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

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In the Matter of Charges and Complaint

Against:

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FRANK ANTHONY SHALLENBERGER, M.D.,

Respondent.

Case No. 23-7127-1

**NEVADA STATE BOARD OF** AL EXAMINERS

# **COMPLAINT**

The Investigative Committee<sup>1</sup> (IC) of the Nevada State Board of Medical Examiners (Board), by and through Donald K. White, Senior Deputy General Counsel and attorney for the IC, having a reasonable basis to believe that Frank Anthony Shallenberger, 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:

Respondent was at all times relative to this Complaint a medical doctor holding an 1. active license to practice medicine in the State of Nevada (License No. 4951). Respondent was originally licensed by the Board on January 7, 1984.

#### PATIENT A

Patient A<sup>2</sup> was a sixty-nine (69) year-old female of which Respondent had a close 2. personal relationship at the time of the events at issue. Her name is not disclosed in this Complaint to protect her identity, but is disclosed in the Patient Designation contemporaneously served on Respondent with a copy of this Complaint.

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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 Rachakonda D. Prabhu, M.D., Ms. Sandy Peltyn and Victor M. Muro, M.D.

<sup>2</sup> Patient A-C's true identity is not disclosed herein to protect their privacy, but is disclosed in the Patient Designation served upon Respondent along with a copy of this Complaint.

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- On September 19, 2007 Patient A was seen by the Respondent for hormone 3. replacement therapy. The treatment plan prepared by Respondent without clinical reasoning, baseline testing nor diagnosis, was for testosterone micronized powder (TMP) which is a schedule III controlled substance.
- Patient A was seen again by Respondent on March 19, 2008, and he continued the 4. same hormone therapy by prescribing TMP on this date, again without clinical reasoning, nor a formal diagnosis.
- 5. December 15, 2010 diagnostic testing was performed on Patient A and her salivary hormone results showed Testosterone above the normal range.
- Respondent submitted prescriptions for TMP from April 2, 2009 through June 19, 6. 2017 for Patient A, over five thousand seven hundred (5,700) days worth of TMP with twenty-two (22) prescriptions.

### **COUNT I**

# NRS 630.301(4) - Malpractice

- All of the allegations contained in the above paragraphs are hereby incorporated by 7. reference as though fully set forth herein.
- NRS 630.301(4) provides that malpractice of a physician is grounds for initiating 8. 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."
- As demonstrated by, but not limited to, the above-outlined facts, Respondent failed 10. to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when rendering medical services to Patient A. Specifically, he did not order a baseline laboratory test prior to initation of prescriptions for TMP. Documentation does not indicate that Respondent discussed signs and symptoms that Patient A had been experiencing that would prompt the treatment with a testosterone replacement. Respondent wrote for five thousand seven hundred (5,700) days of worth of testosterone from 2009 through 2017 for Patient A without a proper

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diagnosis of a condition or ailment for which TMP would be an appropriate medication therapy. Additionally, Respondent only checked Patient A's testosterone levels twice during the the eight (8) year period, the last time being in 2010, when it was four (4) times higher than the upper limit.

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

### **COUNT II**

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

- 12. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.
- NRS 630.3062(1)(a) provides that the "failure to maintain timely, legible, accurate 13. and complete medical records relating to the diagnosis, treatment and care of a patient" constitute grounds for initiating discipline against a licensee.
- Respondent failed to maintain accurate and complete medical records relating to 14. the diagnosis, treatment and care of Patient A, by failing to correctly document his actions when he prescribed a schedule IV controlled substance to Patient A.
- By reason of the foregoing, Respondent is subject to discipline by the Board as 15. provided in NRS 630.352.

#### PATIENT B

- Patient B<sup>2</sup> was a twenty-seven (27) year old female of which Respondent had a 16. close personal relationship at the time of the events at issue.
- On December 6, 2016, Respondent prescribed zolpidem tartrate, a schedule IV 17. However, there are no medical records to substantiate an actual controlled substance. physician-patient relationship existed nor did Respondent provide any clinical reasoning for his prescription of the schedule IV controlled substance. Specifically, there was no record of this patient having been seen at Respondent's clinic even though a prescription sleep aid was provided to Patient B and signed by Respondent.

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#### **COUNT III**

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

- 18. All of the allegations contained in the above paragraphs are hereby incorporated by reference as though fully set forth herein.
- 19. 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.
- Respondent failed to maintain timely, accurate, and complete medical records 20. relating to the diagnosis, treatment and care of Patient B, by failing to correctly document his actions when he treated Patient B for insomnia without evaluating her for insomnia.
- 21. By reason of the foregoing, Respondent is subject to discipline by the Board as provided in NRS 630.352.

#### **PATIENT C**

- Patient C<sup>2</sup> was forty-two (42) year old female at the times of the events at issue. 22.
- On November 7, 2016, Patient C was seen by Respondent for concerns about 23. symptoms that started at the time of her hysterectomy that included being weak, tired, headaches, fatigue, and brain fog. Respondent prescribed Patient C TMP, a schedule III controlled substance.
- On December 21, 2016, Respondent once again evaluated Patient C for follow-up 24. after starting the hormone cream. She indicated she was feeling better and had no side effects, so Respondent increased her TMP dose and arranged for a follow-up visit in three (3) months.
- Respondent did not obtain laboratory results to measure the patient's current 25. hormone levels providing a baseline assessment, nor did he provide clinical reasoning for prescribing testosterone.

#### **COUNT IV**

# NRS 630.301(4) - Malpractice

All of the allegations contained in the above paragraphs are hereby incorporated by 26. reference as though fully set forth herein.

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- NRS 630.301(4) provides that malpractice of a physician is grounds for initiating 27. disciplinary action against a licensee.
- NAC 630,040 defines malpractice as "the failure of a physician, in treating a 28. patient, to use the reasonable care, skill, or knowledge ordinarily used under similar circumstances."
- Respondent failed to use the reasonable care, skill or knowledge ordinarily used 29. under similar circumstances when rendering medical services to Patient C. He did not order baseline laboratory tests prior to initation of prescriptions for TMP. Respondent wrote prescriptions for testosterone for Patient C without a diagnosis of a condition or ailment for which TMP would be an appropriate medication therapy.
- By reason of the foregoing, Respondent is subject to discipline by the Board as 30. provided in NRS 630.352.

#### PATIENT D

- Patient D is Respondent himself. 31.
- Respondent prescribed himself an eighty-one (81) day supply of testosterone 32. cyionate, a schedule III controlled substance. No accompanying medical records indicating a clinical evaluation was performed nor was a diagnosis identified for this medication. Additionally, there is no baseline diagnostic report provided in the medical records file which is necessary before providing supplemental hormones such as testosterone.
- On March 15, 2016, Respondent prescribed himself zolpidem tartrate, a schedule 33. IV medication. Again, there are no medical records indicating clinical evaluation and justification for writing this prescription.

#### **COUNT V**

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

All of the allegations contained in the above paragraphs are hereby incorporated by 34. reference as though fully set forth herein.

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- 35. 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.
- Respondent failed to maintain accurate and complete medical records relating to 36. the diagnosis, treatment and care of Patient D, by failing to correctly document his actions when he treated Patient D.
- By reason of the foregoing, Respondent is subject to discipline by the Board as 37. provided in NRS 630.352.

# **COUNT VI**

# NRS 630.306(1)(c) - Unlawful Prescribing of Controlled Substance or Dangerouse Drug

- All of the allegations contained in the above paragraphs are hereby incorporated by 38. reference as though fully set forth herein.
- NRS 630.306(1)(c) provides that administering, dispensing or prescribing any 39. controlled substance, or any dangerous drug as defined in chapter 454 of NRS, to or for himself or herself or to others except as authorized by law, constitute grounds for initiating disciplinary action.
- NRS 453,256(5) provides that an individual practitioner may not dispense a 40. substance included in schedule II, III or IV for the practitioner's own personal use except in a medical emergency.
- Respondent did not prescribe testosterone cyionate or zolpidem tartrate to himself 41. for emergency purposes as required by NRS 453.256(5) making these prescriptions unlawful pursuant to NRS 630.306(1)(c).
- By reason of the foregoing, Respondent is subject to discipline by the Board as 42. provided in NRS 630.352.

# **WHEREFORE**, the Investigative Committee prays:

That the Board give Respondent notice of the charges herein against him and give 1. 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 Z/S day of April, 2023.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:

DONALD K. WHITE

Senior Deputy General Counsel

9600 Gateway Drive Reno, NV 89521

Tel: (775) 688-2559

Email: dwhite@medboard.nv.gov

Attorney for the Investigative Committee

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

Reno, Nevada 89521

(775) 688-2559

#### 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 Alstay of April, 2023.

INVESTIGATIVE COMMITTEE OF THE NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: UM MUND MED

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