

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 Complaint**

Case No. 23-42501-1

6 **Against:**

FILED

7 **SCHON COLBY ROBERTS, M.D.,**

MAY 31 2023

8 **Respondent.**

**NEVADA STATE BOARD OF
MEDICAL EXAMINERS**

By: 

9
10 **COMPLAINT**

11 The Investigative Committee¹ (IC) of the Nevada State Board of Medical Examiners
12 (Board), by and through Deonne E. Contine, General Counsel and attorney for the IC, having a
13 reasonable basis to believe that Schon Colby Roberts, M.D. (Respondent) violated the provisions
14 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. Respondent was at all times relative to this Complaint a medical doctor holding an
18 active license to practice medicine in the State of Nevada (License No. 17176). Respondent was
19 originally licensed by the Board on July 1, 2017.

20 2. Respondent's specialty is listed as Emergency Medicine on the Board's website.
21 Plastic and Cosmetic Surgery are not specialties of Emergency Medicine.

22 3. Respondent was at all times relevant to this Complaint the supervising physician
23 responsible for the medical services provided by David Kayle McCleve, PA-C (License
24 No. PA1526) (McCleve), a physician assistant licensed by the Board.

25 4. Pursuant to a formal notice of supervision provided to the Board on or about
26 November 12, 2021, and filed in accord with NAC 630.360(4), Respondent certified that he had
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28 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 Aury Nagy, M.D., Nicola M. Spirtos, M.D.,
F.A.C.O.G., and Ms. Maggie Arias-Petrel.

1 read and was aware of all provisions of NRS Chapter 630 and NAC Chapter 630 concerning his
2 duties and professional responsibilities as a physician supervising McCleve.

3 5. Respondent's supervision of McCleve terminated on May 23, 2022, after the dates
4 relevant to this Complaint.

5 6. At all times relevant to this Complaint, as McCleve's supervising physician,
6 Respondent was responsible for all the medical services performed by McCleve.

7 7. At all times relevant to this Complaint, McCleve was considered to be and was
8 deemed the agent of Respondent in his performance of all medical services.

9 8. At all times relevant to this Complaint McCleve was performing liposuction
10 surgery at MyShape Lipo.

11 9. Respondent's training in liposuction surgery is limited to a two (2) day course in
12 tumescent liposuction offered by Inspiring Physicians Worldwide and a certificate from a
13 liposuction master class offered by Elite Medical, a company which, upon information and belief,
14 no longer exists.

15 10. Upon information and belief, Respondent did not perform liposuction surgery and
16 delegated all liposuction surgeries to McCleve during the time he was McCleve's supervising
17 physician.

18 11. Patient A² was a sixty-two (62) year-old female at the time of the events in this
19 Complaint.

20 12. McCleve saw Patient A at MyShape Lipo for the first time on March 4, 2022, when
21 she presented for liposuction surgery.

22 13. It appears that Patient A completed a packet of preprinted forms on her arrival for
23 her appointment on March 4, 2022. On her Patient Information form, Patient A indicated her past
24 medical history included hypertension and hypercholesterolemia. She also indicated that she had
25 undergone two (2) prior liposuction surgeries. Under the Family History section, Patient A noted a
26 family history of hypertension.

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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 14. McCleve's records are preprinted and highly templated. Respondent uses the
2 Liposuction Procedure Report form to report, among other things, a patient's allergies, current
3 medications used, whether the patient is pregnant, the patient's vital signs, lidocaine used, aspirate
4 withdrawn, and the lipo laser areas treated.

5 15. This preprinted form also seems to have a templated narrative that is used on all
6 Liposuction Procedure Reports.

7 16. The medical records lack documentation on Patient A's blood pressure prior to or
8 during her liposuction surgery.

9 17. McCleve's medical records lack any documentation that Patient A was evaluated
10 preoperatively to assess any preoperative medical conditions. There is no documentation whether
11 McCleve did obtain preoperative labs or whether he performed a preoperative risk assessment
12 to determine whether Patient A was an appropriate candidate for liposuction surgery. Finally,
13 there is no documentation that Patient A was prescribed preoperative antibiotics or given any post
14 operative instructions prior to March 4, 2022.

15 18. Upon information and belief, McCleve did not see Patient A preoperatively to
16 assess any preoperative medical conditions, obtain preoperative labs or perform a preoperative
17 risk assessment to determine whether Patient A was an appropriate candidate for liposuction
18 surgery. Finally, McCleve did not prescribe Patient A preoperative antibiotics.

19 19. The Liposuction Procedure Report notes that Patient A consented to the procedure
20 after being informed of the risks and potential complications of tumescent liposuction. McCleve's
21 records lack documentation of consent to any other type of procedure.

22 20. The Liposuction Procedure Report shows the Smart Lipo Laser procedure was
23 performed.

24 21. Upon information and belief, Patient A did not consent to the Smart Lipo Laser
25 procedure.

26 22. The Liposuction Procedure Report indicates that Patient A was given post
27 operative instructions and medications. McCleve's Practitioner Notes and Discharge Summary
28 indicate he told Patient A to provide her pharmacy location; however, the medical records lack

1 documentation regarding the medications prescribed, dose, or date the prescriptions were
2 requested to be filled by McCleve.

3 23. In a postoperative note McCleve indicated he received a call from Walmart
4 Pharmacy on March 6, 2022, two (2) days following Patient A's surgery, for clarification on the
5 prescription order.

6 24. McCleve's postoperative medical record notes that on March 7, 2022, Respondent
7 spoke to an Intensive Care Unit physician at Mountain View Hospital who indicated Patient A
8 was in pain, hypotensive, and that Patient A likely had necrotizing fasciitis.

9 25. Patient A was transferred to Sunrise Hospital on March 7, 2022, where she was
10 confined and treated for two (2) weeks. Patient A was discharged on March 21, 2022.

11 **COUNT I**

12 **NRS 630.3062(1)(a) - Failure to Maintain Appropriate Medical Records**

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

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

18 28. NAC 630.370 requires the supervising physician review and sign off on selected
19 medical record charts.

20 29. As demonstrated by, but not limited to, the above outlined facts, Respondent
21 violated NRS 630.3062(1)(a) because McCleve, his supervisee, failed to correctly document his
22 actions when he treated Patient A, whose medical records were not timely, legible, accurate, and
23 complete because Respondent and McCleve relied on preprinted, templated forms that contained a
24 limited narrative. Additionally, McCleve failed to document the required information and his
25 records contained inconsistent and incorrect information which was never corrected by
26 Respondent as his supervisor. Additionally, Respondent, through McCleve, failed to document
27 any pre or post operative care.

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

COUNT II

NRS 630.306(1)(e) – Practicing Beyond Scope of License

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

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

33. NAC 630.360(1) permits a physician to perform only those medical services that are within the scope of the practice of the physician.

34. Respondent violated NRS 630.306(1)(e) because the liposuction surgery performed on Patient A, by McCleve, is not within the Respondent’s scope of practice of emergency medicine. Additionally, Respondent does not have a specialty in cosmetic or plastic surgery.

35. 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)(e) – Practicing Beyond Scope of Training

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

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

38. NAC 630.360(1) permits a physician to perform only those medical services that are within the scope of the physician’s training.

39. Respondent violated NRS 630.306(1)(e) because Respondent supervised McCleve in liposuction surgery without a specialty in cosmetic or plastic surgery and because his liposuction surgery training was limited to, at most, three (3) days of coursework.

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

COUNT IV

NRS 630.301(4) – Malpractice

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

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

7 43. Pursuant to NAC 630.370, at all times relevant to this Complaint, as McCleve’s
8 supervising physician, Respondent was responsible for all the medical activities of McCleve and
9 McCleve’s malpractice is imputed to Respondent.

10 44. Pursuant to NAC 630.375, at all times relevant to this Complaint, McCleve was
11 considered to be and was deemed the agent of Respondent in the performance of all medical
12 services and McCleve’s malpractice is imputed to Respondent.

13 45. NAC 630.040 defines malpractice as “the failure of a physician, in treating a
14 patient, to use the reasonable care, skill, or knowledge ordinarily used under similar
15 circumstances.”

16 46. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
17 to use the reasonable care, skill or knowledge ordinarily used under similar circumstances because
18 McCleve was Respondent’s agent and because Respondent was responsible for the medical
19 activities of McCleve and McCleve failed to:

- 20 a. provide a preoperative assessment prior to the procedure date to adequately
21 assess:
- 22 i. Patient A’s medical history;
 - 23 ii. determine whether further preoperative workup was needed;
 - 24 iii. conduct a risk assessment to determine if Patient A was an
25 appropriate candidate for liposuction surgery; and
 - 26 iv. provide preoperative prescriptions and post operative instructions.
- 27 b. timely prescribe post operative medications; and
- 28 c. obtain consent for the Smart Lipo Laser procedure.

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

3 **COUNT V**

4 **NRS 630.301(4) – Malpractice**

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

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

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

12 51. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed
13 to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when
14 he supervised a physician assistant in procedures he does not perform himself, and because, as an
15 emergency medicine physician, he did not perform liposuction surgeries within his scope of
16 practice. Additionally, the only training Respondent received in liposuction surgery is three (3)
17 days of programing offered by Inspiring Physicians Worldwide and a certificate from a
18 liposuction master class offered by Elite Medical, a company which, upon information and belief,
19 no longer exists.

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

22 **COUNT VI**

23 **NRS 630.306(1)(b)(2) – Failure to Adequately Supervise**

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

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

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1 55. Pursuant to NAC 630.230 it is prohibited professional conduct for a physician to
2 fail to provide adequate supervision of a physician assistant.

3 56. Respondent violated NRS 630.306(1)(b)(2) by failing to provide the supervision as
4 required by NAC 630.370(5). Respondent has provided no documentation demonstrating
5 development and implementation of a program to ensure the quality of care provided by McCleve.
6 Respondent is not competent to develop and carry out a program to ensure the quality of care
7 provided by McCleve because liposuction surgery is outside the scope and training of an
8 emergency physician. Furthermore, Respondent has negligible training in liposuction surgery, is
9 not a specialist in cosmetic or plastic surgery and could not perform the duties required of him by
10 law and, therefore, Respondent's supervising physician position was sinecure.

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

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

14 1. That the Board give Respondent notice of the charges herein against him and give
15 him notice that he may file an answer to the Complaint herein as set forth in
16 NRS 630.339(2) within twenty (20) days of service of the Complaint;

17 2. That the Board set a time and place for a formal hearing after holding an Early
18 Case Conference pursuant to NRS 630.339(3);

19 3. That the Board determine what sanctions to impose if it determines there has been
20 a violation or violations of the Medical Practice Act committed by Respondent;

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

23 5. That the Board make, issue and serve on Respondent its findings of fact,
24 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 31st day of May, 2023.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

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VERIFICATION


STATE OF NEVADA)
 : ss
COUNTY OF CLARK)

Aury Nagy, 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 31st day of May, 2023.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By:



AURY NAGY, M.D.
Chairman of the Investigative Committee