan with codeine, 240 ml), nor ask any questions related to the risk for habitual behavior or family history of addiction. Moreover, there was no indication a PMP Report being checked to confirm the patient wasn't already on an opioid medication or a medication that is contraindicated with the prescriptions written by Respondent.

COUNT IV

NRS 630.301(4) - Malpractice

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

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

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

33. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when rendering medical services to Patient B as required under NRS 630.301(4). Respondent committed malpractice when he failed to properly conduct a proper physical examination, provide a medical analysis, provide alternative options and treatments nor provide validation for the opioid prescriptions provided to Patient B. Further, Respondent failed to use reasonable care, skill, or knowledge ordinarily used under similar circumstances when he diagnosed Patient B with bronchitis without referring Patient B for diagnostic tests or examinations confirming the diagnosis was correct; especially when Patient B was not, according to the medical records, showing any progress with their symptoms.

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

COUNT V

NRS 630.3062(1)(a) - Failure to Maintain Proper Medical Records

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

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

37. Respondent failed to maintain proper medical records relating to the diagnosis, treatment, and care of Patient B, by failing to correctly document his actions when he treated Patient C, whose medical records were not timely, legible, accurate, and complete.

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

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COUNT VI

NRS 630.306(1)(b)(2) - Violation of Standards of Practice by Engaging in the Practice of Writing Prescriptions for Controlled Substances in a Manner That Deviates from the Model Policy

39. All the allegations in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

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

41. The Board adopted by reference the Model Policy in NAC 630.187.

42. Pursuant to NAC 630.230(1)(k), a licensee shall not engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the standards set forth in the Model Policy.

43. Model Policy requires "Patient Evaluation and Risk Stratification." This includes the records reflecting "...the presence of one or more recognized medical indications and absence of psychosocial contraindications..." a contraindication would include addictive behavior by the patient or a family history of habitual behavior that was not screened for by Respondent during any of the three (3) encounters he had with Patient B. Completion of these evaluations should occur concurrently with the decision of whether to prescribe the opioid medication or not, according to the Model Policy.

44. As demonstrated by, but not limited to, the above-outlined facts, Respondent wrote three (3) separate prescriptions to Patient B for opioid analgesics (an opioid cough suppressant, Phenergan with codeine) to treat bronchitis, and the pain therefrom, in a manner that deviated from the Model Policy. Additionally, the Respondent did not review the PMP Report to confirm that the patient wasn't already taking opioid medications before writing the prescription for Phenergan with codeine. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

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PATIENT C

45. Patient C[4] was a 29 -year-old male at the time of the events at issue.

46. On November 4, 2019, Patient C presented to Respondent to establish care with a new provider for his medications, which are listed as Oxycodone, Alprazolam, Adderall, Chlorthalidone, Lisinopril, and Tizanidine. Patient C also had complaints of a cough. Respondent did not review Patient C's medical records from his previous prescribing physicians nor was a PMP report a part of the patient's medical records. Respondent did complete a PMH form, which indicated Patient C had a history of a herniated vertebral disc, chronic lower lumbar pain, hypertension, and depression; the family history of Patient C was taken and indicated depression in his family. Patient C indicated his depression scale was a one (1); trouble falling asleep was a three (3); and trouble concentrating was a two (2). Patient C also complained of having little energy, being tired, and feeling depressed. Patient C's social history was also taken indicating no habitual behaviors. Patient C saw Respondent five (5) more times from December 4, 2019 through May 5, 2020, in which Respondent indicated in the medical records that Patient C was healthy with no obvious distress and all medications were prescribed. There was no physical or diagnostic examination of Patient C's spine and no neurological and mental assessment by the Respondent. Respondent did not order blood tests or drug testing by a laboratory to monitor Patient C's compliance with his medication regimen.

47. Summary of Patient C's treatment from Respondent indicates that the medications Adderall (amphetamine sulfate) and alprazolam (Xanax) were prescribed without Respondent reviewing any prior medical records from the previous medical provider and no medical analysis for their continued use by Patient C, despite the patient stating high blood pressure. The only justification provided for the medications are very simple notes of ADHD and anxiety. There is no indication if the patient had taken the medications before, if the risks and benefits were discussed with the patient, nor was there any elaboration on the patient's description of their symptoms for these two (2) diagnoses.

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[4] Patient C's 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.

48. Respondent did not refer Patient C to a psychologist in a timely manner to address the diagnosis of anxiety or ADHD. Respondent did not perform an adequate physical examination and there was not an adequate mental status evaluation in the medical record. No laboratory blood or urine tests were ordered and there was no medical analysis or justification for the treatment plan of Patient C's depression, herniated disk, or ADHD. Additionally, there were no indications of a review of the physical

COUNT VII

NRS 630.301(4) - Malpractice

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

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

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

52. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when rendering medical services to Patient C when he failed to order laboratory blood tests and urine tests while continuing to prescribe an opioid medication, conduct proper physical examinations, nor make a timely psychiatric referral.

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

COUNT VIII

NRS 630.3062(1)(a) - Failure to Maintain Proper Medical Records

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

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

56. Respondent failed to maintain proper medical records relating to the diagnosis, treatment, and care of Patient C, by failing to correctly document his actions when he treated Patient C, whose medical records were not timely, legible, accurate, and complete.

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

COUNT IX

NRS 630.306(1)(b)(2) - Violation of Standards of Practice by Engaging in the Practice of Writing Prescriptions for Controlled Substances in a Manner That Deviates from the Model Policy

58. All the allegations in the above paragraphs are hereby incorporated by reference as though fully set forth herein.

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

60. The Board adopted by reference the Model Policy in NAC 630.187.

61. Pursuant to NAC 630.230(1)(k), a licensee shall not engage in the practice of writing prescriptions for controlled substances to treat acute pain or chronic pain in a manner that deviates from the standards set forth in the Model Policy.

62. Model Policy requires "Patient Evaluation and Risk Stratification." This includes the records reflecting "...the presence of one or more recognized medical indications and absence of psychosocial contraindications..." a contraindication would include addictive behavior by the patient or a family history of habitual behavior that was not screened for by Respondent during any of the three (3) encounters he had with Patient C. Completion of these evaluations should occur concurrently with the decision of whether to prescribe the opioid medication or not, according to the Model Policy.

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63. As demonstrated by, but not limited to, the above-outlined facts, Respondent wrote three (3) separate prescriptions to Patient B for opioid analgesics (an opioid cough suppressant, Phenergan with codeine) to treat bronchitis, and the pain therefrom, in a manner that deviated from the Model Policy. Additionally, the Respondent did not review the PMP Report to confirm that the patient wasn't already taking opioid medications before writing the prescription for Phenergan with codeine.

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

WHEREFORE, the Investigative Committee prays:

1. That the Board give Respondent notice of the charges herein against him and give her 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 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 award fees and costs for the investigation and prosecution of this case as outlined in NRS 622.400;

5. 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

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

DATED this 29th day of July, 2022.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____

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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 29th day of July, 2022.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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

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