BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA

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In the Matter of Charges and Complaint Against: **HILARY LYNN MALCARNEY, M.D., Respondent.**	**Case No. 24-28386-1**

FILED
MAR 28 2024
NEVADA STATE BOARD OF MEDICAL EXAMINERS
By:

OFFICE OF THE GENERAL COUNSEL
Nevada State Board of Medical Examiners
9600 Gateway Drive
Reno, Nevada 89521
(775) 688-2559

COMPLAINT

The Investigative Committee[1] (IC) of the Nevada State Board of Medical Examiners (Board), by and through Deonne E. Contine, General Counsel and attorney for the IC, having a reasonable basis to believe that Hilary Lynn Malcarney, 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. 10754). Respondent was originally licensed by the Board on December 29, 2003.

2. Patient A[2] was a sixty-three (63) year-old male at the time of the events at issue in this Complaint.

3. Patient A first saw Respondent on March 3, 2014, with complaints of bilateral knee pain. Over the next several years, Respondent periodically treated Patient A with steroid injections and later with viscosupplementation injections in his right knee.

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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 Aury Nagy, M.D., Ms. Maggie Arias-Petrel, and Nicola M. Spirtos, M.D., F.A.C.O.G.

[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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4. On July 16, 2018, Patient A saw Respondent for continued pain in his right knee. Records show that Respondent again suggested injections for treatment but because he had limited pain relief from previous conservative treatment, and after discussion about the procedure, Patient A indicated his desire for a total knee replacement.

5. Patient A saw Respondent for a preoperative appointment on January 23, 2019, during which he consented to the surgery and on February 5, 2019, Respondent performed a right total knee arthroplasty on Patient A.

6. Records indicate that at the time of surgery the initial placement of the 5-degree intramedullary guide (femoral jig) did not allow for a cut to the medial bone, so the jig was moved back from 9mm to 12mm.

7. This readjustment resulted in a significant valgus malalignment of the right femoral component because this original malalignment of the jig reinforced the incorrect angle at a more proximal level.

8. Post operative imaging evidenced the alignment of the knee in valgus in relation to the mechanical axis.

9. Patient A did not recover well from the total knee arthroplasty surgery. He had some initial healing issues including cellulitis (which recovered well with treatment). Patient A saw Respondent for six (6) post operative appointments during which he continued to complain of swelling and pain.

10. On March 5, 2019, Patient A sought a second opinion from Eric Boyden, M.D. related to continued pain in his right knee. Chart notes from this initial visit of Patient A indicate that Patient A presented with ". . . severe, severe pain that is persisting. He cannot be on his leg for any period of time. He has also noticed that the angle of his knee does not seem right to him. He seems like he is a little bit more knock-kneed than what he would expect."

11. Dr. Boyden's notes indicate his review of four (4) views of Patient A's knee including a full-length standing view which showed the distal cut on the femur to be about 10 degrees over ideal.

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12. Based on Dr. Boyden's examination and records review, it was explained to Patient A that the knee replacement would need to be redone with a revision of the femoral competent.

13. On March 27, 2019, Dr. Boyden performed a right total knee arthroplasty on Patient A.

14. Patient A continued to see Dr. Boyden for post operative care until his last appointment on July 30, 2019, in which chart notes state Patient A has no complaints, his knee did not hurt, and Patient A was doing well after revision surgery. Patient A was discharged from Dr. Boyden's care with the instruction that if he had any setbacks or issues, he should contact Dr. Boyden for additional care.

COUNT I

NRS 630.301(4) - Malpractice

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

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

17. 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."

18. As demonstrated by, but not limited to, the above-outlined facts, Respondent failed to use the reasonable care, skill or knowledge ordinarily used under similar circumstances when rendering medical services to Patient A when she failed to recognize intraoperatively the valgus malalignment of the right femoral component and therefore, did not correct her original and all subsequent cuts. Additionally, Respondent, while noting no evidence of any component loosening in the post operative x-ray studies, did not comment on the clear valgus malalignment in the right knee shown in the x-rays.

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

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WHEREFORE, the Investigative Committee prays:

1. That the Board give Respondent notice of the charges herein against her and give her notice that she 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;

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 28th day of March, 2024.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: Deonne E. Contine

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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 28th day of March, 2024.

INVESTIGATIVE COMMITTEE OF THE
NEVADA STATE BOARD OF MEDICAL EXAMINERS

By: _____
AURY NAGY, M.D.
Chairman of the Investigative Committee

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