## Nevada State Board of Medical Examiners 9600 Gateway Drive Reno, Nevada 89521 (775) 688-2559

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

\* \* \* \* \*

In the Matter of Charges and Complaint

Against:

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ANTHONY HOFILENA IBAY, M.D.,

Respondent.

Case No. 23-11648-1

FILED

JUN 2 0 2023

NEVADA STATE BOARD OF MEDICAL EXAMINEDS

#### **COMPLAINT**

The Investigative Committee<sup>1</sup> (IC) of the Nevada State Board of Medical Examiners (Board), by and through Brandee Mooneyhan, Deputy General Counsel and attorney for the IC, having a reasonable basis to believe that Anthony Hofilena Ibay, 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. 8147). Respondent was originally licensed by the Board on April 8, 1997 and specializes in obstetrics and gynecology.
- 2. Patient A had been Respondent's patient since approximately 2014, and was fifty (50) years old on June 16, 2017.<sup>2</sup>
- 3. On or about June 16, 2017, Patient A presented to Respondent's medical office with a chief complaint of a lump in her right breast that had been present for at least three (3) weeks.

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<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 Vicor M. Muro, M.D., Weldon Havins, M.D., and April Mastroluca.

<sup>2</sup> 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.

4. A diagnostic mammogram<sup>3</sup> is required to evaluate a palpable mass in the breast of a 50-year-old patient, such as Patient A. *See* American College of Obstetricians and Gynecologists (ACOG), Practice Bulletin No. 164, *Diagnosis and Management of Benign Breast Disorders* (June 2016) ("For women 30 years or older with a palpable mass, diagnostic mammography should be obtained, and *additional* imaging with ultrasonography often is required. (emphasis added)); American College of Radiology (ACR), "ACR Appropriateness Criteria – *Palpable Breast Masses*," in 14 Journal of the American College of Radiology No. 55 (May 2017) ("Diagnostic mammography is indicated for women greater than or equal to 40 years presenting with a palpable lump.")

- 5. While an ultrasound⁴ of the breast may be appropriate for supplemental evaluation of a palpable mass in the breast of a 50-year-old patient such as Patient A, it should not be the only imaging ordered for such a patient. See ACR Appropriateness Criteria Palpable Breast Masses ("[Ultrasound] is an essential next step in evaluating women ≥40 years with a palpable mass..."; however, "[ultrasound] can be used as the initial means of image evaluation for women aged 30 to 39 years with a palpable breast mass, although diagnostic mammography or [digital breast tomosynthesis] may also be appropriate in this age group.").
- 6. In order to evaluate the lump in Patient A's right breast, Respondent ordered an ultrasound, but did not order a diagnostic mammogram.

#### **COUNT I**

#### NRS 630.301(4) - Malpractice

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

<sup>&</sup>lt;sup>3</sup> "A mammogram is an x-ray picture of the breast." See National Library of Medicine, Medline Plus, <a href="https://medlineplus.gov/mammography.html">https://medlineplus.gov/mammography.html</a> (last visited June 12, 2023). "A diagnostic mammogram is done for people who have a lump or other signs or symptoms of breast cancer." Id. While the same machine is uses for screening and diagnostic mammograms, "diagnostic mammography takes longer to perform than screening mammography and the total dose of radiation is higher because more x-ray images are needed to obtain views of the breast from several angles." See National Cancer Institute, <a href="https://www.cancer.gov/types/breast/mammograms-fact-sheet">https://www.cancer.gov/types/breast/mammograms-fact-sheet</a> (last visited June 12, 2023).

<sup>4 &</sup>quot;Breast ultrasound is a test that uses sound waves to examine the breasts." See National Library of Medicine, Medline Plus, <a href="https://medlineplus.gov/ency/article/003379.htm">https://medlineplus.gov/ency/article/003379.htm</a> (last visited June 12, 2023).

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- 8. NRS 630.301(4) provides that malpractice of a physician grounds for initiating disciplinary action against a licensee.
- 9. 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."
- 10. In failing to order a diagnostic mammogram of the lump in Patient A's breast as a result of his encounter with her on or about June 16, 2017, Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when rendering medical services to Patient A.
- 11. 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 Complete Medical Records

- 12. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.
- 13. 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.
- 14. Respondent failed to maintain complete medical records relating to the diagnosis, treatment and care of Patient A when he failed to document a thorough examination of Patient A during her encounter with him on or about June 16, 2017, or any appropriate counseling of Patient A during that encounter.
- 15. 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 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;

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

DATED this 2014 day of June, 2023.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

Brandie Mooneyhan
BRANDEE MOONEYHAN

Deputy General Counsel 9600 Gateway Drive Reno, NV 89521

Tel: (775) 688-2559

Email: <a href="mooneyhanb@medboard.nv.gov">mooneyhanb@medboard.nv.gov</a>
Attorney for the Investigative Committee

## OFFICE OF THE GENERAL COUNSEL

# 9600 Gateway Drive Reno, Nevada 89521

#### **VERIFICATION**

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 20th day of June, 2023.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

VICTOR M. MURO, M.D.

Chairman of the Investigative Committee

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CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Nevada State Board of Medical Examiners and that on the 20th day of June, 2023, I served a file-stamped copy of the foregoing **COMPLAINT** as well as file-stamped copy of the **PATIENT DESIGNATION** and required fingerprinting materials, via USPS Certified Mail, postage pre-paid, to the following parties:

ANTHONY HOFILENA IBAY, M.D. c/o Heather S. Hall, Esq. and Robert C. McBride, Esq. McBride Hall 8329 West Sunset Road, Suite 260 Las Vegas, NV 89113

day of June, 2023.

9171 9690 0935 0255 6993 39
Tracking No.:\_\_\_\_\_

DATED this

MERCEDES FUENTES

Legal Assistant

Nevada State Board of Medical Examiners