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

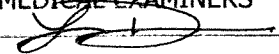
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In the Matter of Charges and Complaint
Against:
BENJAMIN MORGAN MUIR, M.D.,
Respondent.

Case No. 23-36616-1

FILED

JAN 26 2023

NEVADA STATE BOARD OF
MEDICAL EXAMINERS
By: 

COMPLAINT

The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners (Board), by and through Ian J. Cumings, Deputy General Counsel and attorney for the IC, having a reasonable basis to believe that Benjamin Morgan Muir, 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 physician holding an active license to practice medicine in the State of Nevada (License No. 13459). Respondent was originally licensed by the Board on March 29, 2010. Respondent's specialty is listed as diagnostic radiology.

2. Patient A² was a fifty-two (52) year-old male at the time of the events at issue.

3. Patient A had a history of a prior spinal surgery and had undergone an initial posterior spinal fixation on June 3, 2016. Subsequently, Patient A underwent a revision surgery on January 30, 2017.

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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., Carl N. Williams, Jr., M.D. FACS, 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.

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2 4. An X-ray that was obtained on March 3, 2017, and a subsequent X-ray taken on
3 April 7, 2017, demonstrated that Patient A had undergone a posterior spinal fixation from the
4 second lumbar vertebrae (L2) through the first sacral vertebrae (S1).

5 5. On May 31, 2017, Patient A had a second posterior spinal fixation revision for the
6 replacement of failed instrumentation.

7 6. Patient A had another X-ray obtained on June 12, 2017, which demonstrated the
8 May 31, 2017, revision and extension of the fixation to the second sacral vertebrae which included
9 bilateral iliac bolts. At the time of the June 12, 2017 X-ray, the iliac bolts did not demonstrate
10 screw cup displacement.

11 7. An X-ray of Patient A was obtained on August 4, 2017, which demonstrated a clear
12 displacement of the right iliac bolt screw cup.

13 8. Patient A underwent a computed tomography (CT) scan which was interpreted by
14 the Respondent on October 17, 2017.

15 9. The CT scan clearly demonstrates the displacement of the right iliac screw cup.
16 Respondent failed to identify or note the displaced screw cup from the right iliac bolt cup in his
17 report.

18 **COUNT I**

19 **NRS 630.301(4) - Malpractice**

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

22 11. NRS 630.301(4) provides that malpractice of a Physician is grounds for initiating
23 disciplinary action against a licensee.

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

27 13. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
28 to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when

1 rendering medical services to Patient A by failing to identify and note the right iliac bolt screw cap
2 had loosened on his October 17, 2017 CT scan.

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

5 **WHEREFORE**, the Investigative Committee 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 determines there has been
12 a violation or violations of the Medical Practice Act committed by Respondent;

13 4. That the Board award fees and costs for the investigation and prosecution of this
14 case as outlined in NRS 622.400;

15 5. That the Board make, issue and serve on Respondent its findings of fact,
16 conclusions of law and order, in writing, that includes the sanctions imposed; and

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

19 DATED this 20th day of January, 2023.

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

22 By: _____

23 IAN J. CUMINGS
24 Deputy General Counsel
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26 Reno, NV 89521
27 Tel: (775) 688-2559
28 Email: icumings@medboard.nv.gov
Attorney for the Investigative Committee

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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 26th day of January, 2023.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: 

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