

BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In the Matter of Charges and Complaint
Against:
YEVGENIY ANATOLIY KHAVKIN, M.D.,
Respondent.

Case No. 23-35041-2
FILED
JUL 28 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 Brandee Mooneyhan, Deputy General Counsel and attorney for the IC, having a reasonable basis to believe that Yevgeniy Anatoliy Khavkin, 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. 13271). Respondent was originally licensed by the Board on August 26, 2009, and specializes in neurological surgery.

2. Patient A² was a forty-six (46) year-old female with a history of neck and lower back pain when the events described below began.

3. Patient A was referred by her primary care physician to Respondent for consultation regarding her pain, and Patient A first presented to Respondent's clinic on November 24, 2020 (first encounter).

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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., (Chair), Col. Eric D. Wade, USAF (Ret.) (Public Member), and Carl N. Williams, Jr., M.D., FACS.

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 4. Respondent’s record of the first encounter indicates that Patient A “ha[d] been
2 through extensive conservative treatment without significant improvement of her symptoms.”
3 The next line states: “Conservative treatment[:] no pain management; no physical therapy; no
4 neurology services[.]” The record does not document other “extensive conservative treatment”
5 allegedly taken by Patient A.

6 5. The record further indicates that during the first encounter, Respondent reviewed
7 magnetic resonance imaging (MRI) of Patient A’s lumbar spine that had been taken on
8 October 9, 2020.

9 6. In pertinent part, the radiologist who performed the MRI of Patient A’s lumbar
10 spine found mild-to-moderate facet arthrosis and foraminal narrowing³ in the lumbar segments
11 between Patient A’s L4 and L5 vertebrae (L4-5)⁴:

12 L4-5: Small broad-based posterior central disk protrusion-annular
13 fissure with anterior/posterior disk osteophyte complex. Mild-
14 moderate facet arthrosis. Thecal sac is mildly narrowed measuring
15 8.6-8.8 mm. Slight lateral recess narrowing. Mild-moderate
16 bilateral foraminal narrowing.

17 In contrast, the radiologist found that the vertebral segment between Patient A’s L3 and L4
18 vertebrae (L3-4) had only mild facet arthrosis and normal foramina:

19 L3-L4: Disk bulge with endplate osteophyte versus protrusion.
20 Mild facet arthrosis. No significant spinal canal stenosis. Foramina
21 are lower limits of normal.

22 The radiologist recorded his overall impression regarding Patient A’s spine as:

- 23 1. Mild scoliosis, degenerative spondylosis, and facet arthrosis
24 throughout the lumbar spine. Very small disk protrusions and/or
25 disk bulging from L2-L3 through L5-S1.
26 2. L4-L5: Mild spinal canal stenosis and mild-to-moderate bilateral
27 foraminal narrowing.

28 ³ “[N]arrowing of the openings (called neural foramina) where spinal nerves leave the spinal column” is also
called “spinal stenosis,” and such “narrowing puts pressure on [the] nerves and spinal cord and can cause pain.” See
“*Spinal stenosis*,” Medical Encyclopedia, <https://medlineplus.gov/ency/article/000441.htm> (last visited July 27, 2023);
“*Spinal Stenosis*,” Health Topics, <https://medlineplus.gov/spinalstenosis.html> (last visited July 27, 2023).

⁴ “There are three main groups of vertebrae—the cervical vertebrae atop the spinal column, of which there
are seven; the thoracic vertebrae, situated below the cervical vertebrae, of which there are twelve; and the lumbar
vertebrae situated below the thoracic vertebrae, of which there are five. The letters ‘C,’ ‘T,’ and ‘L’ are used
respectively to designate cervical, thoracic and lumbar vertebrae. The sacrum is located at the base of the spinal
column and below it, the coccyx or ‘tailbone.’ The five sacral and four coccygeal vertebrae are fused and together are
considered one bone.” *Mousseau v. Schwartz*, 756 N.W.2d 345, 347 n.2 (S.D. 2008).

- 1 3. Other levels: no significantly spinal canal or foraminal
- 2 narrowing.
- 3 4. No abnormal enhancement/mass.
- 4 5. No abnormal signal in the cord.

5 7. Respondent's record of the first encounter reflects that Respondent believed that
6 only Patient A's L4-5 lumbar segment required surgical attention. Respondent recorded his
7 interpretation of the October 9, 2020, MRI as "show[ing] evidence of degenerative changes at the
8 L4 L5 level with a central and foraminal stenosis and the loss of the disc height," and that he
9 recommended "proceeding with surgical treatment consisting of the L4-L5 lumber decompression
10 and fusion"⁵ to treat Patient A's lower back pain.

11 8. Patient A had another visit with Respondent on January 26, 2021, for a
12 preoperative consultation. Respondent's record of the preoperative consultation states that Patient
13 A was "[s]cheduled TLIF^[6] L4-L5 01/29/2021." A narrative under the heading "Plan" stated:
14 "We will proceed with the previously discussed L4-L5 TLIF."

15 9. On the "Surgery & Procedure Scheduling Form/Physician Pre-Operative
16 Admission Orders" regarding the procedure, which appears to have been signed by Respondent
17 and transmitted to the hospital on or about January 20, 2021, in the space for "Procedure as it is to
18 appear on the Consent," was entered: "Lumbar Decompression and Fusion from Lumbar Four to
19 Lumbar 5."

20 10. On January 29, 2021, Patient A presented to Spring Valley Hospital Medical
21 Center for the planned transforaminal lumbar interbody fusion with decompression at her L4-5
22 vertebral segment.

23 11. The "Consent to Surgery and Other Invasive Procedures" regarding the planned
24 procedure, which was signed and dated on the morning of January 29, 2021, indicates that
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26 ⁵ In the context of spinal surgery, decompression refers to the surgical relief of pressure on the spinal cord or
27 nerves. "To accomplish the fusion during [transforaminal lumbar interbody fusion] surgery, two rods are placed
28 lengthwise on either side of the spine and attached with screws into the pedicle bones of the spine. This bracing
provides stability, while a small metal cage with bone-growth material is placed between the vertebra to facilitate new
bone growth and fusion of the spine." *Knight v. Clark*, 283 So. 3d 1111, 1124 (Miss. Ct. App. 2019) (Westbrooks, J.,
dissenting) (internal footnotes omitted).

⁶ In this context, "TLIF" means transforaminal interbody lumbar fusion.

1 Patient A authorized Respondent to perform “Lumbar decompression and fusion from lumbar four
2 to lumbar five.”

3 12. The “Pre-Procedure Verification” form regarding Patient A’s surgery, signed and
4 dated the morning of January 29, 2021, states that the procedure for which Patient A had reported
5 to the hospital was: “LUMBAR DECOMPRESSION AND FUSION FROM LUMBAR FOUR
6 TO LUMBAR FIVE.”

7 13. As set forth above, the preoperative records regarding Patient A’s
8 January 29, 2021, surgery indicate that only the L4-5 segment of Patient A’s spine was to be
9 operated upon; there is no indication that any other spinal segment was a candidate for surgery.

10 14. During the January 29, 2021, surgery, in addition to performing the planned
11 procedure at the L4-5 segment, Respondent operated on the L3-4 segment of
12 Patient A’s spine.

13 15. In his operative report of the January 29, 2021, surgery, Respondent stated that he
14 made an intraoperative decision to extend the surgery to the L3-4 segment:

15 The L3-L4 segment was examined and appeared to be grossly
16 unstable with a significant amount of abnormal motion present at
17 this level. Per my previous discussion with the patient and to
18 accomplish better clinical outcomes and prevent neurological
deficit, it was decided to incorporate the L3-L4 segment into the
construct and the Precision pedicle screws were placed at the L3,
L4 and L5 levels bilaterally.

19 16. Respondent failed to explain in his operative report why the L3-4 segment was
20 “examined” in the midst of the surgery when the preoperative MRI indicated that it did not require
21 surgery.

22 17. Neither did Respondent explain how Patient A’s L3-4 segment was “examined” in
23 the midst of the surgery, when mere appearance of the segment would be insufficient to
24 demonstrate instability and physical manipulation of the segment would be unwarranted.

25 18. Nor did Respondent explain what criteria he used to determine that the L3-4
26 segment was “grossly unstable” or provide any objective measurement of its alleged instability.

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1 28. NAC 630.040 defines malpractice as “the failure of a physician, in treating a
2 patient, to use the reasonable care, skill, or knowledge ordinarily used under similar
3 circumstances.”

4 29. Respondent failed to use the reasonable care, skill or knowledge ordinarily used
5 under similar circumstances when, during Patient A’s spinal surgery on January 29, 2021, he
6 fused the L3-4 segment of Patient A’s spine without sufficient evidence that it was medically
7 necessary to do so.

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

10 **COUNT II**

11 **NRS 630.301(7) – Engaging in Conduct That Violates the Trust of a Patient and Exploits**
12 **the Relationship with the Patient for Financial or Other Personal Gain**

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

15 32. NRS 630.301(7) provides that “engaging in conduct that violates the trust of the
16 patient and exploits the relationship between the physician and the patient for financial or other
17 personal gain” constitutes grounds for initiating discipline against a physician.

18 33. Respondent engaged in conduct that violated Patient A’s trust and exploited his
19 relationship with Patient A to realize a financial or other personal gain by unnecessarily fusing
20 Patient A’s L3-4 lumbar segment in the midst of surgery planned for another spinal segment on
21 January 29, 2021, thereby increasing the cost of the surgery and his corresponding compensation.

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

24 **COUNT III**

25 **NRS 630.3062(1)(a) – Failure to Maintain Accurate Medical Records**

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

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

4 37. Respondent failed to maintain accurate and complete medical records relating to
5 the diagnosis, treatment and care of Patient A when he failed to include adequate detail in his
6 operative report of Patient A’s January 29, 2021, spinal surgery as to: (1) why he examined the
7 L3-4 vertebral segment when preoperative imaging showed it did not require surgery; (2) how he
8 examined the L3-4 vertebral segment; (3) what criteria he used to determine the L3-4 vertebral
9 segment was “grossly unstable”; and (4) any objective measurement of the alleged instability of
10 the L3-4 vertebral segment.

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

13 **COUNT IV**

14 **NRS 630.301(9) – Disreputable Conduct**

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

17 40. NRS 630.301(9) provides that engaging in conduct that brings the medical
18 profession into disrepute constitutes grounds for initiating discipline against a physician.

19 41. As demonstrated by, but not limited to, the above-outlined facts, by performing an
20 unnecessary surgical procedure and violating Patient A’s trust and exploiting his relationship with
21 Patient A in order to realize a financial or other personal gain, Respondent engaged in conduct that
22 brings the medical profession into disrepute.

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

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

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

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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 28th 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:

YEVGENIY ANATOLIY KHAVKIN, M.D.
c/o Maria Nutile, Esq.
Nutile Law
7395 S. Pecos Road, Ste. 103
Las Vegas, NV 89120

9171 9690 0935 0255 6833 14

Tracking No.: _____

DATED this 28th day of July, 2023.



MERCEDES FUENTES
Legal Assistant
Nevada State Board of Medical Examiners